
 த. கோமதிசாமிநாயகர்
 பப்பிடுவதற்காக எடுத்துக்
 கொள்ளப்பட்ட
 சிமாதம் ௪ வருடம்
 சப்பிடு முடித்த
 சிமாதம் ௪ வருடம்
 ராட்ச்சி உதவியாளரின்
 கைகொப்பம்.

MALABAR LAND TENURES.

(CONFIDENTIAL.)

G.O., dated 19th October 1880, Nos. 2500—2509, Judicial.

READ—again the following paper :—

G.O., dated 15th September 1880, No. 2241, Judicial.

Read—the following telegram from the Collector of Malabar, to the Chief Secretary to Government, dated Calicut, 12th September 1880 :—

Moplah outrage reported Walawanád. Moplah killed a Cherman, wounded two others, and was eventually shot. Body brought in. Ordered burning. Further particulars after inquiry.

Order—dated 15th September 1880, No. 2241, Judicial.

The Government will await further report.

(True Extract.)

(Signed) R. DAVIDSON,
 Chief Secretary.

READ—also the following papers :—

From Colonel C. S. HEARN, c.i.e., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 13th September 1880.

I enclose a demi-official just received from Major Hole, Superintendent of Police Malabar, regarding a fanatical murder at Angádipuram.

2. I am glad the Nairs shot the murderous Moplah. Major Hole does not anticipate anything further.

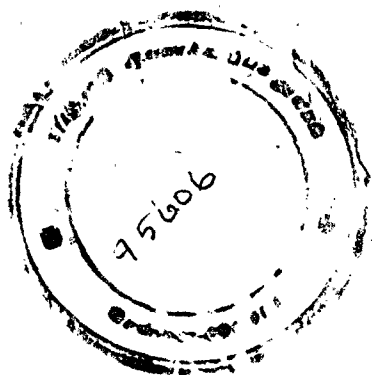
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ENCLOSURE No. 1.

From Major F. HOLE, Superintendent of Police, Malabar, to the Inspector-General of Police, dated Calicut, 11th September 1880.

A fanatical murder was reported from Angádipuram last night. It occurred on the 9th instant.

2. A Cherman had been converted to a Moplah. Apparently not liking the religion, he reverted to his Hinduism. This roused the ire of a Moplah, who deliberately murdered him. The Moplah then went to a mosque and took a sword from there and started off with the intention of murdering a Pisharodi (a sort of Nair) and two other Hindus. On his way to the Pisharodi's house he cut down a potter and severely wounded him and then went on. I fancy his intentions must have been known at the Pisharodi's house, for, when he arrived there and began waving his sword about, a Taragan (also a sort of Nair) shot him down on the spot. The Police were near at hand searching for him, and, on hearing the shot, they thought the Moplah must have shot the Pisharodi, but on coming up they found the Moplah just alive, but he died immediately after.



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3. I have entered this in my weekly report to-day, but as this may take some time to reach you, and in the mean time garbled rumours may be flying about, I have thought it better to write to you direct. I do not think there is any fear of anything else happening.

From Colonel C. S. HEARN, C.I.E., Inspector-General of Police, to the Chief Secretary to Government, dated Masulipatam, 4th October 1880.

Herewith a detailed account by Major Hole of the recent fanatical murder in Malabar. It shows the smouldering fire always ready to break out. Inspector Ahmad Gurikul "Khan Bahadur" has as usual done excellent service.

ENCLOSURE.

Extracts from the Report of the Superintendent of Police, Malabar, for the Fortnight ending 25th September 1880.

Inspector Ahmad Gurikul came in on 13th, bringing with him in connection with the fanatical murder the following seven prisoners:—

- | | |
|---------------------|-----------------------|
| 1. Ahmad Musaliar. | 5. Moideen Kutti. |
| 2. Andrass Moollah. | 6. P. Muhammad Kutti. |
| 3. S. Moideen. | 7. C. Ahmad Kutti. |
| 4. S. Coonjali. | |

No. 1 is the Kazi of the Melatur Mosque, to which the fanatic Ali went after murdering the Cherman.

No. 2 is the owner of the knife with which Ali cut the Cherman's throat.

No. 3 is Ali's uncle.

No. 4 is Ali's cousin.

No. 5 is the Mukri or Murzza of the Melatur Mosque.

No. 6 is a wealthy Moplah residing near the spot where the murder was committed. He married the aunt of Ali's wife. There are civil suits going on between him and one Apatutur Puttur, who was one of the three Hindus singled out to be murdered.

No. 7 had a long conversation with Ali the day before the murder in Ali's father's house and went away on the day of the murder.

As I have got full particulars of this murder now, I had better go through it all again, my last report being necessarily rather scanty, as the reports received at the time of writing it only gave a bare outline of the whole thing.

About nine or ten years ago the deceased Cherman, who was then a mere child of eight or nine years of age, became a Moplah. About five months ago by the persuasion of his relatives he forsook his religion and again became a Cherman. This gave great offence to the Moplahs in the neighbourhood, who are a sort of semi-savages, and, judging from the surrounding circumstances, it was determined amongst them that the Cherman should be killed, and Ali was the man who either volunteered to commit the murder or was chosen to do it. The reason why I say this is that Ali, after the manner of those who have made up their minds to become "shaheeds," neglected all his cultivation, and did nothing whatever for a whole month except pray at the mosque previous to the murder. It was also determined at the same time to get rid of three obnoxious well-to-do Hindus in the neighbourhood, viz., (1) a Pisharodi, (2) Apatutur Puttur and (3) Mannan Raman.

* Of this there is no proof, but it is a certainty.

On the day previous to the murder, Ali sent his wife away to her family's house, no doubt having divorced her.*

On the morning of the murder, Ali went twice to Apatutur Puttur's house and asked to see him. He had his knife at the time wrapped up in a cloth which he carried under his arm. Fortunately for himself the Puttur was away from home attending a ceremony some miles away. Not finding the Puttur, apparently, Ali determined to commence with the Cherman. He arrived at the Cherman's house about 2 p.m., and found him ploughing some ground close by. He asked the Cherman's aunt if he was her son, and, on her replying in the affirmative he walked up quietly to him, put his arm round his head, and deliberately cut the poor wretch's throat. The Cherman just managed to run two or three paces and fell dead. After this Ali went to the

† About half-a-mile off, called the Edapetta Mosque.

mosque,† which is the only one in the Melatur Amshom, and bathed and washed the blood off his body and clothes. Having done this, he went inside the mosque, and there remained in close conversation with the Kazi (No. 1 prisoner), who was seen standing with his arm round Ali's neck, whilst Ali was holding the sword in his hand. The Murzza (No. 5 prisoner) incautiously let this fact out.

From the mosque Ali took the old iron sword and set out for his house.* On his way

* About two miles off.

there, he came across the unfortunate potter, and cut him across his left arm because he did not rise from his seat as he approached. His wound is not very severe. A little further on he met a small Cherman child, who, seeing Ali coming along brandishing his sword about, began to imitate him. Ali gave him a whack with the flat of his sword and passed on to his house, into which he entered and stayed a few minutes.

From thence he went on to a hill close by called "Nadakani," from whence he began bawling out that he had killed the Cherman and intended to kill the Pisharodi, the Puttur, and the Mannan. On his way up the hill, he met a Nair boy and asked him where he was going; the boy, seeing that he was very angry and excited, answered very humbly that he was going to Pandikad and was allowed to pass.

From the mosque to the Nadakani hill, Ali was followed by several Moplahs,† who of course

could easily have boned him, if they had chosen.

At the foot of the hill, No. 1 prisoner gave him a paper, which is supposed to have been a war song. During the whole of that night it is not known what Ali did with himself, but it is supposed that he stayed with his uncle (No. 6 prisoner) who lives at the foot of the hill. The Angadipuram Police got news of the murder at night, and the Inspector Ahmad Gurikul, with Head Constable Attoo and four or five Constables, reached the spot, which is eight miles off, about 4 a.m. the following morning. They collected some people and began searching for Ali, and just at dawn they heard a shot fired

† Close to the foot of the Nadakani Hill.

from the Pisharodi's house,‡ which they reached just in time to see Ali expire. The people of the house there, were of course prepared for him, and when he appeared in the porch brandishing his sword about and muttering something, and with his cloth lightly tied round his loins in the proper martyr fashion, a Taragan, in the upper story of the house about three or four yards off, loosed off at him a little single-barrelled gun loaded with shot and bullets and sent him into the next world. The gun was a wretched little thing with a barrel about 1½ feet long, but it was enough for Ali!

The knife, I have said, with which Ali committed the murder, belonged to prisoner No. 2. It was given up by his sister, who took it out from the thatched roof where it was hid. It had stains of blood on it, and has been sent to the Chemical Examiner.

A very unpleasant part about this business is that prisoner No. 6 is, or rather was, a brother-in-law of Inspector Ahmad Gurikul. He married his sister about twenty-five years ago and divorced her in 1871.

It is hard lines on old Gurikul that he should have so many blackguard relatives, but it is not his fault.

The fanatic Ali was a man of a very violent temper. He was constantly quarrelling with his father and mother, and the day before he committed the murder, his father went to Angadipuram and laid a charge of assault against him, but of course said nothing about Ali's intention to run amuck, though I think the old rascal must have known something about it.

The fact of the Edapetta Mosque (that name puts me in mind of my old friend Koonyippa, whose house-name was Edapetta!) being the only "Jummat" Mosque in the Melatur Amshom shows that the whole of the Moplahs in that amshom must have been aware of Ali's intentions, and yet not a word of it leaked out before the murder was committed.

Gurikul thinks that Nos. 2, 4, and 7 prisoners intended to join Ali, but at the last moment their hearts failed them. All these seven prisoners must be deported, and fines imposed on the Moplahs in the Melatur Amshom. As soon as the Deputy Magistrate has finished his report on the case for Government, I am going over to consult with McWatters about the punishments to be awarded. In my first report on this murder Inspector-General asks whether Ali's friends will go for the Taragan who shot Ali. Gurikul thinks they will not touch him now as they are all in such a funk, but, should another outbreak occur, it is not at all improbable they will look him up. I have spoken to McWatters about rewarding the Taragan, and will see that he is well rewarded.

The Kazi of the Edapetta Mosque is the nephew of a Moplah who ran amuck about thirty years ago in the Pandikad outbreak, when a Brahmin was murdered; all concerned in that affair were shot down by the troops.

Mr. Salisbury, who was lately reduced from Sixth-class Inspector to European Head Constable, has resigned. As he had about sixteen years' service and I did not want to be hard upon him, I gave him time to think it over, but he persisted in his determination, and I therefore accepted his resignation. He will be no loss to the department. I believe he is now going into coffee!

(Signed) F. HOLE, Major,
Superintendent of Police.

25th September 1880.

From G. McWATERS, Esq., Acting District Magistrate of Malabar, to the Chief Secretary to Government, dated Calicut, 5th October 1880, No. 2732.

I have the honor now to forward the particulars of the Moplah outbreak in the Melatur Amshom of the Walawanád taluk reported to Government in my telegram of the 12th September last.

2. The first *express* report received on the night of the 10th September to the effect that a Moplah, of the Melatur Amshom, named Ali, had murdered a Cherman boy and was at large with the sword of the Edapetta Mosque, was followed shortly afterwards by a second *express* with the news that Ali had been shot as he was attempting to enter the residence of Krishna Pisharodi. A military demonstration was thus happily averted.

3. The morning after receiving the above reports, I directed Mr. P. Karunakara Menon, Temporary Deputy Collector, then in charge of the Special Assistant's division, to proceed immediately to Melatur and make a thorough investigation into the causes of the outrage. He was assisted by the Tahsildar of Ernád, the Sheristadar of Walawanád, the Division Inspector of Police, and the Dacoity Inspector Ahmad Gurikul Khan Bahadur. The Tahsildar of the Walawanád taluk happened to be on privilege leave.

4. All the evidence that is ever likely to be forthcoming has been recorded, and consists for the most part, as is usual in such cases, of the partial statements of those who are more or less implicated.

5. I am forwarding, for the information of His Grace the Governor in Council, the Deputy Collector's report in original and a translation of the thirty-three statements taken during the inquiry; also a translation of the first complaint made to the Walawanád Sub-Magistrate by Ali's father on the day before the murder, which was not submitted with the Deputy Collector's report.

6. The Deputy Collector attributes Ali's rising to a deliberate conspiracy to murder two Hindu landlords—Aputur Puttur, a resident of Melatur Amshom, and Krishna Pisharodi, a resident of the adjoining amshom of Chembrasheri and whose house is only separated from the Melatur Amshom by the Woolipoya river, which is bridged at this particular place. Smaller games were the Cherman boy, who had become a Muhammadan and reverted to Hinduism and washerman Raman, whose only crime was that he had unfortunately seen Ali's mother one day as she was bathing in the river.

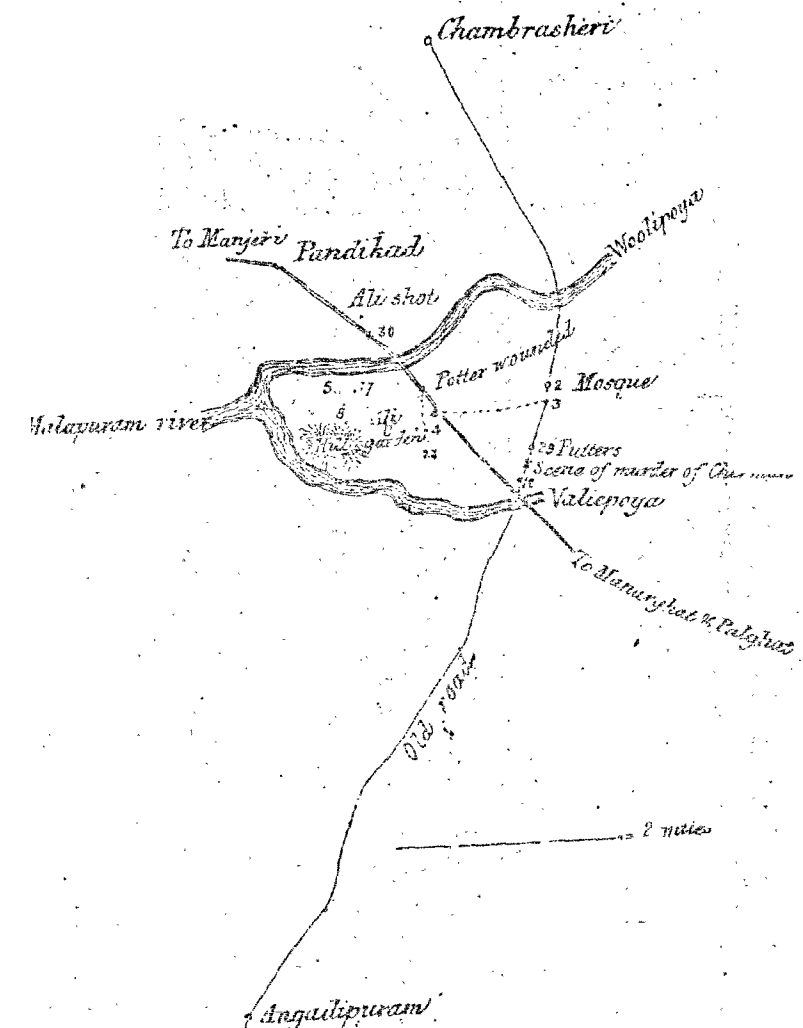
7. Ali appears to have been prepared for action after the termination of the Ramazan. Tuesday, the 7th September, was the "perunal," or big day, after the fast; and Ali divorced his wife; it would seem, on that day, or at all events on the 8th, and started for Aputur Puttur's house on the forenoon of the 9th, and, not finding Aputur Puttur at home, he went on to where the Cherman was living, which was a short distance south of the Puttur's, and in the most cold-blooded manner cut the poor boy's throat. He then went to the mosque, and, it is believed, bathed and prayed there, and issued forth again a little before 4 o'clock prayers armed with the mosque sword. His more immediate object now was to kill the Pisharodi, but he called at his own house on the way and in a garden west of his house he bade his mother and sister farewell and received their blessing in the presence of about fifty sympathisers. At this time, and at this time only, an attempt was apparently made by two or three Moplahs of the Chembrasheri Amshom to disarm and seize Ali, but Ali escaped to a neighbouring hill followed to the foot of it by his band of well-wishers. Where or how Ali passed the night is not known, but next morning at day break he was seen crossing the Woolipoya bridge and making for Pisharodi's house and eventually shot.

8. The Deputy Collector ordered the arrest of seven of the ringleaders* who are now detained in the District Jail at Calicut pending Government orders. His recommendation re-

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| * 2. Pottasji Ahmad Musaliar. | 8. Ayyarali Moideen. |
| 3. Karekkadan Moideen Kutti. | 24. Chanbarpulakkal Ahmad Kutti. |
| 4. Parapravan Andras. | 25. Pudangodan Muhammad Kutti. |
| 5. Ayyarali Kunhali. | |

garding these men is that they should be deported from the district. He further recommends that six* others could be bound over to keep the peace, and the whole amshom, or at least four deshoms† of it tried under the provisions of the Moplah Act.

9. The foregoing summary and the subjoined sketch will be of some assistance in now following the evidence in detail—



10. The Melatur Amshom lies eight miles to the north-west of Angadipuram, the Walawanád Tahsildar's cusbah. It possesses 1,162 houses and 6,337 inhabitants. The portion of it containing the Edapetta Mosque, the scene of the boy's murder, and the houses of the ringleaders, is only five or six miles in area, and is situated between the Valipoya and Woolipoya confluents of the Malapuram river. The old Angadipuram and Chambrasheri road bounds it on the east. In indicating the different places on this sketch and in referring to parties throughout this report, I shall adopt

the numbers given by the Deputy Collector to avoid confusion. The Edapetta Mosque is at 2, and is the only Jummat-palli or place for Friday services in the amshom, so that anything transpiring there must be known to all the inhabitants. The Kazi of this mosque is Ahmad Musaliar (No. 2), and he lives in a building in the mosque compound along with his brother Muhammad Kutti Musaliar (No. 13). The Mukri or menial servant of the mosque, Moideen Kutti (No. 3), lives at 3. Apatur Pattur (No. 29) lives about half-a-mile south of the mosque near the old road to Angadipuram at 29, and the place where the boy was murdered is at 12, where his aunt Kuppachi (No. 12) lives. About a mile westward from the mosque and on the high road which passes through the amshom is the house of Padangodan Muhammad Kutti (No. 25). A little south are the houses of Ali, of Parapravam Andras (No. 4), and of Nunnian (No. 23), with a lane running straight north to join the high road a little way beyond Muhammad Kutti's (25). The house of the Pisharodi (No. 30) is about half-a-mile from Muhammad Kutti's (25) and is situated at the northern side of the Woolipoya bridge. The houses of Ayyarali Kunhali (No. 5), Ayyarali Moideen (No. 8), and Ayyarali Muhammad (No. 17) are a little to the west of Muhammad Kutti's (25). The garden in which Ali parted from his mother and sister is between Ali's house and the hill which Ali ascended and disappeared on the Thursday night. The potter was wounded at the junction of the lane leading to Ali's house and the high road, and Cherman child between that and Muhammad Kutti's house (No. 25).

11. The person at the bottom of the conspiracy and chiefly accountable for the outbreak is Muhammad Kutti (25). He is the wealthiest and most influential Moplah in the amshom, and, like all Moplahs, holds his lands on kanam or mortgage tenure, his principal jannis or landlords being Apatur Pattur (29) and Krishna Pisharodi (30), the very two men intended to be murdered.

12. Apatur Pattur is an East Coast or, as sometimes called, a Palghat Brahmin, but he has been living in Melatur for the past twenty-three years. He is the manager of the Kaipalli Samuham lands and the Kariasten or Agent of the Ayiranayi and Padinhara Kovilagoms belonging to the Wulawanad Raja. Muhammad Kutti (25) holds both Samuham and Padinhara lands on kanam, but his first show of displeasure with Apatur Pattur was, it seems, in connection with a Samuham demise.

Apatur Pattur (29) struck out for what has since been proved to be the true nature of the demise, which was that the kanam was granted in 1023 and for 220 fanams, while Muhammad Kutti (25) contended the grant was last made in 1040 and for 200 rupees. Apatur Pattur filed a suit to recover the land and obtained a decree in his favor in the Court of the Angadipuram District Munsif. Muhammad Kutti (25) appealed and the District Court sent back an issue to the District Munsif to find distinctly whether there had been a demise in 1040 as alleged. The Munsif found the issue against Muhammad Kutti (25) only a few days before the Cherman's murder, and the District Court has since affirmed the original decree. Add to this that in regard to other land held on kanam by Muhammad Kutti (25) from Apatur Pattur (29) as Kariasten of the Padinhara Kovilagom, and the term of which had expired, Apatur Pattur refused to renew unless the Samuham affair was first settled.

13. Then Muhammad Kutti (25) was equally unfortunate with Krishna Pisharodi (30). The terms of the demises held from the Pisharodi had also expired, and the Pisharodi had postponed, if not declined, renewing them, and there had been a previous dispute in which Muhammad Kutti (25) tried, but without success, to prove himself the janmi of lands held only on lease from the Pisharodi.

14. The general impression that the present outbreak was of a purely agrarian character is thus amply borne out. Muhammad Kutti (25) being the chief Moplah in the amshom, and being in particular so thwarted in regard to his landed interest, became jealous of the two principal jannis, Apatur Pattur and Krishna Pisharodi, and plotted their destruction. Ali himself, the mere tool of others, bore neither any grudge, and was on particular good terms with Apatur Pattur.

15. The principal instrument used by Muhammad Kutti to carry out his designs was the Kazi of the Edapetta Mosque (No. 2).

16. This Kazi is not a native of Melatur. He belongs to Pandigad, an amshom adjoining Melatur, but he has been Kazi of the Edapetta Mosque for six or seven

years. His father's brother was one of those shot down by the troops for killing Mussad and his servant in the Moplah outbreak in 1834. After his appointment as Kazi he became on particularly intimate terms with Muhammad Kutti and was appointed his agent, and it is noteworthy that he accompanied Muhammad Kutti to the Munsif's Court at Angadipuram and afterwards to Calicut in connection with the suit above referred to, filed by Apatur Pattur for ejectment. It is this Kazi (2) and Parapravan Andras (No. 4) and Ahmad Kutti (24) that Ali's father accuses of having misled his son.

17. Parapravan Andras (No. 4) is a Moolah, that is, one whose duty it is to kill fowls, &c., for the use of the Moplah community. As remarked by the Deputy Collector, he has a most criminal-looking appearance and is a rather desperate character. It was he who wrote the mystical "Dva," to be hereafter more particularly referred to, for Ali's use; it was in his house that the Kazi and Ali used to meet at nights for about two months before the outbreak to sing exciting war songs, and it was with his (Moolah's) knife that it is believed that Ali cut the Cherman's throat. The conduct of Ahmad Kutti (No. 24) will be noticed further on.

18. Ali's action from first to last may now conveniently be described under the following heads:—

1. His preparation during the Ramazan fast.
2. His quarrel with his parents on the day before the outbreak (8th September).
3. His inquiry after the Pattur on Thursday, the 9th September, and subsequent murder of the Cherman.
4. His conduct at the mosque after the murder.
5. His final issue from the mosque armed with the sword belonging to the mosque, and his farewell parting with his mother and sister near his own house.
6. His death early on the following morning (September 10th) at Krishna Pisharodi's house.

19. (1) There is reason to believe that Moideen Kutti (6), Ali's father, an old man of seventy years of age, tried his best to reason with his son, but to little purpose. He says that Ali neglected his work for two months before the outbreak, and was constantly in the company of the Kazi (2) and Andras (4), and that, as he apprehended danger, he expressly warned Ali, but Ali invariably quarrelled with him and would not listen to him. During this period there was ample warning to members of the Moplah community that something more than usual was being contemplated, for two moiluds or feasts were celebrated during the Ramazan fast—one at the house of Tonikara Kutti on the 11th day of the fast, and the other at Tonikara Kunhama's on the 12th day. Andras (4) was the sole Moolah on both occasions, and it is admitted that Ali was at the moilud of the 11th. He was probably at both, but it is absolutely impossible to procure satisfactory particulars on the point, as, indeed, it is on any point connected with these Moplah risings. Now, a moilud can only properly be held in two months of the Muhammadan calendar—in Jamadil Aval, the month in which the prophet was born, and in Jamadil Akher. A moilud at any other time is altogether unusual, and during the Ramazan fast in particular a thing unheard of unless a rising or outbreak is immediately contemplated. The sequel showed to all observers that in this instance this was actually the case.

20. (2) Tuesday, the 8th September, was the Moplah perunal, or feast day, after their month of fasting. On the morning of that day Ali's wife it is said, wanted to go to her father's and Ali refused to give her permission until he returned from the mosque. Ali went to the mosque, but did not return till night, when he told her she might go the next day, and with the next day came a significant quarrel. The quarrel was as to what clothes Ali's wife should take with her. Ali himself gave order that she should take all her clothes and leave nothing behind, while Ali's mother wanted her to take only what she was in the habit of taking on similar

occasions. Ali's father interposed and Ali struck his father, and the result was that his wife was permitted to go away with all her belongings. It is further said that Ali seized a knife and that those present [including Ali's father, Andras (No. 4), Ayyarali Kunhali (5), and Ayyarali Moideen (8)], apprehending mischief, forcibly took the knife from him and shut him up in a room over which Ayyarali Moideen (8) kept watch. Meanwhile Ahmad Kutti (24) arrived and took Ali upstairs into a room, leading from the one in which he was confined, and had a conversation with him there, lasting two nalgays or three-fourths of an hour. What transpired can only be conjectured. Ali's father seemingly wanted to know, but Ahmad Kutti (24) would not inform him, but made one remarkable reply. When Ali's father asked him what Ali wanted and what he was about, and assured him that if it was only property he desired he was willing to satisfy Ali, Ahmad Kutti said that "if he gave half of his property to Ali, he would not care for it." After all this the father proceeded to Angadipuram and made a complaint against Ali for simply having assaulted him and gave no hint whatever as to the intended outbreak. He does not even state what he stated afterwards regarding Ali's wife's departure home. When he returned home from Angadipuram on the night of the 8th September he found that Ali was absent, and where he stayed that night no one knows. Ali's conduct on Tuesday and Wednesday shows that he must have divorced his wife, and the person who it is believed received the divorce was Ali's uncle by marriage, Muhammad Kutti (25). Muhammad Kutti was in the mosque on Tuesday and was heard that day, with the Kazi and one Sheshan Puttur, talking together at the Kazi's gate relative to the suit, referred to before, filed against Muhammad Kutti by Apatur Puttur. This Sheshan Puttur was formerly a co-trustee with Apatur Puttur (29) of the Samuham lands and was dismissed by suit for mismanagement by Apatur Puttur. This accounts for his intriguing with Muhammad Kutti and the Kazi, and, were it not that he is a Brahmin, I should feel inclined to include him among the conspirators. Things, however, could hardly have come to such a pass that Moplahs would confide in a Brahmin regarding a contemplated outbreak. He was clearly about no good at the mosque on that day, and it is noted that he bolted immediately he heard that the Cherman was murdered and Ali loose.

21. (3) As stated above no one knows where Ali passed Wednesday night, but it was most probably with his old associates, the Kazi (2) and Parapravan Andras (4). He returned home on Thursday morning simply to get his red handkerchief, and in entering the house and passing out again he never spoke a word to his father who was sitting in the verandah. He was evidently intent on business, and the next that is heard of him that day, is at Apatur Puttur's. He was found by witness (27), one of Apatur Puttur's servants, sitting about 2 o'clock on a pile of logs at the Puttur's gate. He was waiting for Apatur Puttur and was disappointed when he learned from the servant that the Puttur was from home and was not expected to return that day. Ali on leaving the Puttur's, appears to have got into the old road from Angadipuram, and proceeded towards the mosque, but whether he actually went as far back as the mosque has not been ascertained. It is probable that he did not, and that after going a short way towards the mosque he wheeled round and made straight for the Cherman. What happened now is told by Kuppachi (12), the Cherman's aunt, with whom he was living. She states that on Thursday afternoon a fair young Moplah came up to her and inquired if the boy, pointing to him, standing near the stile in the paramba or garden north of her hut watching cattle was not her sister's son, and that, on her replying that he was, the Moplah went straight for the boy, seized him, and, doubling him back over the stile, cut his throat with a knife in the most cold-blooded manner and then ran away. The Cherman staggered a few paces and dropped dead without ever having uttered a cry. It appears to have been notorious throughout the neighbourhood that the Cherman had become a Muhammadan and had lapsed to Hinduism, and this undoubtedly was the sole cause of his murder. It is thought that Ali was induced to make the first attack upon the Cherman, so that having once drawn blood he could be the more easily worked up to the proper pitch to go for the Pisharodi and the Puttur. But whether this was really the case or not will never be known. The only other eye-witness of the murder was Kuppachi's son (14), a little boy about seven years of age.

22 (4.) Ali ran from the scene of the murder to the Edapetta Mosque, where, it is believed, he disposed of the knife, washed himself, and then, armed with the mosque sword, prepared for his final sally. In regard to the disposal of the knife, the Deputy Collector is of opinion that it was with the knife belonging to Moolah Andras (4) that Ali cut the Cherman's throat. Thinking it might have been thrown into the mosque tank he had the tank dredged, but the knife was voluntarily produced subsequently by Andras' sister Kuniyamma (No. 9). The evidence regarding the knife amounts to this; the knife was one resembling Andras', and Andras was found, which is unusual for a Moolah, without his knife, and, on being questioned by the Police, denied that he had a knife. Afterwards he admitted that he always carried a knife and said that he left it in a certain place in his house on the morning of the 10th September to make his sister's child believe that it had been carried away by a rat! When Andras' mother was examined, she said she had hidden the knife in the thatch of the verandah of the southern house on the morning of the 12th September. Andras had two houses in his garden—a southern and a northern house. The sister (9) actually produced the knife from the thatch of the verandah of the northern house. There was thus a singular mystery about the hiding of the knife, which, judging from Andras' character, raises more than a mere suspicion that it was the knife that Ali used. The Deputy Collector thought that there were stains of blood on it and requested me to have it sent to the Chemical Examiner for report. I did as requested, but I pointed out to the Civil Surgeon at the same time that I believed that stains of human blood were not distinguishable by chemical analysis. The Chemical Examiner's report only reached me on the 2nd instant, and is to the effect that there are no blood stains. But whether there were any or not does not, in my opinion, alter the case. I firmly believe that it was the knife actually used.

23. The Kazi's conduct at the mosque at this time in regard to Ali requires to be particularly mentioned. The first intimation as to what occurred was derived from a Tiyan on promise of his not being publicly examined and his name disclosed, and his statement is corroborated by the Mukri (No. 3). Just before Ali issued from the mosque he was observed speaking confidentially to the Kazi with the mosque-sword in one hand and with the other leaning familiarly on the Kazi's shoulder. Then the Kazi gave him a short start in advance and, accompanied by the Mukri, followed after on a sham hue and cry to recover the sword. The Kazi, I believe, purposely induced Ali to arm himself with the sword belonging to the Jummat-palli in order to keep his courage from flagging, for he had still his most important work to do, and to make him believe that his inevitable martyrdom would be clothed with the greater sanctity.

24. (5.) Ali ran westward along the foot-path leading from the mosque to the high road, passed the house of Muhammad Kutti (25), slapped the Cherman child with the broad side of the sword, wounded the potter, and turned up the lane to his father's house which was closed on his approach. He then made for the garden to the west of his house, where the final interview took place with his mother and sister.

25. Meanwhile Ali's father and a neighbour of the name of Poker started for Angadipuram to inform the authorities.

26. In the garden to which Ali repaired when he was refused admittance into his house by his father's orders, there gathered together in a few minutes a band of about fifty Moplahs, all earnest sympathizers in Ali's movements. Not one single individual of the whole crowd made the slightest effort to take the sword from Ali, which any one or two of them could easily have done, or to dissuade him from attempting further bloodshed. The Kazi took up a prominent position in the garden and gave directions. He first sent for Ali's mother and sister and made them give Ali their blessing and take leave of him. The mother and Ali kissed hands, and his sister embraced him, and, as he tore himself away from her embraces, the "Dva," which the Kazi sent Ayyarali Kunhali to fetch from Ali's house, was put into his hands. What this "Dva" really was, no one knows. It is supposed to be some particular mantram or prayer for success in fight against the infidel, and was written specially by Parapravan Andras (1) for Ali's benefit. Ali, on reading it over quietly before the host of his co-religionists, is said, in a harangue that he made, to have remarked

referring to the "Dea"—"What great deeds have those in the olden times not done by means like this, and why cannot I accomplish this small affair." Just at this time it seems an attempt was made by two or three Moplahs of the Chembrasheri Amshom to arrest Ali and take the sword from him, and Ali thereupon made westward for the Nadagani hill, which he ascended and disappeared for the night. His band of sympathizers ran with him as far as the bottom of the hill.

27. Now, Muhammad Kutti's (deponent No. 25) account of what he himself was doing all this while is utterly false, and he appears to have won over the Chembrasheri Moplahs, who it seems really did attempt the arrest of Ali, to try and screen him. He pretends that, on hearing of Ali's outbreak, he ran after him along the high road in the direction of the Willipoya bridge, and passing in turn the Cherman child that was slightly struck and the potter who was wounded, made for his nephew Moideen Kutti's house, and there, calling for a cadjan and pen, wrote a report to the Amshom Cutcherry to the effect that Ali had wounded the potter.

The Amshom Adhigari received no report. He then, he says, collected a few persons and went in succession to Ali's house, the garden, and up the hill, but could not find Ali.

28. (6.) Again, it is not known where Ali passed the night. Early next morning he was observed wending his way over the Willipoya bridge towards the gate-house of the Pisharodi, and, as he was going along, he kept chanting and brandishing his sword. There was no mistaking what he meant, but luckily the Pisharodi's people were prepared. As Ali approached the door of the gate-house, he found it slammed in his face, and immediately after the Pisharodi's watchman, Gopala Taragan, took deliberate aim and shot him through the breast. The gun was loaded with shot and slugs, and Ali fell from the paddy-bund into the channel and expired just as the Police Inspector arrived.

29. The Deputy Collector thinks that the Taragan lost his presence of mind, but I quite agree with the Police Superintendent in thinking he did nothing of the kind. There appears to be no doubt but that he had made up his mind to shoot the murderer and fanatic, and deliberately did so when so good an opportunity presented itself.

30. Ali's body was, as reported in my telegram, conveyed into Calicut and burnt within the precincts of the district jail in accordance with the provisions of section 5 of Act XX of 1859.

31. One curious fact remains to be noticed. The Moplahs, after all that passed on Thursday evening, never gave or sent the Pisharodi any intimation that Ali was going to kill him, although every one of them knew that Ali would assuredly attempt to do so. The Pisharodi, however, was otherwise informed and was prepared. About four nalgahas before the sun went down on Thursday evening, a little carpenter boy came and told him that Ali had killed a Cherman and wounded another Cherman and a potter, and two nalgahas later a messenger came from the Padinahara Kovilagam distinctly warning him that Ali intended to kill him and Apatur Puttur. So Gopala Taragan and four others were ordered to keep watch at the gate-house all the night.

32. It now only remains for me to make my recommendations for the approval of His Grace the Governor in Council. I think that the Deputy Collector has chosen the ringleaders carefully, viz, Nos. 2, 3, 4, 5, 8, 24 and, above all, 25, and I would support his suggestion that these should all be deported. In regard to the number to be bound over to keep the peace, I would add No. 13, the Kazi's brother, and Thonikara Kutti and Thonikara Kunhunna, in whose houses the molluds were held on the 11th and 12th days of the Ramazan. The deportation of the seven ringleaders and the binding over the other nine persons is, however, not enough. I would recommend further that the whole amshom be fined in the sum of 8,000 rupees, and about 500 rupees distributed among the Tharakau, the potter, the two messengers, and the aunt of the murdered boy. The reward might be in the shape of gold bangles or in money or both. The amount of fine is not heavy considering that Muhammad Kuti alone is worth from 10,000 rupees to 15,000 rupees. In his case I think the fine should be levied at the rate of 50 per cent. on the market-value of his property. (He deserves to have his property confiscated). Two thousand rupees or so would then remain to

be apportioned amongst the other well-to-do Moplahs of the amshom including Ali's father, who, though he may be credited with having used his influence for good with his son, failed to furnish the authorities with that timely information of the intended outbreak which, after all that transpired, it must have been in his power to have afforded. Any fine levied should, I think, be spent in opening up and developing the resources of the Melatur Amshom—the course adopted in 1873 after the Kolatur outbreak.

ENCLOSURE No. 1.

To be deported.

Name.	Amshom.	Deshom.	Age.	Remarks.
2. Pottayil Ahmad Musaliar ..	Melatur.	Edapetta.	35	
3. Karekkadan Moideen Kutti ..	Do.	Do.	30	
4. Parapravan Andras ..	Do.	Manayi.	22	
5. Ayyarali Kunhali ..	Do.	Do.	18	
8. Ayyarali Moideen ..	Do.	Do.	50	
24. Chanbarpulakkal Ahmad Kutti ..	Do.	Do.	25	
25. Pudangodan Muhammad Kutti ..	Do.	Do.	43	

To be bound over to keep the Peace.

17. Ayyarali Muhammad ..	Melatur.	Manayi.	47	8, 17, and 19 are brothers; their sister is Ali's mother. 5 and 18 are 17's sons, one of whom (18) married Ali's sister. 20 and Ali are cousins or sons of brothers.
18. Do. Moideen Kutti ..	Do.	Do.	25	
19. Do. Rayan Kutti ..	Do.	Do.	30	
20. Vengasheri Rayan ..	Do.	Edapetta.	35	
21. Ayirattil Said Ali ..	Do.	Melatur.	40	
22. Pavatcherri Enadi ..	Do.	Manayi.	30	
13. Pottayil Muhammad Kuti Musaliar.	Do.	Edapetta.	22	
34. Thonikara Kutti ..	Do.	Do.	..	
35. Do. Kunhunna ..	Do.	Do.	..	

(Signed) G. McWATTERS,
Acting District Magistrate.

ORDER—dated 19th October 1880, No. 2500, Judicial.

In his letter Mr. McWatters, the Acting District Magistrate of Malabar, gives a clear and exhaustive narrative of the Moplah outrage which took place on the 10th September 1880 at Melatur Amshom in the Walawanad Taluk of that district, where Mathummal-todi Ali, a Moplah, brutally murdered Chatham Kutti, a Cherman lad; and upon proceeding the following day to the house of a Hindu landlord, Trippakkada Krishna Pisharodi, in Chembrasheri Amshom, with the avowed intention of murdering him, was shot down by his servant Gopala Taragan.

2. Mr. McWatters shows that the outrage was instigated by others for the purpose of murdering two Hindu landlords and was not spontaneous, and sums up in paragraph 32 his proposals for the punishment of those implicated in the matter, the fine to be imposed, and the rewards to be disbursed.

These are that—

(1) The ringleaders named below be deported:—

Pottayil Ahmad Musaliar.	Ayyarali Moideen.
Karekkadan Moideen Kutti.	Chanbarpulakkal Ahmad Kutti.
Parapravan Andras.	Pudangodan Muhammad Kutti.
Ayyarali Kunhali.	

(2) The following persons be bound over to keep the peace:—

Ayyarali Muhammad.	Puvarcherri Enadi.
Do. Moideen Kutti.	Pottayil Muhammad Kutti Masaliar.
Do. Rayan Kutti.	Thonikara Kutti.
Vengascheri Rayan.	Do. Kunhunna.
Ayirattil Said Ali.	

(3) The whole amshom be fined in the sum of Rs. 8,000, of which Rs. 500 to be distributed in the shape of gold bangles, or in money, or both, among Gopala Taragan, who shot the Moplah fanatic, the potter whom the fanatic wounded, and the aunt of the Cherman boy who was murdered; the balance, Rs. 7,500, to be spent in opening up and developing the resources of the Melatur Amshom.

3. His Grace the Governor in Council entirely approves and sanctions these proposals, and directs that the necessary State warrants be issued for the detention of the ringleaders in the jails of Berhampore, Vizagapatam, Kurnool, Guntur, Bellary, Chingleput and Cuddapah.

4. The District Magistrate will send the seven ringleaders under proper escort to the Commissioner of Police, Madras, who will be directed to arrange for their despatch to their respective destinations.

5. The warrants will be sent direct to the Superintendents of the jails mentioned.

(Signed) R. DAVIDSON,
Chief Secretary.

LETTER—to the Superintendent of the District Jail, Berhampore, dated Ootacamund, 19th October 1880, No. 2501, Judicial.

I am directed by the Governor in Council to forward to you direct a warrant for the detention in your custody as State prisoner of Moplah Pottayil Ahmad Musaliar, who was implicated in the late Moplah outrage in the Malabar district, and who will be sent to Berhampore for imprisonment in the jail under your superintendence.

2. You will receive him according to the warrant herewith sent, and will detain him as a State prisoner under Regulation II of 1819.

3. You will not subject him to any needless rigor, but will adopt the most careful precautions against escape or attempt at escape. You will treat him in all respects as State prisoners under Regulation II of 1819 are usually treated, and will not put him to labor or place him in irons unless he is refractory or attempts to escape.

4. You will furnish the periodical report on the man required by section 3, Regulation II of 1819, to Government regularly through the Inspector-General of Jails.

(Signed) R. DAVIDSON,
Chief Secretary.

Nos. 2502 to 2507.

Similar to the Superintendents of the district jails of Vizagapatam, Kurnool, Guntur, Bellary, Chingleput, and Cuddapah, entering the name of the prisoner to be sent to each jail.

(Signed) R. DAVIDSON,
Chief Secretary.

WARRANT.

To the Superintendent of the District Jail, Berhampore, dated Ootacamund, 19th October 1880, Judicial.

Whereas the Governor in Council, for good and sufficient reasons, has seen fit to determine that Pottayil Ahmad Musaliar shall be placed under personal restraint at the District Jail, Berhampore, you are hereby required and commanded in pursuance of that determination to receive the person above named into your custody and to deal with him in conformity to the orders of the Governor in Council and the provisions of Regulation II of 1819.

(By order of the Governor in Council.)

(Signed) R. DAVIDSON,
Chief Secretary.

The same to the Superintendent, District Jail, Vizagapatam.

Prisoner "Karekkadan Moideen Kutti."

" to the Superintendent, District Jail, Kurnool.

Prisoner "Parapravan Andras."

" to the Superintendent, District Jail, Guntur.

Prisoner "Ayyarali Kunhali."

" to the Superintendent, District Jail, Bellary.

Prisoner "Ayyarali Moideen."

" to the Superintendent, District Jail, Chingleput.

Prisoner "Chembarpulakkal Ahmad Kutti."

" to the Superintendent, District Jail, Cuddapah.

Prisoner "Pudangodan Muhammad Kutti."

LETTER—to the Acting Commissioner of Police, Madras, dated Ootacamund, 19th October 1880, No. 2508, Judicial.

I am directed by His Grace the Governor in Council to inform you that the District Magistrate of Malabar will forward to Madras the seven Moplah State prisoners named in the margin, who were implicated in the recent outrage in that district.

	District Jails.
Pottayil Ahmad Musaliar ..	Berhampore.
Karekkadan Moideen Kutti ..	Vizagapatam.
Parapravan Andras ..	Kurnool.
Ayyarali Kunhali ..	Guntur.
Ayyarali Moideen ..	Bellary.
Chembarpulakkal Ahmad Kutti ..	Chingleput.
Pudangodan Muhammad Kutti ..	Cuddapah.

2. The prisoners are to be sent to the district jails specified opposite their respective names, and I am to request that you will arrange for their despatch thither under proper escort.

3. The Master Attendant at Madras should be requested to provide passage for the escort and prisoners to be sent to Berhampore, Vizagapatam and Guntur.

(Signed) R. DAVIDSON,
Chief Secretary.

LETTER—to the Inspector-General of Jails, dated Ootacamund, 19th October 1880, No. 2509, Judicial.

I am directed to forward to you copy of a letter which has been addressed to the Superintendents of the district jails marginally named, with warrants for the detention as State prisoners of seven Moplahs implicated in the late outrage in Malabar.

(Signed) R. DAVIDSON,
Secretary.

To the District Magistrate, Malabar, with depositions returned.

" Inspector-General of Police.

" " of Jails.

" Accountant-General.

G.O., dated 25th January 1881, No. 170, Judicial.

The Right Honorable the Governor in Council resolves to appoint Mr. William Logan, Collector of Malabar, as Commissioner for specially inquiring into certain important matters in Malabar. Detailed instructions will issue in separate Proceedings.

(True Extract.)

(Signed) R. DAVIDSON,
Chief Secretary.

To the Accountant-General.
„ W. Logan, Esq., Collector of Malabar.*

G.O., dated 5th February 1881, No. 281, Judicial.

READ—the following papers:—

Petition purporting to be addressed by certain Mussulmans, Nayars, Tiyyans, and men of other castes inhabiting Malabar.

STATES,—That as a terrible outbreak is going to occur immediately in Malabar, urgent orders are requested to be issued with a view to prevent any lawlessness.

2. That since the British acquisition of Malabar, no European officers deputed to the district have received any bribes from the natives or otherwise unjustly acted.

3. That the native officials of the district take bribes and oppress the ryots; that though this is difficult to prove, on proof of any instance, the party concerned gets punishment at the hands of his European superiors.

4. That during the late famine your Grace protected the lives of innumerable people at an expense of countless sums of money.

5. That under other Governments, petitioners hear that the subject-people suffer from great oppression.

6. That the ryots are aware that such a paternal Government as this exists nowhere else.

7. That the severity of the oppression of the Malabar landlords will lead to great disturbances, at which a great number of people will have to lose their lives. This is a matter of great regret.

8. That the grievances of the subjects are stated below. The property of a great part of the lands in Malabar belongs to Hindu temples and to Nampuderies and others who are Hindus.

9. That when such lands lay waste, the Mussulmans, Nayars, and other castes obtained grants on Kanam and Otti rights, made improvements and regularly paid, besides the annual rents, the renewal fees at every twelve years at the rate of 20 per cent. of the principal sum advanced upon the original grant; that these fees are paid as mere gifts, and not secured in the vouchers obtained; that these ryots also pay the Government revenue and enjoy the surplus profits.

10. That when one has made the necessary improvements upon a grant so obtained, and when the land and improvements have reached a period when a return in the shape of profits may be expected, the grantee becomes old and dies leaving behind a large family whose maintenance is to be derived from such property, when the grantor appears, brings a suit, makes out that the improvements or less than a tenth of their

real worth, gains over the Munsifs, deducts the value of improvements for Court costs, and ejects a respectable family. Thus reduced to beggary, houseless and unable to feed a number of hungry children, one will not, of course, hesitate to give up his life.

11. That ejectments were rare in Malabar. Any hard-hearted landlord who resorted to such extreme measures would soon be killed, and a disturbance would ensue, to quell which a military force had to be brought, and much money expended; that within the last two years the landlords, having bought over the District Munsifs, have commenced to oust the lessees, and whatever they gain is divided between themselves and the Munsifs.

12. That such a proceeding serves to enrich the landlords and Munsifs, but reduces the well-to-do lessees of land to beggary.

13. That the Mussulmans are the people committing riots: all the Hindu officials and landlords impress this fact upon the European officers of the district; that there are no Mussulmans holding high offices or acquainted with English; that this accounts for the Mussulmans being declared the principal offenders.

14. But that the fact of Mussulmans becoming offenders and losing their lives is due to their being oppressed by landlords and the Nayar officials who side with them.

15. That demolition of mosques, religious persecution, cruel oppression, and ejectment of Mussulmans by landlords are the causes that have led to Moplah out-breaks in Malabar.

16. That the assassination of Collector Conolly was committed by some Moplahs of bad character whose continued imprisonment made them despair of being liberated from the jail.

17. That the former rulers of the country and their adherents, the landlords, feel extremely dissatisfied with the subjugation of the country by the British Government; that the ryots feel satisfied when they compare the welfare and tranquillity they enjoy under the British rule with the oppression they suffered before; that this vexes the late rulers and landlords who therefore cause and foster disaffection and riots.

18. That the Travancore Government having been fully persuaded of the fact of the holders of land being unjustly turned out and also persecuted for their religion by their landlords, have prohibited the dispossession of lessees, who are, however, declared liable to pay the annual rent and the renewal fees.

19. That no riots of the kind occur in that Native State; that within the last two years all the landlords in Malabar, assisted by a few Munsifs, have combined in filing ejectment suits and in obtaining and executing decrees in such suits.

20. That the people having, therefore, conspired to create a disturbance are advised by some wise men to wait until a representation of the popular grievances has been made to Government and orders received thereupon.

21. That whatever enactments may be passed, before all such suits have been decided and all such decrees executed, disturbances and bloodshed of a kind unknown in Malabar will take place; and that this should not be construed into a vain threat held out to deceive. By the Almighty God who has created all, petitioners swear that this will be a fact.

22. What the Government ought to consider is whether it will be proper, for the sake of enabling the landlords and Munsifs who are comparatively few to amass immense wealth, to subject a great many people to cruel oppression, and thereby allow countless lives to be lost.

23. Petitioners pray that orders may issue prohibiting the trial of such suits and the execution of such decrees, and forbidding the registration of documents effecting transfers of lands recovered by such suits; and petitioners also request the deputation of an efficient and impartial Commissioner to inquire into complaints against landlords. The expenses of the Commission, petitioners add, may be defrayed

Court-fee stamps of one anna being required to be affixed on the petition presented to him.

14th October 1883.

(No names or signatures).

(A true Translation.)

Secretary.

(Signed) E. THOMPSON,
Malayalam Translator to Government.

From H. WIGRAM, Esq., Officiating District Judge of South Malabar, to the Chief Secretary to Government, dated Calicut, 8th November 1883, No. 319.

An anonymous petition, No. 2500 of 1880, relating to Malabar, was forwarded to me confidentially for report with your note of 2nd November 1880, and I was instructed to hand over the petition to Mr. Logan on his arrival from furlough.

The petition appears to be the production of some ignorant person or persons, and contains the oft-repeated complaint that the tenants are unjustly treated by the landlords, that the Munsifs side with the landlords, and that there is danger of fresh outbreaks occurring in Malabar.

2. Similar petitions were presented to Mr. Strange when he was appointed Special Commissioner for inquiry into the Moplah disturbances in the district of Malabar in 1852. In submitting his report on 25th September 1852, Mr. Strange enumerates the Moplah outrages that occurred between 1836 and 1852, but declines to attribute them to the oppression of tenants by landlords (para. 20).

It has always appeared to me that Mr. Strange gave far too little weight to agrarian discontent as the cause of the outbreaks. His suggestions do not comprise a single relaxation of the law in favor of the tenant, but are rather aimed at giving the landlord a cheaper remedy for recovering his rent (para. 70).

The removal of the Tungal Syed Fazil from India and the disarming of the population under Act XXIV of 1854, were speedily followed by Mr. Conolly's murder in 1855, but the subsequent measures taken under Act XXIII of 1854 seem to have effectually put a stop to Moplah fanaticism. I believe that the only serious outbreaks that have occurred since that time were the Kolathur outbreak in 1873, and the outrage recently reported to Government. We may thus congratulate ourselves on having been almost free from fanatical outbreaks for more than 25 years.

3. The lawlessness of the population found vent in a serious outbreak of dacoity in 1875 and 1876, but nearly all the gangs consisted of Moplahs, Nairs and Tiers combined, although the victims were invariably Hindus.

The vigorous measures taken against the dacoits in 1876, which resulted in the conviction of more than 200 and the transportation for life of many of the ringleaders, has had its result.

Dacoity has been scotched, though probably not killed.

The only serious case of dacoity, since April 1876, that has come before me was a case at the present Sessions, and there the victim was a Moplah who was believed to have acquired some hidden treasure. The dacoits were for the most part Moplahs.

4. That agrarian discontent still exists and may at any time break out in isolated instances of fanaticism, as in the case recently reported to Government, is undoubted. Further, that the sympathy of the Moplah population is invariably on the side of the fanatics is also undoubted.

At the same time, I am firmly persuaded that the organisation does not exist for any general outbreak. There is no saying what might happen if isolated acts of fanaticism were successful, and were not promptly and severely dealt with. Leaders

might then be found for a general rebellion. Nearly every Moplah agriculturist is a foe to law and order, and would like nothing better than to expel every Hindu landlord. Our safety lies in the want of leaders, in the want of organisation, and in the knowledge of the Moplahs themselves, that any attempt at rebellion must end in failure.

If any general outbreak were likely to occur, there would be ample premonitory symptoms. We should have resistance to the execution of Civil decrees, refusal on the part of Moplahs to take lands from which their countrymen were evicted, and many single acts of fanaticism, not to mention reports of informers: all these are wanting, and I venture to think that the individual landlord is far more secure in Malabar than in Ireland.

5. As to the reality of Moplah grievances. The Moplah trader has no sympathy with the Moplah agriculturist. Over-population and want of capital among the latter class here as elsewhere cause poverty and discontent. The Moplah is as great a conservative as the Nair. Nothing will induce him to emigrate from Malabar. Where his father and grandfather lived and died, there he must live and die. Inability to pay his rent is his misfortune, but does not, in his eyes, justify his eviction from the land which his ancestors held.

6. The position of the tenant in Malabar is not what it was in ancient times. The two main causes which have led to the relations between landlord and tenant are—

- (1) the Muhammadan invasion;
- (2) the judicial system of our Courts.

The proprietary (jeum) right in Malabar was originally in the hands of a limited aristocracy: the Temples, the Nambudri Brahmins, the Rajas, and petty chieftains were the only owners of land. All other persons held on a derivative tenure. The Kanam tenant was regarded as having almost a permanent interest in the land, subject only to a rent service or a rent charge. He might have to pay fines for renewal of his lease when his landlord died, or when his landlord urgently required funds, but practically he was as independent as an English copy-holder; his rent was merely nominal, and his position was as secure as custom and public opinion could make it. This ancient system was first broken up by Hyder's invasions in 1766 and 1774. The Hindu landlords retired from the country and the Moplahs were left in possession. Still further disruption occurred when Tippoo invaded the country in 1788, and attempted to proselytise the Hindus. When peace was again restored in 1792, when Malabar was ceded to the British Government, and when the old landlords began to return to their country, it was not to be expected that they would be allowed quietly to resume their relations to their former tenantry.

7. By a proclamation issued in 1793, it appears that Jenmis were prohibited from disturbing the possession or claiming rent from such Moplah tenants as had held as of right since 1766, whilst they were authorised to claim the former rent, and if resisted, to eject such of the Moplah tenants as had only held as of right from 1788. This was a rough and ready mode of settling rights of property, but it is doubtful whether the tenants would not have been placed in a more favorable position, if they had resumed their former relations with their landlords.

A practice sprung up among the landlords of requiring tenants to take renewals of their leases at shorter periods than had been usual on pain of ejection, and of levying contributions whenever an opportunity offered. As a kind of compromise, the Courts, adopted the somewhat arbitrary rule that a Kanam tenant had a right to quiet enjoyment for twelve years, but what was at first intended as a relief to the tenant gradually became the strongest weapon in the hands of his landlord. At the end of the twelve years, it was held that the landlord might redeem the tenant without assigning any reason, on payment of compensation for improvements. Thus what was originally by force of custom, almost a permanent right of occupancy, was soon converted into a right of occupancy for a term of twelve

years. No one that I am aware of has ever pointed out that the right of the Kanom tenant to twelve years' quiet enjoyment is purely a creature of the Courts. Neither in Walker's Land Tenures nor in Buchanan nor in Graeme's Report is any mention to be found of such a limitation, and I do not think it can be traced back further than 1840.

8. Legislation in Travancore proceeded on a more equitable basis.

I have beside me a proclamation issued in the time of Sir T. Madava Rao in 1867, reaffirming the principles laid down in 1829 on the subject of the reciprocal relations between landlords and tenants.

The sum and substance of the proclamation is that tenants who pay their rent and customary fees for renewal cannot be ejected. Had a similar course been followed in Malabar, I firmly believe that it would have checked the rapacity of the landlord and encouraged the tenant to pay his rent regularly and to live on terms of amity with his landlord, instead of resisting him in the Courts by false pleas and defences.

There are, of course, landlords and landlords. The good landlord still cultivates friendly relations with his tenantry. But many of the irresponsible managers of the temples, whose sole object is to enrich themselves, find their opportunity when a tenant's term has expired. The right of the tenant is then put up to auction to the highest bidder, and the tenant, whose ancestors have held from time immemorial, finds himself defendant in a law suit where he has no defence. A Moplah is no match for a Hindu in a Court of law. His forgeries are clumsy forgeries, and he cannot even lie with consistency. The suit is decided against him, and he is ejected. Is it to be wondered at, that he cherishes feelings of resentment against the landlord?

9. In conclusion, I have only to observe that there is no ground whatever for the belief that the Munsifs invariably favor the landlord at the expense of the tenant. It would, of course, be very desirable if some uniform system of valuing the compensation for improvements could be adopted. But this is impossible: in one part of the district the tenant may be entitled to Rs. 8 for a full-grown cocoanut tree planted by him, in another part of the district he may be entitled only to Annas 8.

The right to improvements is constantly the object of transfer by sale or mortgage, and to lay down any arbitrary rule on the subject would be to interfere with the rights of property. We must perforce leave such questions to be decided by local usage. The deputation of a Commissioner to inquire into the grievance of the tenants against the landlords would, in my opinion, only tend to embitter class-feeling and lead to no useful result.

10. I must apologise for the length to which my remarks have run, but I have thought it best to state fully the opinion I have formed after five years' experience in Malabar. I believe that it is inexpedient to employ none but Malayalis in Malabar. A judicious admixture of foreigners is highly desirable, and I have far greater confidence in working with Sub-Judges who are foreign to Malabar than with natives of Malabar. The same remark will apply to the post of Deputy Collector. Tahsildars and Munsifs must, as a rule, be selected from Malayalis, as the discharge of their duties requires an intimate acquaintance with the manners and customs of the people. And the selection is almost limited to Nairs and Brahmans. Moplahs are rarely qualified for the post, and Tiers are, for the most part, unable to command the respect which is due to their position. But even among Tahsildars and Munsifs, the gradual introduction of foreigners, or, at all events, the introduction of residents of North Malabar into South Malabar, and *vice versa*, would be attended with advantage.

From W. LOGAN, Esq., District Magistrate of Malabar, to the Chief Secretary to Government, dated Calicut, 13th December 1880, No. 3399.

Referring to your notes of 2nd and 22nd November 1880, handed to me by Mr. Wigram along with copy of his confidential report to you, dated 8th idem,

No. 319, I have the honor to submit my views on the questions raised in connection with the anonymous petition, No. 2500* of 1880. To admit of ready reference,

* Herewith returned.

I will take up the points in the order in which I find them treated of in Mr. Wigram's letter.

2. *Mr. Wigram's letter, para. 2.*—I entirely agree with Mr. Wigram in thinking that Mr. Strange "gave far too little weight to agrarian discontent as the cause of the Moplah outrages." I have long held that opinion (*see para. 6 of my letter printed with G.O., Judicial Department, No. 2007, dated 2nd October 1876*), and I may add that, as matter of fact, the Collector, Mr. Conolly, would not have insisted on the Tangal Syed Fazil's leaving the country if he would have consented to go to the Jammal mosque at Tirurangady at a Friday service, and have there publicly withdrawn from the position which he had already taken up in his sermons to the congregation, viz., *that it was a righteous act to kill a landlord*. I had this on the best authority, namely, from the late Deputy Collector C. Kanaran, who was the officer deputed by Mr. Conolly to enter into personal negotiations with Syed Fazil, and through whose influence he was eventually prevailed upon to leave the country. Syed Fazil persistently refused to do as he was asked, and Mr. Conolly then insisted on his quitting the country. The Government will search in vain in the published records for any notice of this fact.

3. *Mr. Wigram's para. 3.*—Mr. Wigram is apparently of opinion that the dacoity outbreak in 1875-76 had its root also in agrarian poverty and discontent. In this opinion I fully concur, and I may mention as a significant token of the sort of people who joined that outbreak that the father of one of the Moplah ringleaders assured me that he held some land from a landlord who insisted on his paying 100 parras of grain as rental, although in the very best of years, when he got two crops (frequently he got but one), he could only expect to get 115 parras of gross produce from the land he so held. Of course, he was always in a state of arrears with his rent, and, on my remarking what a fool he was to keep on the land on such terms, his reply was, "What can I do? I have got no other occupation, and if I gave it up, somebody else would take it on similar terms." I formed a strong opinion at the time that the dacoits were driven to robbery by starvation staring them in their own homes; and I may add, as a remarkable feature of the outbreak, it was not against the landlords who rack-rented their tenants that their resentment was particularly directed, *for every Malayali in his heart of hearts is conscious that he would do precisely the same if he had the power*. In short, the tenants look upon it that a landlord is within his rights in insisting on payment of his rent to the uttermost farthing; but when he proceeds beyond this and tries to make unlawful gain out of his tenant's improvements, the latter, with his inherently strong sense of justice outraged, then proceeds to extremities. I shall come to this point again further on (para. 5).

4. *Mr. Wigram's para. 4.*—I have purposely delayed submitting this report for a day or two in order that I might be in a position to advise the Government as to the present state of the district, regarding which I was necessarily in the dark after a furlough absence of eighteen months. I have in the interval, since assuming charge, seen and conversed with people, official and non-official, from all parts of the district, and am clearly of opinion that no "terrible outbreak," as the petition says, is on the point of occurring. Discontent does, however, prevail to a considerable extent in the Wallawanad, and probably also in the Ernad, taluk. Indeed, I have within the last ten days received from the Special Assistant Magistrate at Malapuram a report on a petition, sent to him for investigation by Mr. McWatters, to the effect that certain Moplahs were meditating a rising in the Pallipuram Amshom of Wallawanad. In this case land-disputes are undoubtedly at the bottom of the affair. The people who denounce the Moplahs are themselves Moplahs, and are probably in secret alliance with the people they denounce, though ostensibly (in obedience to their landlord's wishes) opposed to them. The Temporary Deputy Collector, who knows the parties, seems to think there is little chance of a rising, but there is undoubtedly a good deal of friction. I do not anticipate any general outbreak at present, but the same causes are

at work that have led to outrages and outbreaks of dacoity in the past; and these causes will, if no remedial measures are applied, undoubtedly lead to like results in the future in spite of the tremendous penalties which are exacted from those concerned.

5. *Mr. Wigram's para. 5.*—I am not quite in accord with Mr. Wigram in his views as to the reality of Moplah grievances. What happened in 1875 and 1876 opened my eyes, as already alluded to in para. 3, to the fact that it was not so much against the mere rack-renting landlord that a Moplah bears a grudge; for there is nothing in life he would so much enjoy, himself, as being in a position to rack-rent others. What he does feel as a grievance is eviction from land which he has improved without adequate compensation for the improvements he has effected. How the thing works is pretty much as follows:—A Moplah takes a piece of waste land from a landlord, possibly he is permitted tacitly to squat on it. Being industrious and frugal, he very soon makes the place to blossom as a garden proverbially ought to do. For the first few years no rent is asked for or given; but a time at last arrives when the improvements have become valuable, and then comes the landlord's opportunity. The Moplah knows that if he is evicted through the Courts he will get as compensation, to which he is by custom entitled, *only the value of the improvements according to the customary scale in force in the neighbourhood*. These rates are utterly inapplicable to present circumstances: they were fixed, generations ago when money had a very different value to what it has at present. For instance, a full grown fruit-bearing cocoanut tree is, in some parts of the district, valued

* One-and-a-half Velli fanams.

Mr. Wigram does not mention any lower rates than 8 annas; but in North Malabar, the rate, in more than one place, is lower still.

under, if he possibly can, when asked for an increase of rent, and will consent to hang on to his land on starvation terms in the hope of something turning up to his advantage. I don't say he is immaculate; far from it: he has probably been scheming against his landlord from the day he took the land. Let us suppose that an irreparable breach has occurred between them. According to our present system of civil administration, *which encourages litigation on the one hand and discourages it by heavy taxation on the other*, the landlord must go to a Civil Court; and it is needless to follow the litigation which ensues and which usually ends, justly enough, in a decree for eviction with costs against the tenant. He is outwitted in the execution of the decree; the Ameen (*for a consideration*) makes a false return of the improvements; petitions (with the usual incumbrance of 8 annas Court-fee stamps and Vakeel's fees) have to be filed to set the matter right, commissions have to be issued, copies of public records obtained, &c. At the end of it all the Moplah tenant, probably with a numerous young family to provide for, finds himself ousted from his land, *and with probably more than the whole value of his improvements swallowed up by the costs of the suit*. A Moplah, who will pay up with regret, and great delays perhaps, but without much grudge to a rack-renting landlord, every grain of his extortionate dues, likes to kill a landlord who thus makes use of the Courts to defraud him. I am told by the Tahsildar of Ernad that in about 90 per cent. of the eviction cases, which are brought to his notice officially, the evicted tenants are Moplahs.

6. *Mr. Wigram's para. 6.*—I cannot agree with Mr. Wigram (para. 6) in thinking that the Kanam tenant was to all intents and purposes a permanent tenant, in the times preceding the Muhammadan invasion in 1766. The land tenures

Lease on consideration of an advance of money, the repayment of which money is secured upon the land. The landlord enjoys the interest of the sum advanced; if the interest is equal to the rent, no rent is paid by the tenant (Kanamkar).

of Malabar are singularly clear and equitable; there are permanent tenancies and tenancies not permanent; but to say that a simple Kanam tenant was in former days a permanent tenant is, I feel sure, not historically accurate. I shall only quote on this subject one extract from

an early report:—"It was a prerogative inherent, and is still claimed in the Jan-

* Literally birthright = full proprietorship.

† 13 per cent. of the Kanam amount, besides which the Kanamkar had to pay "an entire year's rent" to the Janmi. The Courts now recognise the Janmi's right to insist upon any terms he is strong enough to exact,—a very questionable alteration in the unwritten law.

instead of granting a renewed lease with

‡ Mr. Wigram is quite right (para. 6) in saying that the twelve years' duration of a Kanam lease is a modern arbitrary adjunct adopted by our Courts.

Kanamkars; but even in such cases, the question as regards permanence of tenure was on the same footing as that of a tenant-at-will left in possession for a long period. Neither the Kanamkar's right nor the tenant-at-will's right could ripen into permanency by long possession.

7. *Mr. Wigram's para. 6.*—What happened at the time of the Muhammadan invasion was this:—The Hindu landlords being afraid, for obvious reasons, to remain in the country, set out for Travancore taking with them as much money as they could raise upon their lands. This money was raised on Kanam deeds, and the Moplahs took advantage of the position by obtaining Kanam deeds for larger sums than those they actually advanced to the landlords. The moderation of the Moplahs in this respect was a matter of wonder to the officers of the district in the early days; but it is easily accounted for when one realises that the influence of the village headman (Désavālis) was so great and that the lands chiefly belonged or had belonged to them.

8. *Mr. Wigram's para. 7.*—After the Muhammadan period the landlords found great difficulty in paying off the large Kanam rights thus assigned; but time, the influence of the law Courts, the increasing population, and, above all, the diminished value of money gradually enabled them to improve their position, until we find them now in many instances complete masters of the position and able to rack-rent their tenants as they choose.

9. *Mr. Wigram's para. 9.*—I cannot insist too strongly on the necessity that has arisen, in my opinion, for a complete revision by legislative enactment of the customary rates of compensation for improvements. It is the inadequacy of these customary rates that is, in my opinion (*see para. 5 above*) the great lever which enabled the landlord to bring so much pressure to bear upon the tenant. The latter is in equity entitled to the full market value of his improvements; whereas, as matters stand, in most parts of the country he gets only a very small fraction of the market value. When he is ignorant and unused to the ways of Civil Courts, he finds too often, as indeed these anonymous petitioners assert (para. 10), the whole value of his improvements "deducted for Court cost."

10. Mr. Wigram admits (para. 9) that a revision of these customary rates is desirable; but he thinks that it would be impossible to adopt any uniform system of valuation, because the rates vary so much in different parts of the district, and the right to improvements at those rates being frequently the object of transfer by sale or mortgage, any arbitrary rule on the subject would lead to interference with rights of property. Now on this point I would submit—

- (1) The unwritten law of the country has fully recognised that a tenant who effects improvements is entitled to the value thereof when evicted.
- (2) This unwritten law has almost fallen into abeyance practically, because under our administration, money has become so cheap that the customary rates no longer represent the real value of the improvements.

(3) The conclusion seems to me irresistible that the legislature should therefore step in and render really effectual the above wise provision of the unwritten law.

(4) Any objection to doing this on the ground of interference with existing contracts could easily, if necessary,* be surmounted by enacting that the revised rates should apply only to future contracts.

* I am not at all convinced that it would be necessary.

(5) There would be no difficulty, so far as I am aware, in fixing an equitable scale to hold good within certain definite local limits for a certain fixed period of time; in fact, I would propose that these rates should be revised periodically all over the district, say, every ten years.

(6) The Act should provide for the appointment of Commissioners from time to time to ascertain existing rates, and, after hearing petitions and evidence for and against those rates, to prepare fresh tables which having received the final sanction of Government, should be made binding on the Civil Courts for a time to be fixed.

11. *Mr. Wigram's para. 8.*—I am unable to agree with Mr. Wigram (para. 8) in his admiration of the law adopted by the Travancore legislature under the auspices of Sir T. Madhava Rao, enacting that tenants who pay their rent and customary fees for renewal cannot be ejected. I have never yet heard any well educated Malayali approve of the action of the Travancore Government in that matter, and I know that

† He sent me a copy of it.

the late Dewan of Cochin put on record a long† paper opposing such a scheme for Cochin, and showing that it was contrary to all the traditions of Malabar, and in this I entirely agree with him. The fact is, the Malabar land tenures are about as perfect in theory and as equitable in principle as are to be found anywhere on the face of the globe; and no arbitrary change like that carried out in Travancore can have any but a deteriorating effect upon them. What, I would ask, is to be gained by raising a Kanam tenant into a permanent copy-holder, so far as the purpose now in hand, viz., to alleviate agrarian discontent is concerned? To answer this it will be necessary to discriminate between Kanam tenants who are now rack-rented and those who still have a margin of profit left over after paying Janmi's fees, cultivation expenses, and what not. The former class would accept, I fancy, as a very questionable boon the proposal to continue them on as permanent tenants at a rack-rent. As regards the latter class, they would, of course, be delighted, because it would in effect be raising them from the class of tenants, liable to arbitrary enhancements of rent, into the class of *landlords able to dictate terms to those below them*. This is no imaginary case; for in Bengal where, by the Act of 1859, all tenants on Zemindari estates who had held their lands for twelve years were declared to be permanent tenants; they now find that these permanent tenants have other tenants below them whose condition now requires to be relieved. If the same principle is again acted on, a few years hence the evil will once more arise as soon as the pressure of population on the soil has increased to the requisite extent, and the sub-tenants have found sub-sub-tenants to rack-rent. Action in this matter reminds one of the famous couplet—

“The bigger fleas have smaller fleas upon their backs to bite 'em,
The smaller fleas have lesser fleas, and so *ad infinitum*” !!!

12. As a matter of State policy, the logical conclusion, to which the action of rack-renting landlords drives one, seems to me to lie not in the direction of raising temporary tenants into permanent ones, but in the recognition of some such principles as this, that a landlord shall not impoverish his tenants by demanding from them more than a certain fixed maximum of the net produce of the lands they hold. I do not think, however, that matters have got so far in Malabar as to render action in that direction necessary; at any rate, I would first try the effect of the other and milder measures recommended above. The Commissioner whose appointment I have

recommended could easily make inquiries in this direction and advise the Government if further action seemed to be necessary. His inquiries in this direction, judiciously conducted, would not raise false hopes in the minds of tenants.

13. Finally, to make this report complete, I beg most strongly to call the attention of Government to the necessity that exists for reforming the Civil Judicial administration in a direction which has received far too little attention hitherto. I allude to the creation of a class of legal practitioners to take up the work performed in England by Solicitors and Attorneys. Much of the ill-feeling that exists between landlords and tenants would disappear if the landlords had properly qualified and responsible legal advisers in place of the harpies who at present batten upon the strife which they create; and many a tenant would submit to being peaceably dispossessed, on payment of the value of his improvements, if he had a responsible adviser to tell him that it would be only money thrown away to oppose his landlord in the Courts. I venture to enclose, for the perusal of Government, an extract (paras. 10 to 14) from

* October 1874.

a report which I submitted more than six years* ago to the Honorable the Judges of the High Court on this very subject, *the importance of which has seemed to me to increase as time rolled on*. That some such reformation is necessary is shown by the action taken by the Nyaya Sabha in Bombay, and by the proposal (a futile one) to revert to Village Panchayets. The true solution of all the difficulties lies, I feel sure in the direction indicated in the report above alluded to, viz., in the organisation of a body of *responsible* legal advisers to take up the work done in England by Solicitors and Attorneys.

ENCLOSURE No. 1.

EXTRACT from a letter, dated October 1874, addressed to the Honorable the Judges of the High Court, Madras, by the Acting District Judge of South Canara.

* * * *

10. The Judges of the High Court will perhaps excuse me for submitting to them, as the simile will help to make my meaning clear, that the administration of justice is like a number of streams, with watchmen posted at convenient places to keep them in their proper channels and to free them from impurities. The watchmen have an easy task when the streams first issue from their fountain heads, but when they combined the task becomes ever more and more difficult. Improvements and administration have chiefly hitherto been in the direction of employing better and better watchmen for the main streams, while those at the fountain heads have been neglected.

11. And I would further submit that, however much may have been done or contemplated in the direction of improving the class District Munsifs and Judicial subordinates generally, there yet remains the equally important task of raising and improving the class of Vakeels and law agents through whom, as through a purifying stratum, all disputes should filter before reaching the channels appointed for their course. And the scheme I would submit for the consideration of the High Court, as one that would, to a very large extent, do away with the evils I have noticed, is one that is founded on a fuller recognition of the important part which Vakeels ought to play in judicial administration, not as pleaders merely but as Mukhtars or law-agents.

12. The result of my observation and experience is that legislation in this direction has not made any distinction between the men whose duty it should be to work up the facts of a case and the men whose duty it should be to lay those facts in their most favorable light before the tribunals, and that, in consequence the former work has passed into the hands of a set of men who are quite irresponsible officially for their good conduct and by whom forged documents and perjured witnesses can be used with safety and advantage. I must not be understood to mean that persons who are officially recognised as Vakeels in the Courts do not also act in the way above indicated. The remarks of the Puttur District Munsif are worthy of note on this point. He says: “In like manner the writers and attestors of forged documents are generally people of the same village. Some of the Vakeels use these documents as Shroffs do gold ingots;

personally no Sheriff goes to commit theft with the thieves, nor does he melt the ornaments. Likewise no Vakeel is personally concerned in fabricating false evidence or in committing forgeries." In short, as a rule, the dirty work is done before the officially-recognised Vakeel will have anything to say to it; and what I pointedly wish to bring to notice is the existence everywhere of a set of men who are, in fact, attorneys without the officially responsible position of such persons. I will cite only two instances out of many that have come under my notice. In the first instance, a suitor in quite a small case took the trouble to send his son or nephew a distance of no less than 140 miles by road in order to have his answer as a defendant drawn up by a person who is not a Vakeel, but whose skill in drawing up complaints and pleadings and consequent skill in deciding what evidence should be procured or manufactured is well known and extensively used. So much was this person's skill dreaded by the opposite party that the quasi-law-agent on that side resorted to a most ingenious device (the particulars of which need not be related) to have the person sent arrested and detained. In the second instance, the suitors in the Tellicherry Courts took a most unwarrantable alliterative liberty with the name of the late distinguished leader of the Madras Bar, and, owing to the astuteness and ability displayed by one of these quasi-legal agents in cases which he took in hand, dubbed him the "Nittoor Norton," by which cognomen he was usually referred to. Now what I mean to say is, that the flagrant forgery and perjury which prevails will never be stopped until some method is adopted by which all suitors not conducting their own cases shall be compelled to use the services not of "Nittoor Nortons," but of those men only whose official responsibility is recognised by the Courts. For I hold it as an axiom that, if all disputes came into the Courts after full investigation by a class of intelligent men pledged first to endeavour by every means in their power to prevent disputes being taken into the Courts at all; and, secondly, if an appeal to the judicial tribunals was inevitable, then to produce in Court no documents and no witnesses but such as they, in good faith, believed to be reliable, not only would our now over-burdened files be immensely lightened, but the whole tone of the administration would be raised.

13. These are not new principles; for section 9 of Regulation 14 of 1816, which is still in force, makes it the bounden duty of Vakeels to examine the evidence, both oral and documentary, before producing it in Court; and the preamble of the same Regulation recites that the speedy adjustment of disputes may be facilitated by empowering authorised Vakeels to receive certain fees for legal opinions furnished by them, and by vesting them with authority to act as arbitrators under the general Regulations; and this latter authority still remains with them under section 19. These provisions have, however, failed to produce the good effects anticipated, because they do not go far enough. The most recent legislation on the subject, Act XX, 1865,

* Compare sections 4, 14 and 15 of Act XX, 1865, with section 10 of the High Court's Letters Patent.

which is not in force here follows very closely; the Letters Patent constituting the High Court* and it seems to me that the High Court, in

"making rules for the qualification, admission, and enrolment of proper persons to be Pleaders and Muktars" (section 4, Act XX, 1865), might, as a necessary preliminary to admission, insist upon each Vakeel, before his appointment, executing an agreement binding himself (1) to prevent, by all means in his power, disputes being taken into the Courts at all, and (2) if an appeal to the tribunals was inevitable, then to produce in Court no documents and no witnesses but such as he, in good faith, believed to be reliable. And for the due fulfilment thereof he should give tangible security according to his means.

14. On this last point, the giving of security for good conduct, I cannot insist too strongly, for I feel that any steps whatever that may be taken will be incomplete unless Vakeels are made to understand that they have something besides the loss of their profession at stake. At present the dismissal of a Vakeel is little or no hardship to him, for he is able, as a hanger-on at the Courts and as a manufacturer of evidence, to pick up almost as much as he did before. It is never to be forgotten that unscrupulousness in legal transactions among natives is not the exception as in England, but the rule; and that a dismissed Vakeel can find ample employment and remuneration of a safe kind by doing the dirty work which during his career as Vakeel he had had done for him by others. And there is no reason why a Vakeel in this country should be better off than those of his profession in other countries. A Barrister, Attorney, Advocate or Solicitor at home has very considerable fees to pay before he is admitted into the ranks of his profession, and it seems to me that the giving of security as proposed would be much less of a hardship than the practice of paying heavy fees on admission. The security required need not be large, provided it is good and tangible, and there is no reason why a maximum amount should not be fixed and the Vakeel should be required within a reasonable number of years gradually to increase the amount of his security till it reached this maximum; though generally such a rule would be unnecessary, because, owing to the sub-division of landed estates in this country, every family has some immovable property. Moreover my experience of native character has shown me that natives who are bound down by tangible security for good conduct are as much to be trusted as Englishmen themselves. Regulation IX of 1822 is a dead letter in Malabar, chiefly because every Amshom official, except the Kolkar, on entering on his duties is bound to give some tangible security for his good conduct. He pledges a portion or the whole of the family lands or houses and immediately comes under the influence of the only kind of

public opinion for which a native has any regard, namely, the opinion of those of his own household; and that influence, such is my experience, may be safely trusted to prevent the placing in jeopardy of the house which shelters the old mother's head or the garden which the old father has reclaimed from the waste.

(Signed) W. LOGAN,
District Magistrate, Malabar.

Demi-official letter from W. LOGAN, Esq., District Magistrate of Malabar, to the Chief Secretary to Government, dated Calicut, 7th January 1881.

Since Wigram and I sent in our confidential reports on that anonymous petition, I have been on a tour through the Special Assistant's division—the Moplah taluks,—and have been better able to gauge the state of popular feeling there. There is no doubt whatever that the relations between landlord and tenant in that part of the district are rapidly approaching a crisis, which will manifest itself either in a fresh outbreak of dacoity as in 1875-76, or, as is more probable, in fresh Moplah outrages. Hble and I stayed for a day or two at Edapetta close to the mosque from which Ali issued with the sword of vengeance; a more tumble-down looking place you never saw—the roof thatched, the thatch coming off, &c.,—a regular poverty-struck look about the whole place and its surroundings. That is a most significant fact, for whatever else Moplahs may or may not be, it cannot be charged against them that they are niggardly in their contributions to their mosques; in fact, when they are tolerably well-off and allowed to follow their own bent, they build and keep up a mosque for every 100 or so of the population. In the Laccadive Islands in some places they even have one mosque for every fifty to sixty of the population. Well, the fact that the population (Moplah) thereabouts (Edapetta) have a ruinous mosque is a sure proof that they are exceedingly badly off. Moreover, the lists which we have prepared of their property show precisely the same thing. I proposed to retain McWatters's figures, and fine the well-to-do people Rs. 1,000; but I have serious misgivings as to my ability to raise so much from them. Let us suppose that the fines are fully collected, and that the Moplahs are to that extent punished, what result have we obtained? I reply that we have to that extent added to the general poverty which prevails among them, and diminished *pro tanto* their fear of being again fined. Let us suppose another Ali issues from the same mosque with another sword of vengeance—where would we be then? I trust you will excuse me for using so homely an illustration, but as we say in N.B. "It's ill takin' the breeks off a Highlandman;" and if a Moplah has no property to lose, the chief hold we have on him is gone. Moreover, the Moplah Act is an admirable instrument when we have wealthy men to deal with, but it fails of its purpose to a great extent when the population is poor.

Moreover, the Act is, I am fully persuaded, only a half remedy. It is like puncturing an abscess and leaving a deep-rooted sinus behind. The pain may go deeper if the remedy is to be effectual. And the root of the evil is the nature, in the strained relations which exist between landlords and

In my confidential report on the anonymous petition I stated that I had had a petition against some Moplahs of Pallipuram Taluk. I also said the petition was probably a make-believe, and I ascertained in our late tour that there have been no less than eight or ten reported burglaries in that Amshom in the last eighteen months or so. The enclosed papers (which please return after perusal) will give you some idea of the state of affairs as they stand at present there. You will see there is, as I said in my confidential report, "considerable friction;" and I have no doubt that if the Amshom (Nambudri) landlords press the men still further in the Courts, matters will speedily come to a crisis. Chek, who is a keen sportsman, is just the man to head a desperate enterprise. He is much of the same disposition as Attan, who headed the big outbreak in

1848, if I recollect the date aright. On full consideration I have done nothing in the matter. The Nambudris by their grasping avarice have brought themselves into their present plight, and they must just make the best of it. If we can get evidence (which I don't expect) against the Adigari and Chek in any of these burglary cases, we will, of course, act upon it.

And that brings me to the last point which I wish to bring to notice. You will find in Hole's note, which accompanies the papers, that he insists on the necessity for having a "good determined Magistrate out there." I would be well content to leave the Temporary Deputy Magistrate P. Karunágara Menon in the post he holds at present, the Special Assistant Magistrate's Division. He is a singularly able man, whom I selected to put down the dacoity outbreak in 1875-76; he received the thanks of Government. It was he who reported on the late Melattur outrage, and it is his confidential report on this Pallipuram Amshom business that I now enclose for your perusal. I would rather have him in charge of that division than any of the junior men of our service that I know, except Winterbotham, who is provided for in a senior appointment. If I cannot have P. K. M., then please send me a really good man who understands native character. I have little confidence in W. G. Underwood who is to join the division according to present arrangements in ten days. Brodie has not experience enough, and Ratnavélu Chetti (my Head Assistant), though he seems to be a very smart officer, is, I am inclined to think, somewhat lacking in other respects. I have seen too little of his work to be able to judge, but from what I have seen I am inclined to think he would not do in the Moplah Taluks.

In dealing with a determined character like Chek, the Magistrate will have to be exceedingly cautious before making up his mind, and, having made it up, will then have to act with boldness and decision. We require, as Hole says, a good determined Magistrate in the Moplah Taluks.

I trust the Government will be able to see their way to appointing a Commissioner to inquire into these landlord and tenant complications, for until some satisfactory solution of the questions is arrived at, we shall never have peace in Malabar.

With that and with some alteration in the *as regards taking up land for Moplah mosques and burial-grounds*, I should feel at ease.

Two mosque and burial-ground cases have recently come to notice, and I am longing for final orders on my reports on this subject.

This letter has run to a great length, but I thought it best to write to you semi-officially on the subject.

P.S.—I have a shrewd guess that the anonymous petition sent down to Wigram and myself, for report came from the Pallipuram Amshom. If you have no objections please send me the *original* again in order to trace the handwriting if possible.

From A. MACGREGOR, Esq., British Resident in Travancore and Cochin, to the Chief Secretary to Government, dated Cochin, 19th January 1881.

I have the honor to forward my opinion, as called for in G.O., January 8th, 1881, No. 26, on the subject of an anonymous petition from some inhabitants of Malabar, dated October 14th, 1880. The petition is herewith returned, together with the original reports of Messrs. Wigram and Logan.

2. I shall, for convenience, follow the order adopted by these gentlemen in dealing with the various questions raised.

3. First, as to the essential nature of Malabar Moplah outrages, I am perfectly satisfied that they are agrarian. Fanaticism is merely the instrument through which the terrorism of the landed classes is aimed at. The tools are lads of from 16 to 20 years of age, who are taught that they must never survive the perpetration of an

outrage but must die fighting. By this means the security of the influential Moplahs who are always behind, pulling the wires, is greatly promoted, and this, coupled with the unwillingness of co-religionists to give evidence, renders a conviction by direct evidence impossible.

4. I attribute the comparative immunity that the district has enjoyed, from this species of agrarian outrage since 1855, to the law which enables Government to deport to a distant place of confinement those who, from circumstantial and other evidences, are regarded with moral certainty as the instigators, and to fine up to an unlimited extent all Moplahs in the neighbourhood, their open sympathy and criminal complicity being absolutely necessary to the successful carrying out of such designs.

5. The next point to be touched on is whether there is ground to infer from this petition or from other causes that a general outbreak is to be apprehended immediately or in the near future. I will at once say that I should not expect the warning to come in this shape, and I would go further and say that I do not think there is the least cause for apprehension of any general outbreak.

6. An outbreak of the ordinary type may occur any day. A dozen lads will combine, under secret instigation, to murder a prominent land-owner and be shot down by the European troops. The Moplah community at large will stand aloof and carefully avoid the slightest exhibition of sympathy, and for some years to come the Hindu landlord will be far more chary of evicting his Moplah tenants. After a time, however, the usual sense of security will return, and the landlord will recognise no force over his own interest.

As to grievances the only one which I hold as valid is the insufficiency of the compensation awarded for improvements. I fully concur with the views expressed by Mr. Logan on this point, and I think it absolutely necessary that some effective means should be adopted for preventing the evasion by the Courts of the award of compensation for improvements, because that is really the effect of valuing them at obsolete rates, both as regards the cost of effecting them, and the market value.

It is obvious that this system offers a direct premium to landlords to evict tenants. It is altogether an abuse of the term custom, because in maintaining a custom in regard to rates, the fundamental custom of compensation was abandoned. The tenant does not receive the equivalent for his expenditure, nor the means to enable him to purchase a lease elsewhere, whilst the landlord is not under the obligation to pay full value to the out-going, whilst he can and does receive it from the in-coming tenant.

Moplah outrages have hitherto been virtually confined to the two taluks of Ernád and Walawanád. Here the breadth of land between the sea and the foot of the gháts is greater than elsewhere, the country is more isolated and purely agricultural, and the surface consists of alternating hill and valley of great picturesque beauty. As a rule, every tenant lives in a detached house in a park of his own making, and has to his hand every thing he requires for his livelihood.

To give him in case of eviction full value is, I consider, no interference with the rights of property, but bare justice, the withholding of which is only too likely to cause him to take revenge.

I quite agree with Mr. Logan that nothing would be gained by any attempt by law to convert occupancy into a permanent tenure. It is true the measure was adopted in Travancore, but not without inflicting great injustice. It so happened, however, that the State was in such or much more backward position that the blow was not felt as it would have been in a more advanced community. In Malabar when full proprietary right has been admitted for over half a century, affirmed in repeated decrees of the Privy Council, and acted on by Government in regard to thirty lakhs worth of escheat lands sold by Government, the question of how cancelling that right in favor of a casual occupant seems one that cannot be mooted, except to be at once set aside.

The position of the Moplah tenantry in Malabar, even when evicted, is by no means hopeless, or calculated to drive them to desperation.

There is plenty of unoccupied land still within reach, and the gold industry, which is now receiving such an impetus, will give occupation to thousands, both directly and indirectly.

The Moplah is an excellent subject, but must be ruled with rigid severity.

He is incapable of regarding concession as dictated otherwise than by conscious weakness; whether as landlord or trader, he exacts the last farthing, and does not claim to be otherwise dealt with himself, nor, in my opinion, ought he to be.

I have necessarily been brief in these remarks, having received your telegram requesting me to expedite my report. I only received the papers five days ago while here on circuit, and have no means of referring to many documents I should have liked to peruse before sending it in.

ORDER—dated 5th February 1881, No. 281, Judicial.

These reports submitted by the present Collector, and the District Judge of Malabar, and by an officer who was for some years Collector of that district, show that while there may be no immediate reason for apprehending general and extensive disorder in Malabar, still there exists in some taluks an amount of serious agrarian discontent, which, if not inquired into and promptly and effectually removed, may at any time assume proportions fatal to the peace of that part of the country.

2. With a view to a thorough investigation of this and other grievances complained of by the people of those districts, the Right Honorable the Governor in Council, in G.O., dated 25th January 1881, No. 170, notified the selection of Mr. Logan, the present experienced Collector of Malabar, as Commissioner, to inquire and report upon all matters referred to him, and it now remains to define the duties on which he will be specially employed.

3. Mr. Logan, while using his own discretion as to other matters which call for investigation, will specially inquire into and report upon—

- (1) the general question of the tenure of land and of tenant right in Malabar, and the alleged insufficiency of compensation offered by the landlords and awarded for land improvements made by tenants;
- (2) the question of sites for mosques and burial-grounds, with suggestions for a measure rendering the grant of such sites compulsory under certain conditions if such measure appears to him called for.

He will further submit his views as to the best means for redressing any existing grievances which are, in his opinion, well founded, and which, after due inquiry, he thinks ought to be redressed, and will suggest appropriate remedies.

4. Mr. Logan while employed on this special duty, will draw his full salary and tentage (fixed and extra), as Collector, and will be relieved entirely from current duties. He can employ such small additional office establishment as he may require temporarily.

(True Extract.)

R. DAVIDSON,
Chief Secretary.

To W. Logan, Esq.
„ the Revenue department.
„ the Accountant-General (para. 4).

READ—the following papers:—

From H. WIGRAM, Esq., District Judge of Coimbatore, to the Chief Secretary to Government, dated Coimbatore, 19th December 1882, No. 12.

In your letter of 12th October 1882, I am asked in general terms to submit my opinion on Mr. Logan's Report on Land Tenures and Tenant right in Malabar. The subject is a most complicated one, and where I have the misfortune to differ from Mr. Logan, I feel that my conclusions are, like his own, speculative, and that the subject demands far more discussion than it has yet received. I have no desire to assume the rôle of the captious critic, and fully recognise the laborious research with which Mr. Logan has conducted his arduous and somewhat indefinite commission, and I fully appreciate the valuable information which he has collected, though I regret that it has not been arranged in a more systematic and accessible form. I would particularly invite attention to the plan adopted by Mr. Brodrick in his admirable work on English Land and English Landlords as a model. He commences with an historical sketch of the English land system. He then discusses the distinctive features of the system, and compares it with foreign systems, and concludes with setting out proposed reforms and their probable effect on rural economy and rural society.

2. I find myself at issue with Mr. Logan at the outset with reference to the historical portion of the subject. He starts with an emperor, a number of subordinate rajas and the territorial division of Nads, over which the six hundred exercised some sort of supervision, and below the six hundred he places the various other classes, each having their own functions to perform in the body politic. He then proceeds to argue that the *janmam* or birthright denoted an office of rank, which was originally in the gift of the emperor and had nothing to do with the proprietary right in the soil; that the shares of the produce after payment of certain fees to artisans were distributed equally between the *janmi*, the *kanakkar* or protectors, and the actual cultivator, each of whom had a definite right to one-third; that the *janmi* had a number of prerogatives attached to his office, and that with the disappearance of the last of the perumals or emperors in the ninth century (A.D.) the creation of *janmam* ceased; that about the end of the seventeenth century (A.D.) when the communal rights of the *taras* became disintegrated the word *janmam* came to be used in a secondary sense as denoting the individual right of the more powerful families whose power and influence depended on the number of smaller families that they could attach to their service and to whom a third of the produce was allotted; that the British Commissioners, following more or less the Mysore arrangement, consulted the *janmis* only and left the *kanakkar* out in the cold; that thenceforward the *janmi*, *kanakkar* and *kudum*, who all had equal rights, were transformed into the landlord, farmer, and laborer known to the English land system, and that the Moplas resented this treatment and had recourse to agrarian outrages.

3. My view of the history of the subject is fundamentally at variance with Mr. Logan's theory. I think that he has been misled by the grandiloquent language of the ancient grants into the error that the perumal or emperor really had the power which he arrogated to himself. I believe that the agrarian preceded the political organization.

The title to the land was by occupation and was vested in the *taras* or village communities. The six hundred or supervisors of the Nad were probably the principal men of the several *taras*. They owed allegiance to some raja or chieftain, who, perhaps originally one of themselves, had become first *primus inter pares* and then assumed a kind of sovereignty. It is almost certain that these petty rajas and chieftains did not originally claim any share of the produce. The supply of land was greater than the demand, and the local rajas were satisfied with their demesne lands. All they claimed from the six hundred was personal military service.

The perumal or emperor was the suzerain of several rajas, and he levied contributions, amounting perhaps to an estimated one-sixth share of the produce, on lands cultivated by the rajas and the six hundred. Then arose the *janmi*, who was one of

the six hundred, and who undertook to collect the perumal's one-sixth share from the village communities, taking care to secure himself by levying one-third and retaining the balance himself. He was in fact the zemindar or intermediary between the emperor and the village communities. In process of time, the village communities themselves became disintegrated, and the *kanakkar* became the peasant proprietors, subject to a payment of one-third of the produce to the *jannis*. After the disappearance of the last of the perumals in the ninth century (A.D.) no single raja was strong enough to assume the suzerainty. In process of time the four swarupams, to wit, the Kola king, the zamorin, the Cochin raja, and the Travancore raja were able to form dynasties, but as their power depended on their keeping in check a number of petty rajahs—and they were very jealous of one another—they wisely refrained from exacting any land-tax.

4. From the commencement of the ninth century (A.D.) the land-tax of the State became a tradition of the past.

From this period we may date the four classes of landholders whom we found in existence at the end of the eighteenth century (A.D.), viz. :—

- (1) The rajahs and petty chieftains.
- (2) The Brahmans.
- (3) Devasams.
- (4) The *jannis* or representatives of the village communities.

There was no limit to the share of the produce which the three first classes might choose to exact from their tenants or *kudians*. As a rule, there was no intermediary between the landholder and the tenant, and the tenant held from generation to generation at an easy rent. The fourth class or *jannis* had only a right to one-third of the produce, whilst the remaining two-thirds belonged to the *kanakkar* or peasant proprietors, but the supremacy of the *jannis* was acknowledged long before the British occupation. Possibly in some instances the *kudians* had acquired by prescription a customary right to a third of the produce, but I think that the evidence is wanting to show that this was the general rule. They were the retainers of the higher class of landholders whom I have mentioned, or of the *kanakkar*. Even the *kanakkar* themselves had to some extent bartered their independence by ministering to their *jannis*' wants or depositing a sum of money as earnest money in their hands, believing that they would thereby secure greater independence; and probably a new class of *kanakkar* had grown up who were in reality nothing but mortgagees under the rajahs, chieftains and Brahmans. A distinction ought no doubt to have been drawn between the hereditary *kanakkar* or peasant proprietors, and the new *kanakkar* or mortgagees.

It would have been unjust to treat every *kanakkar* as having a permanent right of occupancy, just as it was unjust to treat every *kanakkar* as a mortgagee. But the truth is that the Commissioners had only one object in view, viz., to secure the Government land-tax, and did not undertake to compile a record of rights. Great injustice was undoubtedly done in the districts which were settled on the zemindari system until Regulation IV of 1822 was passed.

The question of the *kanakkar*'s rights was not, so far as I can ascertain, ever brought forward in the courts until Mr. Strange, in 1852, enunciated the rule that they were entitled to twelve years' quiet enjoyment. This rule was accepted by the courts and the mischief was done.

The question now is how it can be undone.

5. I would pause here to point out what I consider is by no means an unfair analogy between the results produced by the land system of England and the land system of Malabar. The origin of both systems was the village community. As the "mark" and the "manor" grew up side by side and the mark became subordinate to the manor so the *tara* and the *jannam* grew up side by side and the former became more or less subordinate to the latter.

The same potent causes were at work in both cases, viz., primogeniture and entail, and we can hardly be surprised that the result was the same.

I believe that the same result would have followed in other parts of India but for the influence of two as powerful factors which were absent in Malabar—I mean partition of family estates and Muhammadan interference.

As the Nayar tarwad is the best extant type of the primitive Hindu undivided family, so the Malabar land system, which comprises the landlord, the farmer, and the laborer, is, I believe, the type of the Hindu land system of the middle ages uninfluenced by Muhammadan interference. Southern India was a country of petty rajahs and chieftains who clubbed together for mutual protection under the suzerainty of the most powerful of their number who founded what we are pleased to call dynasties.

Each petty raj or chieftainship was but a *congeries* of villages or little republics as they have been called. When corporate ownership passed from the larger unit of the village to the smaller unit of the family, it was almost inevitable that the headmen of the village should become lords of the manor and hold the present proprietors in subjection. Each *janni* would aim at being as independent as the raja or chieftain, just as each raja or chieftain was always aiming at being as independent as the perumal or emperor.

On the other hand the Brahmans and the temples were from the first objects of superstitious reverence, and were in no sense subordinate either to the rajahs or the perumal.

6. Before concluding this portion of the subject I would make one or two observations—

- (a) Too much stress must not be laid on the wording of the Jewish and Syrian deeds. The power of the Chera perumal was itself on the wane at the time that he professed to create the Jewish and Syrian communities into principalities. Of his extensive dominions nothing was probably left to him but his western dominions with its capital of Cranganore. About fifty years later he disappears from the scene altogether, and the Jews and Syrians relapse into their former insignificance.
- (b) I cannot at present accept Mr. Logan's theory that *jannam* and *nir-attipet* are in any way synonymous terms, nor can I accept his definition of *nir-attipet*. *Jannam* admittedly denotes birthright in allusion probably to the office of *janni* being hereditary in the same family. *Nir-attipet* means, I believe, literally *that which obtained completely, water included*—*Cf. Gundert's Dictionary*. The *nir-mudal* or property in the water was the last right parted with. The word was used to denote the transfer of property by sale. It is admitted that in many of the *attipet* deeds the various rights of the soil are enumerated with great minuteness, and I am inclined to think that its connection with *jannam* points to a time when the *janni* claimed the right to dispose of the common unoccupied lands. The next step would be to dispose of the occupied lands, but the *janni* stopped short of claiming the right to evict, and recognised that the *kanakkar* had a permanent right of occupancy.
- (c) The imposition of the Government land-tax necessarily wrought a complete revolution in the relations of those who were interested in the soil. The Moplas who interviewed Mr. Duncan were quite right in representing that the land could not yield a *janni*'s share, a farmer's share, a cultivator's share and, in addition, a share for the State; and, as the Commissioners did nothing without consulting the *jannis*, the *jannis* were not likely to be the class to suffer. As a matter of fact, wherever there were three classes supported by the land, the lowest class succumbed to their fate and were pauperized. So great, however, is the Malayali's tenacity to the land which his forefathers planted or sowed that they were willing to submit to the most impossible terms sooner than surrender what they looked on as their birthright.

now proceed to comment on some of the points alluded to in chapter IV

As pointed out by Mr. Logan the system of rack-renting which

prevails in Malabar has led to the indebtedness and impoverishment of the people and the stagnation of agriculture. I fully endorse Mr. Logan's view that the object of legislation should be to improve the position of the actual cultivator, and more especially the position of the actual cultivator of garden lands.

I am free to admit that Malabar law is, to a great extent, court-made law, but I fail to see how the courts could have done otherwise than they have done so long as the principle of freedom of contract was admitted. The one fatal mistake was to introduce the right of eviction after twelve years. It was done with the best intentions in the interests of the *kanakkar*, but it has been their ruin.

I believe that payment of compensation for improvements in cases where it was not provided for by the contract of the parties is a specimen of court-made law. Where waste land was leased out for plantations, or old plantations which required replanting were leased out—and one of the conditions of the lease was that improvements would be paid for—the understanding certainly was that the tenant would not be evicted, but that, at the end of twelve years, the cost of improvements made should be estimated and form the tenant's charge on the land. These were in accordance with custom estimated at a rate very favorable to the *janmi*, but then the tenant had enjoyed the produce for five years free of rent. Thenceforward he would have to pay a nominal rent. It was certainly never contemplated that the tenant should be evicted on payment of the customary rates for improvements, and when the right of eviction was established, the courts in South Malabar endeavoured to mitigate its severity by valuing the improvements in a mode more favorable to the tenant. This is I believe the origin of the variation of the rates in use in different parts of the district. I cannot follow Mr. Logan's argument in paragraph 119. The customary share of produce due to the Pād or authority was payable by not to the tenant. I have already stated that I think the evidence is wanting to show that a *verumpattam* tenant ever had a right to retain one-third of the produce. It is true that the reservation of one-third to the actual cultivator is the basis of all British settlements of the Land Revenue, but in Madras no steps have ever been taken to secure him the enjoyment of it. I do not know that the actual cultivator in Malabar is worse off than the actual cultivator in Tanjore and elsewhere. I have heard authentic stories of families living from hand to mouth and cultivating the lands of some absentee landlord on the Eastern Coast nominally as tenants, but really more in the position of slaves *adscripti glebæ* than even day laborers.

If the number of estates examined by Mr. Logan can be taken as a criterion of the proportion of the old and new tenants throughout the district, it would appear that about 60 per cent. of the wet and dry land cultivators and about 70 per cent. of the garden cultivators ought certainly to have their tenures made more secure. It is somewhat alarming to see the number of eviction suits instituted within the last two decades, and to see that the number is on the increase. Whether the decrees are or are not executed, the power of obtaining execution is a formidable weapon in the hands of the *janmi* who wishes to rack-rent his tenant.

Many of these eviction suits are not really brought at the instance of the *janmi*. A friend of the *kariestan* wants the land and gets the *kariestan* to start the suit in the *janmi's* name, himself finding the funds.

The typical case of the Mopla widow (paragraph 159) may excite compassion, but I think that on many estates in England farms are not left in the hands of widows and boys. The question of how to arrive at a correct estimate of the value of improvements is a most difficult one. Surveyors' and appraisers' estimates will always vary, but I believe that in almost every case the variation occurs in the classification of trees and not in the enumeration of them.

Among the many appeals from munsifs that have come before me, I very rarely had any objection that the trees were wrongly enumerated.

The consequence of treating the *kanam* as a mortgage is that when the mortgage is redeemed, the mortgagor is entitled to an account of rents and profits during the pendency of the mortgage. If the *kanam* was treated as a lease, arrears of rent for

more than three years presume that rents could not be recovered. I admit, however, that it is hard to would fain hope it has not been paid because rent receipts are not produced, and I as my experience that the case noticed in paragraph 214 is an exceptional case. So far these are disbursements goes, the rule is that the tenant produces forged receipts, and, if 8. I have believed, the tenant justly suffers.

Malabar, as we little or nothing to say as to chapter V. There are of course in typical *janmi* elsewhere, good and bad landlords, but I agree with Mr. Logan that the rogue to the clings to his rights and ignores his obligations and prefers the clever honest fool as his agent and manager.

9. As to what is stated in chapter VI, the expenses of litigation are enormous, but if they were twice as much as they are, the people would still resort to litigation. In South Malabar there was in 1881 a surplus of Judicial receipts over expenditure of Rs. 1,50,000. The decrease in the number of original suits is, in my opinion, characterised whilst the increase in the number of appeals is rather due to the litigious Appellate of the people, fostered to some extent by speedy disposal of work in the average Courts. The character of the munsifs' work is, I should say, far above the munsifs. A point of ability, and the last remedy that I would suggest is an increase of the sake. An increase of munsifs invariably means an increased love of litigation for law. That litigation, and the true policy is to make it harder and not easier to go to the law. The plan of responsible law agents is, in my opinion, chimerical. To whom are punchay agents to be responsible? The people of Malabar have lost all faith in of costs and arbitration. A double set of practitioners would mean a double set out of if the case were to go into court, or a corrupt decision if the case were kept out of court.

High the right of appeal to a European tribunal and a further right of appeal to the when Court counteracts any distrust of the Courts of First Instance, even in cases where race and caste prejudices are at issue.

My own opinion of Malabar officials is that as a body they are far more trustworthy than native officials elsewhere. The police improve a true case, but they do not concoct a false one. Where corruption exists in high places, it is the least pernicious form of corruption and assumes the form of a reward paid in gratitude for a favorable decision rather than of a bribe paid in consideration thereof.

10. I pass over chapter VII with the simple observation that the sooner the Government obtain legislative powers, not only to prohibit the creation of mosques and shrines without sanction, but also to suppress such mosques and shrines if necessary, and this not only in Malabar but throughout the presidency, the better will it be for themselves and for the people. On the other hand, I see no objection to Mr. Logan's proposal that land should be taken up for public purposes if required for the site of a mosque or burial-ground.

11. It only remains to deal with the proposals for legislation, and I regret that I cannot support Mr. Logan's drastic remedies; in the first place, because I can only characterise them as revolutionary; and in the second place, because I do not believe that they would have the effect which he contemplates.

Fortunately for Malabar, there is no caste-like barrier between the three classes of *janmis*, *kanakkar* and *kudians*. If any barrier at all exists, it is between the *janmi* and *kanakkar* on the one hand, and the *kudian* on the other. A *janmi* in one parish is a *kanakkar* in another, and even a *kudian* may nurture the prospect of some day being a *kanakkar* or *janmi*.

To abolish one of the three classes, and to say that henceforth there shall be but two classes interested in the soil—the landlord and the tenant—is, in my opinion, to revolutionize the agrarian constitution; whereas it is a well-settled principle that agrarian reforms must be wrought out by gradual evolution and not by sudden revolution. Again, what would be the result of the introduction of Mr. Logan's statutory tenures? We should have immense competition for the occupancy right whenever the existing tenures were determined.

Although the statutory tenant would have no right to mortgage his interest, it could be attached and sold in execution of a money decree. And most of the new tenants would start with a burden of debt round their necks, which would in the end drag them down. The rent might not exceed two-thirds of the annual net produce, but the interest on the loan which in many cases the tenant would raise from the janmi would absorb the remaining one-third. I predict that all the evils of the present rack-renting system would be perpetuated.

12. I confess that although I find it easy to criticize Mr. Logan's proposals, I find it difficult to make others, and I shall not attempt to do more than indicate the lines on which I think reforms should proceed—

- (a) Make the position of the *kanakkar* and all those who hold direct from the *janmi* more secure.
- (b) Place some restriction on them to prevent them in their turn from rack-renting their tenants.
- (c) Make the *janmi* invariably answerable for the Government assessment.
- (d) Let every householder obtain a statutory lease for his *kudli* or homestead and for so much ground round it (not exceeding two acres) as he has planted by his own exertions.
- (e) Let there be, as at present, perfect freedom of sale, and let there be a fixed scale for valuing improvements whenever evictions are resorted to.

(g) 13. As regards (a), (b) and (c), I am myself in favor of allowing all those who have held for twelve years to acquire a permanent right of occupancy at a fair rent on their relinquishing any money claim they may have on the land.

If a longer term than twelve years is to be taken then there are some arguments for taking Mr. Groome's pyramid of 1820--25 as the starting-point. The names of the *janmis* and tenants were registered in the Collector's office at that time, and most of the tenants deposited copies of their title-deeds, some of which are still in existence. A fair rent I would define to be two-thirds of the estimated net produce. A land will yield at least three profits; the State is entitled to one-third, the *janmi* to one-third, and the tenant will have the remaining one-third.

14. Tenants who cannot, or will not, claim a permanent right of occupancy must be divided into two classes—

- (1) Those who hold direct from the *janmi*.
- (2) Those who hold from some intermediary.

The former class should be entitled to claim that their rent should not exceed two-thirds of the net produce in addition to interest on any sum advanced by them. The latter should be allowed to retain at least one-sixth of the net produce for themselves, i.e., in other words, to divide the third profit between themselves and the intermediary.

A new survey and settlement must precede any reforms, and it will be the duty of the Settlement department to determine, in accordance with the custom of the country, what is the net produce of each holding. The custom of the country is to estimate the seed area and the productive quality of the soil and to deduct from the probable yield the seed and an equal quantity for cultivation expenses. Thus, if a land sow 15 paras of seed and its estimated yield is seven-fold, the gross produce is 105 paras and the net produce is 75 paras. Of this 75 paras, according to my scheme, the *kanakkar* or the *kanakkar* and his *kudian* would retain 25 paras, the *janmi* would get 25 paras, and the State would get 25 paras. When once the net produce of each field is determined all difficulties are removed. The State and the *janmi* should divide between them the cost of the survey and settlement. This would prevent small holders coming forward to claim a *janman* right, and it would not be unfair to the *janmi*, as I anticipate that his rents would be considerably raised. The State would, as elsewhere, commute its one-third share into a money payment by the *janmi*.

(r) 15. As regards (d), I consider this of paramount importance. The Malayali values his homestead much as he values his wife and children. He should pay half the cost of the demarcation and survey; and the quit-rent, as proposed by Mr. Logan, should be at the rate of 12 annas an acre or part of an acre. Of this, half should go

to the State as revenue and half to the *janmi*, but the Government should undertake the collection and account to the *janmi*. Each householder should receive a title-deed from the Government specifying the quit-rent payable, and he should thenceforward have a permanent right of occupancy in his holding. If this homestead was afterwards brought to sale it would fetch its full market price.

16. As regards (e), the *janmi*, *kanakkar* and *kudian* would each, as now, have perfect freedom to sell their interests, and I would not introduce any right of pre-emption which does not exist. At present the *janmi* has a right of pre-emption in the case of *otti* mortgages only. Rights of pre-emption invariably lead to law suits.

I would fix the scale for valuing improvements at two-thirds of the market value if the tenant had been in possession for less than twelve years, and at one half of the market value if he had been in possession for more than twelve years. I would have but three classes of bearing trees, *good*, *bad*, and *indifferent*, and I would require the Settlement department to fix the rate for each class in each taluk, or in each group of villages, or, if necessary, in each village. Trees not in full bearing might be similarly classed and the rates for each class should be one half of the rates for bearing trees. In this way very little discretion would be left to the commissioner appointed by the court, and he might be required further to record the opinion of three of the adjacent holders of gardens as to the classification adopted by him.

17. I have still to meet an objection which may be taken to the introduction of any reforms, viz., that the *janmis* will use their powers of eviction before the reforms are introduced.

To guard against this I think it will be necessary to enact at once that from a certain date no decrees of ejectment shall be executed, and that tenants, against whom decrees have been passed, shall have the benefit of the provision of the new law, if they apply for stay of execution within three months. Where necessary receivers might be appointed.

18. Lastly, as regards Mr. Logan's other proposals, I think that the tenant should be allowed to deposit his rent in the treasury if he cannot get a receipt.

The Nayers are beginning to wake up to the fact that they want a marriage law and a law of succession for separate property, but these would probably be included in a separate Act. I think that every facility should be given for recording marriages before the Registrar, and that every man should have a right to dispose by will of his self-acquired property, and that even if he dies intestate half the property should go to his children.

From W. LOGAN, Esq., Collector of Malabar, to the Chief Secretary to Government, dated Calicut, 12th February 1883, No. A.

Having been favored with a copy of Mr. Wigram's opinion on my Land Tenures Report, I have now the honor to submit a few notes on points which seem to me to require a few remarks. These notes will I hope be of assistance to Government as they will serve to indicate the points on which Mr. Wigram's views and my own diverge, and they will probably help to a correct appreciation of the differences thus indicated. The notes are lettered, and the passages in Mr. Wigram's paper to which they refer will be found similarly lettered in the enclosed copy of it.

ENCLOSURE.

NOTES.

(a) Fourth line of paragraph 1, my conclusions are, like his own, speculative.—Mr. Wigram here admits his conclusions are speculative, and tries to create an unfavorable impression to the same effect against mine. To this I demur. There may not be much evidence in favor of some of the positions I take up, and the paper (appendix I) on tenures is admittedly only an attempt to trace their history (Report, paragraph 11), but the evidence, such as it is, is all on record, and it would have been more to the point had Mr. Wigram cited the conclusions to which he refers and challenged me to produce the evidence in support of them.

(b) *Line 9, paragraph 1, in a more systematic and accessible form.*—I submit that this is hardly a fair criticism, for, in the first place, the history of English tenures has long ago been worked out, whereas the history of Malayali tenures has hardly yet been touched. As noticed above, I view appendix I as only an *attempt* to trace their history. The materials are not yet available, and it is even doubtful if they exist for writing an exhaustive treatise on the subject. In the second place I have stated my reasons (Report, paragraph 404) for refraining from drawing real or fancied parallels between the Malayali and other foreign systems of tenure, and I submit that the argument there used is a sound one.

(c) *Line 7, paragraph 2, the proprietary right in the soil.*—Mr. Wigram here shows that he has misunderstood the whole drift of the evidence. He talks of “proprietary right in the soil.” He should have turned his back on the soil and forgotten all about it for the time being, if he wished to gain correct Malayali views about it. Europeans look to the soil—the soil—and nothing but the soil. The Hindus on the other hand (at any rate in Malabar) looked to the people—the people—and nothing but the people located on the soil (see appendix I, paragraphs 106, 144, 154). The last report by Mr. Underwood on the Laccadive Islands, which is now under consideration by Government, specifically states that a man may there plant trees in his neighbour’s backyard if his neighbour so far neglects his duty as to leave a vacant space. On reference to the passages of appendix I above cited, I have twice alluded to the fact that down to the present day the Laccadive islanders have no sense of property in the soil, even of the sites where their trees have been planted. And this is true not only of the pure Malayali islanders, but also (as now appears from the last report) of those who inhabit Minicoy and use the Mahl language. They put private marks on the trees and can always distinguish by this means whose trees they are; but once a tree falls, any one is at liberty to take up the site where it stood. I regret to notice that sufficient prominence has not been given by me to this most important fact. I was under the impression that I had noticed it in the report itself, but I find this not to be the case. I regret this the more, because it was a fact which weighed heavily with me in adopting the final views to which I have given expression. Stated shortly, my opinion is that the land was viewed just like water, or iron, or any other bounty of Providence, and that special classes were told off in the body politic to work these natural resources on condition that the persons in authority over them received specific shares of their earnings. If I had looked outside Malabar, I might have obtained evidence in support of my position, but it would have introduced foreign matter and endless topics for controversy.

(d) *Line 20, paragraph 2, landlord, farmer and laborer.*—It would have been more correct to say “landlord, mortgagee, and cultivator.”

(e) *The whole of paragraph 3.*—Mr. Wigram’s conclusions are admittedly (see note (a) above) speculative, and as in these paragraphs 3 and 4 he has not by evidence established a single new fact, and has alluded to one or two which I consider at the best to be of doubtful authenticity, and as the whole subject is as yet only in the controversial stage, I do not propose to notice his remarks in detail, beyond observing that I have given the evidence on which my conclusion rests that there was originally among Malayalis no sense of property in the soil according to European ideas, and until that conclusion is upset by clear evidence to the contrary, I prefer it to Mr. Wigram’s speculations.

(f) *The whole of paragraph 5.*—Mr. Wigram here (paragraph 5) exemplifies the mischief introduced by comparing as analogous things utterly different. One would suppose from his remarks that primogeniture and entail in their English sense were common to Malabar, but it is only necessary to turn to Mr. Wigram’s own book on Malabar Law and Custom to see how unfounded such a supposition is. The argument is loose, and the facts are not supported by evidence.

(g) *Paragraph 6, clause (a).*—Mr. Wigram here again makes assertions unsupported by established facts. The history of the early Muhammadan settlements in Malabar, Canara, Cochin and Travancore shows that the perumal had even up to the time of his departure for Arabia very extensive influence on this coast. If he had been the insignificant potentate Mr. Wigram thinks he “probably” was, it is rather remarkable that his tradition should still be so fresh in the minds of the people. Finally as regards the Jews and Syrians relapsing into their former insignificance, I must distinctly join issue with Mr. Wigram as to the fact, and I assert that as foreigners they got a distinct rise in the social scale in consequence of the perumal’s grants, and moreover that even up to the present day this in some measure continues.

(h) *Paragraph 6, clause (b).*—As regards the derivation of the phrase *nir attiperu* (= water, contact, birthright) which Mr. Wigram cannot “at present” accept, I would submit that the evidence is quite clearly laid down in appendix I, chapter VI, paras. 128, 131, 133, 134, 135, 137, 138, 139, 142, 144, 145, 147, 148, 149, 150, 151, 154, 158, 159, 169, and is ample. In particular, I would point to paragraph 139, where the causal form of the usual verb is employed. There can be no doubt what the meaning is in that case; e.g. *atuka* (=to be near, close)—causal form *attuka* (to come in contact)—causal form of the causal form *attikkuka* (=to cause to come in contact), hence the phrase used in that deed, viz., *nir attichecha* means having caused the water to come in contact. Mr. Wigram’s reference to Gundert’s Dictionary is not to the point unless supported by evidence and arguments. He writes the phrase as *nir attipet* which is ungrammatical, for *pet* is the inflected form of *peru* and should have been followed by some word like *ola* (= palm leaf, deed). But having accepted the correct form of the phrase (viz., *nir attiperu*) I

form which has Special Commissioner Græme’s authority likewise (see *attiperu* in glossary to appendix I), Mr. Wigram should have analysed it as I have done, and then it would have been apparent to him that the meaning which he gets out of it could have been obtained only at the expense of grammatical construction. Mr. Wigram even seems to doubt whether *peru* means birthright and whether it is synonymous with *jannam*, but here I would submit that he has the authority both of Dr. Gundert (see his note to clause (b) of deed No. 1, appendix I) and of Special Commissioner Græme (see *attipettola* in glossary to appendix I) against him. In conclusion, I think there is enough evidence on record to show that what Mr. Wigram calls my *theory* on this point is no theory at all, but a well-established fact.

(i) *Paragraph 7, lines 26 and 27.*—The explanation I have to offer on this point is already on record and will be found in the paragraphs of the report (113 to 118) immediately preceding the one mentioned by Mr. Wigram. The customary share due to the *pât* (authority) was due only after compensation had been made (in the way indicated in paragraph 117) to the cultivator for the labor and expense he had been put to. A point on which too much stress cannot be laid is that the great body of cultivators were also the *kanakkar* (= supervisors, protectors) and were the real power in the land and able therefore to enforce conditions which cultivators elsewhere have sought in vain. In this connection I would call attention to chapter I of appendix I and in particular to paragraphs 7 to 18 and 24 to 39.

(j) *Paragraph 7, lines 28 to 32.*—The evidence to which Mr. Wigram here takes exception will be found in appendix I, paragraph 225, and in Nos. 15, 16 and 17 of appendix III (paragraphs 223 — 228, volume II). It is inconceivable to my mind that the chief landholders should have consented to sign the document No. 17 unless the one-third share reserved to the cultivator thereby was the ancient customary share as also asserted by them at the time of Mr. Farmer’s enquiry in 1792. If appendix III is attentively perused, it will be seen that Mr. Rickards never once alludes to Mr. Farmer’s enquiries, and the idea of the arrangement finally embodied in Nos. 16 and 17 dawned on Mr. Rickards only after receipt of Coonhi Coror’s paper (No. 15) and as he himself distinctly states “after much consideration” thereof. The evidence cited therefore comes from two independent sources, and being an admission against interest may be safely relied on.

(k) *Paragraph 7, lines 59 to 61.*—In paragraph 215, I have clearly shown that the case was not an exceptional one.

(l) *Paragraph 9, lines 11 to 15.*—The law agents should certainly be responsible to the District Judge, whose time would be far more profitably spent than it is at present if he were to move about his district almost as freely as a Collector does. The District Judge’s work ought in my opinion to be more administrative than judicial, if justice is ever to be brought home to the people; and this end can in my opinion only be attained by raising from among the people themselves an educated and responsible body of men whose interest it will be to see justice done. There certainly would be no double set of costs if the client was unable to find a law agent whom he could trust not to betray his interests, for of course the employment of them should not be made compulsory. But confidence and trust would, under the system suggested, attain a marketable value and would flourish in good time.

(m) *Paragraph 10, line 3, but also to suppress such mosques and shrines if necessary.*—If the Government took power to suppress mosques in Malabar, I am convinced that if the law were enforced it would lead to bloodshed and would probably divert upon the officers of Government charged with the execution of the law the ill-feeling which now finds vent against the owners of the mosque sites. I think the measure recommended by me is as stringent as it is desirable to make it.

(n) *Paragraph 11, line 2, drastic, line 3, as revolutionary.*—Mr. Wigram characterises the measures proposed by me as “drastic” and “revolutionary,” but, as will be seen presently, he has failed sometimes to realize what those measures are, and in the next place I am prepared to show he goes as far as I do on essential points, and further on one at least.

(o) *Paragraph 11, clause 3.*—I certainly did not propose to myself to have in future “only two classes interested in the soil, the landlord and the tenant,” and the fact that Mr. Wigram thinks so shows that he has not considered the matter carefully. The principle which underlies my proposals is, as frequently noticed—report, paragraphs 355, 383, 403 to 417, 510, 511—to chip off from the landlord’s block of rights in the soil of small holdings only a portion containing the permanent agricultural occupancy right and to insist that that right shall be bought and sold like a chattel. In the soil of large holdings, I propose therefore to leave as at present the utmost freedom of contract consistently with the maintenance of the two important provisions of the customary law (report, paragraph 361), and even as regards small holdings if the matter is attentively considered, it will be seen that in my proposals there is nothing to prevent the “landlord’s” share of the produce being mortgaged to intermediaries to any extent. What I do try to insist on is that the small cultivator shall be kept from starvation and shall have every motive to save, and not, as at present, every motive to run into debt. If under my proposals he runs into debt and falls into arrears with his rent, his holding will be at once sold to a man who has saved something.

(p) *Paragraph 11, last 3 lines of clause 3 and the whole of clause 4.*—The “immense competition for the occupancy right” which Mr. Wigram views with distrust seems to me to be the

strongest point in favor of my scheme. Mr. Wigram does not allude to the fact that I propose to have this "immense competition" only for the occupancy right of small holdings and to the further fact that by restricting the power to sublet, the "immense competition" would take place only among people who meant to settle down as "actual cultivators" of these small holdings. Now if these additional facts are kept in mind, it will be at once apparent that the competition will lie only among people either of realized capital or of credit, just the last persons in the world, as a rule, to submit to be run into debt beyond what they see their way to paying off. If some of them were foolish enough to hamper themselves too heavily, the clause providing for the sale of their interests in their holdings would bring in a better class of tenants in their places; for it is always to be borne in mind that the persons who would buy these interests would be themselves "actual cultivators," else the interests themselves would be forfeited. I question if Mr. Wigram realized this point distinctly when he wrote his criticism.

(g.) Paragraphs 13 and 14.—The following remarks regarding Mr. Wigram's proposals (a), (b) and (c) suggest themselves:—

I. He accepts permanency of tenure though he has just before in a general way characterised my proposals, of which this is the most radical principle, as "drastic" and "revolutionary."

II. He would like his permanent tenants to hold at a "fair rent" which he takes to be as "two-thirds of the estimated net produce." The making of this proposal just shows how little Mr. Wigram has realized the practical difficulties of the question putting aside the revolutionary character (as I may fairly in turn call it) of his proposal on this point. The people who are to be put in permanently at this fair rent are people who have "held direct from the janni for twelve years." Take the case of an *ottidar* who pays no rent at all because he has advanced on the security of the land capital which at small interest neutralises all claims for rent from him. Mr. Wigram apparently expects this man to give up all his capital and consent to take up the land permanently paying two-thirds of the "estimated net produce." He would certainly say, "No, thank you." Next take the case of the *kanakkaran* whose money claim would not be so great as that of the *ottidar*. Mr. Wigram in his case for very much less consideration would give him a position equal to that conferred on the *ottidar*. Finally take the case of the *verumpattakkar* with no money claim at all and holding, we shall say, at a rack-rent, take by way of a concrete example petitioner No. 91 in the Petition Register. Mr. Wigram in his case would say, "You have held the land for 12 years direct from the janni, and although you have no money claim on the land yet your rent shall in future be two-thirds of the estimated net produce, and all this advantage over your present outrageous rent you shall have free, gratis, for nothing, and you shall be put on a footing exactly similar to your neighbour the *ottidar* who paid no rent at all!" Petitioner No. 91 would certainly say, "Thank you, very much indeed." All these inequalities are avoided by my scheme.

III. Again Mr. Wigram seems to think that if the Survey department once determined what the net produce of a holding was, all difficulty in the way of determining what his fair rent was would be ended. Whereas net produce is a variable and constantly varying quantity and, particularly so, if estimated in money. Who for instance, except the parties themselves, can estimate what effect *jungle fever*, or *malaria*, or *wild pigs*, or *elephants* have on the net produce? The Survey department net produce estimate, if moderate, is a good enough basis for a revenue settlement, but it is certainly not a reliable basis for fixing rent. By my proposals the necessary elasticity in such matters is fully secured.

IV. Finally, as regards Mr. Wigram's mode of dealing with non-permanent "tenants" by which term in paragraph 14, I think, he refers to cultivators, but I am not sure, I would remark that the *ottidar* and the *kanakkaran* would have still less reason than they had above to be thankful for Mr. Wigram's proposed arrangements, and some of the *verumpattakkar*s even would look askance at them. Rent cannot be equitably adjusted except by those who have to pay and who have to receive it, and any State interference, such as Mr. Wigram proposes, would certainly only complicate matters.

V. Moreover the great evil which the evidence gathered by me discloses is that the actual cultivators are harassed in their industry by constant eviction suits, and it is obvious that Mr. Wigram's proposals would hardly touch at all this main grievance, for, of course, all his "tenants who cannot or will not claim a permanent right of occupancy" would still be liable to eviction annually in many cases at the pleasure of their landlords. Finally, Mr. Wigram draws no distinction between capitalists and coolies. He would apparently put the European planter capitalist on the same footing as a cooly holding one cent. of an acre of paddy flat.

Paragraph 15. (r). In his proposed reform (d) Mr. Wigram goes a great deal further from a revolutionary point of view than I dared to do in framing mine. I proposed to let jannis and tenants come to a mutual understanding in regard to their house-sites as soon as their existing contracts fell in. Mr. Wigram suggests that the present house-sites should be conferred on the present house-holders without any further bother, and that, too, at a uniform rate of 12 annas per acre for Government and janni claims. This leaves out of account all that the janni may have done for the tenant in the way of buying up improvements and all that the tenant may not have done for the janni in the matter of (say) arrears of rent, and in fact it would be a whole-

sale confiscation of jannis' rights. I quite agree with Mr. Wigram that an immense step would be gained towards the relief of the actual cultivators if they could be at once and permanently settled in their existing house-sites; but I see no way of doing this equitably to the jannis without giving all parties some such opportunity as I have provided for for dealing with each other at the termination of their existing contracts. The portion of my report dealing with this point will be found at paragraphs 432 to 437.

Paragraph 16 (s). In paragraph 16 Mr. Wigram fails to notice the objections raised by me in paragraphs 345 to 352 of the report in regard to valuation of improvements as a means of settling the many difficulties that exist. If you tell a man on the one hand (as I propose and as Mr. Wigram also proposes) that he may freely sell his improvements for what they are worth, and if you tell him on the other hand (as Mr. Wigram alone proposes) that if he is evicted by his landlord he will be paid two-thirds of their market value or half according as his possession has been short or long, he will at once reply "you are mocking me, for you say that I may have the full market value if I sell to any one else than my landlord, but if the improvements go to him, he is to have a reduction of one-third to half made from that full market value." Surely the logic of the situation is that if he is at all entitled to his full market rates, he must get those rates from whoever acquires the improvements. Then, again, Mr. Wigram seems to think the Settlement department can once for all fix improvement rates for each village to represent the market value. I maintain that this is impracticable. The market value must be fixed in money. How are the immense variations in the prices of produce to be dealt with? Are the tables of money rates to be altered annually? How are the rates for new products to be fixed?

Finally, supposing all this could be satisfactorily arranged, who is to pay the courts for doing it? On this point I wish to draw special attention to the argument in paragraph 349 of the report. Holdings are nearly everywhere on a very small scale, and the expense of eviction and valuation through the courts is the most serious difficulty of all. Mr. Wigram does not allude to it.

Finally, all this trouble about rates is to be incurred because the courts have misunderstood (report, paragraphs 111 to 120) the ancient custom of the country as to the valuation paid by jannis for their customary shares of produce. The courts have maintained the tenant's right to freely sell or subdivide his holding, and they should have followed that custom to its logical conclusion and have ascertained how such a custom could co-exist with one that (apparently to their eyes) neutralised it. If this had been done they would have seen that the cultivator was really a permanent tenant, and that all that the janni was paying for in giving compensation for improvements was his own customary share of the produce.

CALCUTTA,
12th February 1883.

(Signed) W. LOGAN,
Collector.

From A. MACGREGOR, Esq., M.C.S., to the Chief Secretary to Government,
dated—

I have the honor to acknowledge your letter of 12th October, requesting my views on Mr. Logan's proposals in regard to Malabar tenure.

Having only received the papers from the India office last week, I have been unable to give my views at an earlier date, and now propose doing so briefly.

The following points may, I think, be regarded as clearly established by the papers, and they will be corroborated by those whose experience has rendered them familiar with the conditions of Malabar.

- (1) That a large proportion of the soil of Malabar is cultivated by tenants holding (either directly from the superior landlord or from intermediaries) either as tenants-at-will, or as mortgages with possession at extreme rack-rent aggravated in most cases by exorbitant renewal fines.
- (2) That this has led to a large proportion of the cultivators of the soil having reached, or nearly approached, a state of insolvent cottierism, with the result of an increase in grave crime whenever an unfavorable season produces additional pressure.
- (3) That as a rule no consideration is shown by landlord to tenant, no assistance is given by the former towards improvement, arbitrary eviction is common and no adequate compensation is received by the tenant for his valuable improvement.
- (4) That this position which the British Court have assigned to the landlord coincides with no pre-existing conditions of property in Malabar, or elsewhere in Southern India, but is in fact directly opposed to the mutual right of landlord and tenant as revealed by a study of the matter historically.

- (5) Lastly, that the murderous outrages, which still from time to time occur, and the apprehension of which necessitates special measures as regards a European garrison as well as regards exceptionally stringent coercive legislation, are greatly dependent on the unsatisfactory relation between landlord and tenant both as to the causes which promote them, and as to the machinery by which they are carried out.

The Commissioner's main proposal for the remedy of the existing evils is the establishment of a statutory tenure to become inseparable from the occupancy of small holdings on the occurrence of the first lapse. Under this tenure there is to be no power of eviction so long as the rent is paid, which rent is to be fixed, according to the ancient custom of the country, at two-thirds of the average annual net produce of the holding at the time of entry, deducting the Government revenue if paid by the tenant; with this there is to be the right of sale by the tenant of his occupancy right.

This proposal has the advantage of reducing the interference of the legislature to a minimum, for having enunciated the conditions of tenure which it alone regards as consonant with public policy, the law simply debars the courts from enforcing any leases inconsistent therewith, leaving the parties to adjust everything else among themselves.

The measure would take effect gradually as leases fell in, the determination of the principal tenancy, when there were one or more intermediaries, affording the opportunity for adjusting the various relations in conformity with this principle.

On a full consideration I am of opinion that the measure proposed is well calculated to effect the end in view, and to place on a sound footing the relations between landlord and tenant with an interference with existing rights as small as, under all the circumstances, is possible.

The landlord under it would in future have to forego the profits of rack-renting and renewal fines in exchange for whatever he might be able to obtain from the first purchaser of the new statutory tenant right. It is, however, now an admitted axiom that rack-renting must eventually be as fatal to landlord as to tenant, and the law would simply operate to enforce on the landlord that which is one of the first obligations on a proprietor both in his own interests and in those of his tenants.

There is no doubt that the growth of the system of renewal fines has been greatly stimulated by the opportunity they afford to the managing member of a Hindu family to defraud the younger members, whose trustee he is. The sums thus levied appear in no written instrument, and cannot therefore be traced, and they go to diminish the rent for which, as there is documentary evidence of it, the manager can be brought to book.

In coming to a decision to deal exceptionally with Malabar it is useful to consider the main points in which the character of the district is excepted. At the head of the differences between it and the other districts of Southern India, I would place the climate and configuration of the country. The combined rainfall and sun heat are sufficient to bring to maturity on the worst soils the most valuable of Indian products, most of them perennial, which elsewhere would require two-crop irrigation, but here flourish on dry land on the roughly terraced hill side. Throughout the country there is an undulating surface of hill and dale affording at every step favorable sites for dwellings each in an orchard of these valuable products. These conditions have induced the population to spread itself in detached buildings throughout the whole country, instead of, as elsewhere, the dwellings being grouped in villages.

However seemingly unpromising the site on which a tenant first erects a thatched shed the scene entirely changes in a few years. He is found in a fairly comfortable dwelling, the materials for which lie at hand, surrounded by a garden in which there are probably 20 cocoanut trees, as many areca palms, a patch of coffee bushes, a dozen mango and jack trees, with a pepper vine clinging to each, a few talipot or umbrella palms, plantains and betel-leaf vines and some clumps of bamboo. Thus in a small compass the tenant has the means of supplying most of his wants, and of utilising his spare hours in the immediate vicinity of his house, and not only this but much of the produce admit of his family pursuing a profitable industry in converting the raw material into a partially manufactured article. Thus the cocoa kernel is sliced and dried, and thus fitted for foreign export. The cocoa husk is first made into fibre and then

hand-spun into cordage, the green leaf of the cocoa palm is plaited and finds a ready sale for thatch. The areca-nut is prepared for the retail market, &c.

To a family thus situated eviction means a great deal that no money compensation can reach, even were the amount calculated on the most liberal terms. A man thus situated must regard as the merest mockery of justice the petty sum awarded him by way of compensation at the suit of his landlord who has probably sold these valuable improvements to another who will in his turn be deprived of the further improvement and development of the holding.

It is, in fact, only necessary to peruse the series of grievances established in so many of the cases reported on in appendix XXII to feel that it is impossible to allow the British Court to be longer employed as the machinery of such obvious and grievous injustice. As already stated, I consider that Mr. Logan has indicated a mode in which matters may be improved, and it is only to be regretted that some remedy could not have been applied at an earlier stage.

From H. WIGRAM, Esq., District Judge of Coimbatore, to the Chief Secretary to Government, dated Coimbatore, 26th February 1883.

I have the honor to acknowledge the receipt of Mr. Logan's notes on my letter to you of 19th December 1882. If I were to reply in detail to these notes I should be in danger of entering into a personal controversy with Mr. Logan—a course which I wish as far as possible to avoid.

The only explanatory remarks on my former paper which I think it necessary to offer are these—

- (1) Mr. Logan objects to the use of the term "proprietary right in the soil," but it is quite consistent with all the evidence that he has adduced that the property in the soil may belong to one or more persons and the property in the trees to another person. Stated shortly, this is my view of the matter.

- (2) When I spoke of certain effects being produced by primogeniture and entail, I ought to have added that, as pointed out by Mr. Mayne in his admirable work on Hindu Law, the position of a karnavan of a Malabar family more nearly resembles that of an absolute owner than of a simple manager. The senior male members of the family succeed each in turn to the post of karnavan. Under the English law an estate granted to a man and the heirs of his body was called an estate in fee-tail, and it seemed to me that a Malabar estate which vested in a female progenitrix and her descendants from generation to generation without power of alienation except for necessary purposes might fitly be called a strictly entailed estate.

- (3) In my paper I stated that the standard value of improvements was to be determined by the outgoing tenant on eviction, I was not mindful of the fact that the valuation would be rough and ready. But I considered it to be an improvement on the present system.

The standard value would of course regulate the value in all transactions of private sale, and this would be a distinct advantage in the present sale by a tenant of his occupancy right—a purely speculative transaction.

It should be said that I discussed this question only cursorily, considering Mr. Logan's proposals for legislation. I ask permission to express my opinion at greater length.

The list of grievances in the notes on which I have commented has been so ably and concisely stated by Mr. Logan that I have no room for reproducing it verbatim. The grievances are—

(1) The charge of the soil, which is paid by tenants holding (either directly from the landlord or through intermediaries) is excessive, and is often paid in advance. (2) The charge for the use of the soil, which is paid by tenants holding (either directly from the landlord or through intermediaries) is excessive, and is often paid in advance. (3) The charge for the use of the soil, which is paid by tenants holding (either directly from the landlord or through intermediaries) is excessive, and is often paid in advance.

- (2) That this has led to a large proportion of the cultivators of the soil having reached or nearly approached a state of insolvent cottierism with the result of an increase in grave crime, whenever an unfavorable season produces additional pressure.
- (3) That as a rule no consideration is shown by landlord to tenant; no assistance is given by the former towards improvement; arbitrary eviction is common; and no adequate compensation is received by the tenant for his valuable improvement.
- (4) That the position which the British Courts have assigned to the landlord coincides with no pre-existing conditions of property, in Malabar or elsewhere in Southern India, but is in fact directly opposed to the mutual rights of landlord and tenant as revealed by a study of the matter historically.
- (5) Lastly, that the murderous outrages, which still from time to time occur, and the apprehension of which necessitates special measures as regards a European garrison as well as regards exceptionally stringent coercive legislation, are greatly dependent on the unsatisfactory relation between landlord and tenant both as to the causes which promote them and as to the machinery by which they are carried out.

3. The main remedy proposed by Mr. Logan is a statutory tenure—

- (1) For all holdings below a fixed standard.
- (2) For what may be called cottage gardens.

4. As regards (1) Mr. Logan himself admits that *holdings are nearly every where on a very small scale*, and it may therefore be assumed that the statutory tenure will have a very wide application.

The principal features of the statutory tenure are two—

- (a) The occupancy right is to be sold to the highest bidder whenever the existing tenure is determined, and is thenceforward to be permanent so long as the tenant pays his rent and does not commit waste. It is to be alienable by sale, but not by mortgage or lease.
- (b) The rent is not to exceed two-thirds of the net produce estimated at the time of entry.

5. The avowed object of the proposed legislation is to benefit the actual cultivator, whether he is the *kanamkar* or the tenant under the *kanamkar*. How far is this object likely to be attained? Mr. Logan anticipates that nearly all the *kanamkar* will continue on as tenants under the new statutory tenure and that most of the present sub-tenants holding under them will continue on as day-laborers. He omits to forecast the fate of the not inconsiderable class of simple tenants who hold direct from the *janmis* on *verumpattam*.

I am afraid that the actual cultivator will hardly relish being converted into a day-laborer on subsistence wages. He occupies a better position as he is. The *kanamkar* and the simple tenant who holds direct from his *janmi* will of course do all that they can to purchase the occupancy right, but they will have to enter into competition with their hereditary foes, (every man has some enemy in his village), and they will have to pay a high price for the privilege. To accomplish their object they will have to borrow from the money-lender or perhaps execute a bond to the *janmi*. At any rate the interest on the purchase money, say at nine per cent., must be added to the rent. It is therefore a mere illusion to say that the rent shall not exceed two-thirds of the net produce. If I rent a house for 100% a-year and have to pay 500% for the remainder of the term to the outgoing tenant, my rent is really 125% a-year as I must add 5 per cent. on the purchase money to the fixed rent.

Is a man thus clogged with debt a desirable tenant? It is only a matter of a few years before he is sold up.

6. Again to introduce a statutory tenure in lieu of all existing tenures is at once to destroy the sentimental feeling which to some extent governs the relations of landlord and tenant in every country. As a shrewd Native Judge has shown in a paper which he prepared for Mr. Logan, it is the diminution of this feeling of sentiment which has brought about the present state of things in Malabar.

It is I think to be regretted that in discussing this matter we have not before us the views of influential natives. Mr. Chandu Menon's paper, to which I alluded above, seems to be a most valuable contribution.

The register of petitions (appendix XXII) may fairly represent the grievances, though it seems to me that the Commissioner's camp was too much of an Adullam cave where "every one that was in distress and every one that was in debt and every one that was discontented gathered themselves together unto him," but we want a judicious selection of the remedies which the natives themselves would apply.

7. When in my former paper I spoke of Mr. Logan's proposals as revolutionary I meant that there was no guarantee that those who are at present in possession of the land should continue to be so, and that the object of legislation should be to improve the position of those who actually are in possession.

My own proposals were framed with that purpose in view. I do not think that the law is bound to offer permanency of tenure to all classes on the same terms, and my own impression is that many of those who now hold on *otti* or *kanam* would cheerfully exchange permanency of tenure for a money charge on the land. If they did not they would be in no worse position than they are now.

The simple tenant would of course reap the most advantage in my scheme.

8. Lastly, as regards (2) Mr. Logan proposes to allow householders to form new gardens on waste lands. My proposition goes much further and would allow them to acquire a title to their present homesteads. I can see no injustice to the *janmi* in my proposal provided that the homestead was formed at the expense of the occupant. If it was not, provision should of course be made for compensating the *janmi* for the buildings and the trees. I firmly believe that if my suggestion on this head alone were adopted it would go far to allay all the discontent in Malabar. It would elevate the mass of the people into peasant proprietors (for a permanent tenant is to all intents and purposes a proprietor), and they would enter into contractual relations with the *janmi* or the *kanamkar* as regards the cultivation of the lands as free men.

From W. LOGAN, Esq., Collector of Malabar, to the Chief Secretary to Government, dated Calicut, 7th March 1883, No. B.

I have the honor to acknowledge receipt of Mr. Wigram's second paper of notes dated 26th ultimo, on the Land tenures question.

2. The only points which seem to me to call for further remarks are the following:—

(a) In paragraph 5, Mr. Wigram says that I have "omitted to forecast the fate of the not inconsiderable class of simple tenants, who hold direct from the *janmis* on *verumpattam*." The part of the report dealing with this point is paragraphs 429, 430. I consider it to be a distinct advantage of the scheme I have suggested that those *janmis* who have encroached the most extensively on the ancient customary shares of the produce reserved for the cultivators and who in doing this have changed *kanam* tenures into *verumpattam* ones should be the first to feel the effects of the new law. They will in most cases *within one year from the date of the proposed Act* have to decide who shall be put in permanently in their holdings. The actual cultivators of large areas of country cannot be changed in a few months, so that these grasping *janmis* will have to decide in the few short months the law will allow them, either to take their permanent tenants from among the people they have succeeded in impoverishing, or to allow their lands to lie waste. Impoverished tenants cannot afford to pay much for the permanent agricultural occupancy right, and so I anticipate that the majority of them will obtain their holdings at the statutory rate without excessive entry fines.

(b) But even if the *janmi* compels them to sign bonds for large amounts in lieu of taking money from them on entry, what happens then? The permanent agricultural occupancy right may be sold, but not mortgaged. The tenants, let us suppose, fail in the payment of their interest or of their rent, their holdings are sold, and the new tenants come into possession without any incubus of the old debt about their necks, or if they too have been foolish enough to clog themselves with debt in order

to purchase the permanent agricultural occupancy right, then they too in turn will give place to others who won't be so foolish. It will not take long to convince the people that they must save if they wish to succeed as small cultivators, and this is, I submit, a very strong argument in favor of the scheme. Mr. Wigram asks, "Is a man thus clogged with debt a desirable tenant?" and remarks: "It is only a matter of a few years before he is sold up." To which I reply that the sooner a man who has run into debt beyond the recovery point is sold up, the better will it be for him and for everybody else.

(c.) In paragraph 6 Mr. Wigram remarks that "it is to be regretted that in discussing this matter we have not before us the views of influential natives," and he refers to Mr. Chandu Menon's paper. If he will kindly turn to appendix V (pages 317 to 365 of volume II) he will there find the suggestions made to me by those Judicial officers who favored me with their views as to the best mode of reconciling the differences between landlord and tenant, and it is needless to say that their opinions were most carefully considered by me before making up my mind on the general question, and that several of their suggestions were adopted. In this connection, I beg to draw prominent attention to the suggestions offered by the district munsif of Chavacherry (page 325, volume II). As matter of fact Mr. Chandu Menon's views were not incorporated in appendix V, for, though he sent me some suggestions as to improvement rates (see Pálghat district munsif's remarks at page 348 of volume II) he delayed for a long time to submit his general views, and when I eventually did receive them, he requested that they might be considered confidential, and as such I treated them. It will be observed that he is the only district munsif in the district (except Chowghát—then vacant—and Anjengo) whose views are not on record in appendix V. The views of Mr. Kunhi Raman Nayar, Judge of the High Court at Trivandrum, to whom I have recently recommended that the report should be sent for opinion, will be found at page 333 of volume II. He was at that time district munsif of Calicut.

(d) As regards the first clause of paragraph 7, I am not sure what sort of a guarantee Mr. Wigram would like to have that persons now in possession as cultivators should remain in possession, but it is quite clear that, as the agricultural part of the population is nearly 70 per cent. of the whole population, there can be no great body of strangers to be brought in to fill the places of cultivators who may be ousted, and jannmis would have to set themselves to the task of finding the best of the available cultivators as tenants. Some people doubtless would not get back the lands they held before the passing of the Act, but of such changes, or threats of change, they have already had long and painful experience in the Civil Courts. As matter of fact, I do not anticipate that under my scheme there would be any very extensive changes in the holders of lands.

(e.) Finally, in paragraph 8 Mr. Wigram anticipates that his peasant proprietors of house-sites would "enter into contractual relations with the jannmi or the kanakkar as regards the cultivation of the lands as free men." He does not say whether he would forbid sub-letting, sub-division or mortgaging of their property by these "peasant proprietors," and, unless he elects to adopt these three conditions of his peasant holdings, it is obvious that there is in his scheme nothing to prevent the growth of relations among the parties, every bit as much to be dreaded as those which now subsist. *There is no harder landlord anywhere than a peasant proprietor.* And hence I think arises the necessity in the matter of small holdings only—

- (1) of protecting no one but the actual cultivator; and
- (2) of legislating that the only kind of "contractual relation," which such small cultivators shall be capable of negotiating in respect of their holdings, shall be that these shall be bought and sold like chattels, but not otherwise dealt with.

From W. LOGAN, Esq., Collector of Malabar, to the Chief Secretary to Government, dated Calicut, 21st April 1883, No. D.

With reference to your note of 13th instant, on the subject of Mr. Wigram's proposal in paragraph 17 of his note of 12th December 1882 on Malabar Land Tenures,

I have the honor to report that such an enactment if passed "at once," as suggested by Mr. Wigram, would be nothing less than revolutionary in its operation and most dangerous to the peace of the district.

2. My chief reasons are—

- (a) The stay of decrease of ejectment would confer on the tenants a position which would at once enable them to withhold payment of rent and renewal fees. I am almost certain that in the taluks of Ernad, Ponáni, and Valuvanád this would be the immediate effect produced by it on every Mappilla tenant. The landlords would still of course be able to bring suits for such rents, &c., and would be able to sell their tenants' interests if their demands were not complied with, but this would be only a roundabout way of evicting them.
- (b) It would also prevent the mortgagee from recovering his money lent to the tenant on the security of his interest in his holding. Of course in this case the mortgagee might proceed against the person of his debtor and not against the property, but the means of evading such decrees are so numerous that the mortgagee would almost certainly lose his money.
- (c) It would interfere in so many ways with the existing relations between the parties that the eventual settlement of their differences would be rendered infinitely more difficult and such eventual settlement would have to be dealt with in a special manner, as it would be hopeless to expect the parties themselves to come to terms.
- (d) The proposal is so worded that small holdings and large would be alike affected. Is a European capitalist cultivator, who has made his bargain with his eyes open and with full knowledge of the value of his money, to be put on the same footing as an ignorant native rustic holding perhaps one cent. of an acre of paddy land?
- (e) It would give rise to hopes in the minds of the ignorant and particularly of the Mappillas in Ernad, Ponáni and Valuvanád, which would be doomed only to disappointment the more bitter when it was discovered that the hopes were in many instances fallacious.
- (f) The Government has committed itself to a promise that every facility will be afforded to the people to discuss the proposed measures before they are definitely settled, and such a measure as that now suggested would be looked on as more or less of a breach of faith.
- (g) If my proposals are accepted such an enactment would certainly not be necessary (see paragraphs 435 to 437 of the report).
- (h) I think such a proposal is premature, and the proper time to consider it would be after the policy of Government on the whole question has been definitely fixed.
- (i) Finally, the jannmis have not so far shown any disposition to use their powers of eviction in anticipation of the proposed reforms, and Mr. Wigram's reasons for proposing such an enactment have not consequently so far been justified by the event.

3. In conclusion, I would observe that eviction suits have not largely increased in numbers; that some landlords have tried to anticipate legislation by entering into contracts with their tenants stipulating for payment for improvements at lower rates than customary; and that some others have tried to effect the same object in other ways, but that the great bulk of the landlords are at present in a quiescent state waiting for the proposals which, as already promised by Government, they are to have the privilege of discussing before they are put in force. I would certainly strongly advise that no steps be taken to create uneasiness as to this promise in the minds of the people.

4. If the Government see no objection to the proposal, I would further suggest that my report, except paragraphs 230 to 304 and paragraphs 489 to 506 (relating to the Mappilla outrages and Mosque disputes), should now be published with a Malayalam translation. The appendices are too voluminous to permit of this being done in regard to them, and appendix XXII containing the petitions ought not, I think, under any circumstances, to be published, as personal questions had best be left out of

the discussion. I attach particular importance to its publication in Malayalam for the benefit of those who do not understand English; I feel sure that many most valuable practical suggestions will be obtained from this class.

From P. P. HUTCHINS, Esq., to the Chief Secretary to Government, dated Ootacamund, 28th April 1883.

I have the honor to acknowledge the receipt of a copy of Mr. Logan's Report on Malabar Land Tenures, forwarded for my remarks with your official memorandum of the 20th ultimo, and also of the correspondence with Messrs. Wigram, Logan and Macgregor on the same subject, which accompanied your demi-official of the 16th instant. Unfortunately I have no practical knowledge of Malabar, and it is difficult, from a mere perusal of Mr. Logan's report—elaborate as it is—to master the intricacies of the subject or gain a correct apprehension of the actual situation and the mutual relations of the various classes interested in the land. It is therefore with very great diffidence that I venture to submit the following observations.

2. It seems to be generally agreed that the great body of the actual cultivators are rack-rented and need legislative protection; that their present oppressed condition is one great cause of crime; that the janmis or landlords are not, or were not originally, absolute proprietors, but that the actual cultivators once owned some right in the soil; and, from the evidence collected by Mr. Logan, this right seems to have been a right to remain in possession upon payment of two-thirds of the net produce, the landlord being responsible for the public revenue.

3. Mr. Logan proposes a distinction between holdings according as they do or do not exceed an arbitrary limit, viz., 25 acres of grain land or 5 of garden, the property of a single landlord. Larger cultivators he would treat as capitalists, able to take care of themselves. It is only the smaller tenants who, in his opinion, require protection from absolute freedom of contract. He proposes to restore such to their ancient position, i.e., to give them permanent occupancy on a rent equivalent to two-thirds of the net produce, but he would require them first to purchase this right at a price to be settled, if necessary, by public competition. Such competition he hopes to restrict to actual cultivators by providing that, though they may alienate, they shall not subject their interest.

4. As a further precaution he would take away the right to mortgage, although it has been commonly exercised by the cultivators hitherto, and although his main principle is described to be that the right of occupancy shall be "bought and sold and treated like a bale of goods." It seems strange at first sight that a mere tenant-at-will should have any interest capable of being mortgaged, but it is clearly established that the actual cultivators may improve the land and are entitled to compensation for their improvements before eviction. One of their chief grievances, however, arises from the low rates at which such compensation is assessed. Mr. Logan proposes (section 436) to alter this, and I entirely agree that the rates should be the full market value and not taken from some arbitrary schedule, prepared at a time when land was abundant and all its products excessively cheap. I anticipate great difficulties, which cannot but lead to discussions and delay, in regard to most of the other remedies suggested, but I can see no objection to a short Act being at once passed to enhance the rates of compensation, and I am inclined to think that it will go far to remove the most pressing grievances of the cultivators. It is of course true that a man makes improvements in the hope of reaping the fruits and not with a view to obtain compensation, but if, his title to the land being known to be at the best uncertain, he obtains full value for all his improvements, he cannot have much to complain of; and he will still have a chance of personally enjoying the fruits—a chance which will be greatly increased by the fact that he can no longer be evicted without considerable expense. Indeed it is probable that, in all ordinary cases, the fact that full compensation must be paid will, at least for a time, give the cultivators all the security which need be desired.

5. But though this may put a stop temporarily to improper eviction, it cannot operate permanently to prevent rack-renting, and I must now return to the more

elaborate remedy which I have briefly described in the last paragraph but one. Simple as it seems in principle, I doubt very much if it can be worked out in practice, and I also doubt if it would confer much benefit on the cultivators. They are to have the value of their personal labor anyhow (section 378), but they will get nothing more, unless they succeed in materially increasing the productiveness of the soil beyond the average, except the difference (if any) between the interest on what they pay for the right of occupancy and the value of a third of the average net produce. It is obvious therefore that everything will depend, first, on the price at which the occupancy right has to be purchased; secondly, on the manner in which the average net produce may be estimated.

6. As to the former point Mr. Logan has not sketched out any method of procedure, and I am not sure that I quite comprehend what he wishes to be done. In section 423, speaking of an intermediary, he says that *he*—not the cultivator—may elect whether he will take the land into his own hands or not. If so, the cultivator, at whose protection we are aiming, may at once be ousted, and it will be open to the intermediary or the janmi, as the case may be, nominally to resume and then to evade the law by refusing to relet unless the actual cultivator will nominally undertake more than 25 acres, sub-letting what he does not require. Such difficulties can hardly fail to arise if the Legislature ventures to prescribe an arbitrary limit like that suggested. It is of course anomalous that a holder of 25 acres should have altogether different rights from a man who is responsible for 26.

7. I will assume, however, that, at the outset, we are to take the actual holdings as they now stand, and that the intention is that the cultivator of each holding under 25 acres may require the landlord to offer it, as it stands, to the competition of himself and others who may profess themselves willing to till it, subject to a charge for whatever may be due to himself on account of improvements. Difficulties of procedure will of course occur wherever there is a dispute, and there always will be such disputes, about either the value of the improvements or the amount of the net produce on which the rent to be reserved depends; but I will assume these points to have been settled somehow and the competition to begin. How are we to exclude the bids of persons who will not personally cultivate? The denial of a statutory right to sublet will not shut them out, because the landlord could always concede such a right. If the cultivator has displeased him in the matter of estimating the produce or improvements, he may determine to have another tenant; he will at all events be anxious to drive up the price as high as possible. He may even put forward collusive bidders. Eviction would be made easier than it is at present, and the last state of the cultivator be worse than the first.

8. But even if the present tenant succeeds in the competition, he will probably commence his new holding under a load of debt which must cause him to be sold up within a few years. We wish to encourage thrift, but the thriftless will always bid more than the prudent man will venture. It is said that he will not be able actually to charge the land, but his possession, past and prospective, cannot but improve his credit, and, unless he is dishonest, will be almost equivalent to a mortgage. When he comes to be sold up, the purchaser will very likely be either the local money-lender, who can sublet if he obtains an agreement from the landlord, or the landlord himself, who is to have a right of pre-emption, and who will, I suppose, be allowed to repeat the same process *ad infinitum* or as long as he finds it profitable. There will now be no actual cultivator to compel him to offer the holding in its original extent, and I am at a loss to know what is intended. Clause XV of section 353 seems to pre-suppose a liability on demand to create small holdings, but it is difficult to see how it could be enforced. Section 401 does not throw much light on this point, but does show that the liability could be evaded. The landlord could always pretend that he has some thoughts of utilizing the land for building or mining purposes, or to make a large farm (section 399), until the applicant agreed to make himself at least nominally responsible for 26 acres.

9. The other point on which the cultivator's fate will depend is the estimate of the average net produce, two-thirds of which is to form his rent. I accept the suggestion that this would be a fair rent, the landlord paying the land revenue. But the important question is, Who is to make the estimate? In section 377, Mr. Logan cursorily

states that "this estimate should be made by the parties themselves." If they can be trusted to state the net produce correctly, what need is there to control their freedom of contract? It seems to me that, both on this point and on the one just treated, Mr. Logan proposes to allow a degree of liberty of contract which will frustrate the object which we have in view. "The Malayali's tenacity to his land is such that he will even submit to the most impossible terms rather than surrender his birthright." He is, however, to have liberty "to apply to the authorities, within a reasonable time, for a revision of the estimate, if it is found to be grossly fallacious"—which, I suppose, must be taken to mean, if he has knowingly, in order to secure the land, assented to extravagant terms, for the actual cultivator must know what the land will yield. Here another difficulty suggests itself. Can he appeal after the competition and when he has secured the land? If not, the provision would be illusory. If he can, the competition must of course be re-opened with the result that he will certainly lose the land—the landlord would take care of that—so that he would never dare to appeal "within a reasonable time."

10. But again to what "authorities" is he to apply? I strongly protest against this burden being thrown on the Civil Courts. Long experience has taught me that there is no question, upon which the courts of this country are so utterly helpless, as the amount of the past produce of land. The Judge must depend on commissioners, and Mr. Logan has very clearly shown that they are both expensive and untrustworthy. Nice estimates of this description can only be framed by a trained settlement officer on the spot, but, if the permanent rents of a large body of cultivators are to be revised at the forthcoming settlement, I think it will be necessary to provide an appeal to a temporary land court. Similar estimates, which may have to be made after the settlement is closed, should be left to the Revenue authorities, with an appeal perhaps to the Judge or Collector with assessors.

11. I cannot follow Mr. Logan's remarks in section 414. What better inducement can be held out to a man than that of bettering himself? and why should it be assumed that a fair rent must be an easy one? It seems to me that the rent should be fixed with reference to the capability of the land alone, and that considerations of the tenant's character for resource, energy and thrift are beside the question. Even the accessibility and general convenience of the land cannot much affect the net produce: it will affect the value of the produce, but it is intended that the money rent may vary every year, or preferably every ten or twelve years (section 379).

12. In section 331, Mr. Logan proposes to leave things as they are on estates where the old situation is maintained. It is difficult to see how this can be arranged, if the legislature enacts any general rules, but the suggestion indicates that the true remedy will be to restore the old state of things everywhere. This seems to be the effect of Mr. Wigram's suggestions in sections 12 and 13 of his first letter. It is true that they are, as Mr. Logan complains, more revolutionary than his own, because they assign to the cultivators gratuitously a right which the courts have long denied them, and which Mr. Logan would make them purchase. But the courts admittedly made a mistake. The cultivators, it is conceded, once owned the rights which it is proposed to restore to them. If, as is now generally admitted, the legislature not only has the right, but is bound on sufficient cause being shown, to step in and protect the ignorant agricultural class, and to restrict landlords to a fair rent, surely it should do so *a fortiori* where such a measure will merely restore the *status quo ante* an unfortunate error of the courts. At all events, if the legislature interferes at all, let it do so effectually, and not try at the same time both to control and to preserve freedom of contract. In many cases I understand the present tenants are the representatives of persons, by whom the land was originally reclaimed on the understanding that they were to have a permanent interest in the soil, or at the worst liberal compensation.

13. As regards Mr. Wigram's proposal (d), which seems almost identical with Mr. Logan's sections 440 and 448 to 452, I am disposed to agree that some such measure is of paramount importance, both for the cultivator's well being and for the public security.

14. I presume that Mr. Logan intends that, when once acquired, the right of occupancy is not to be lost by the tenant's extending his holding beyond the statutory

limit. The extension should probably be regarded as a mere accretion. But in process of time, if the measure succeeds, the holding may be increased to such an extent that the denial of the right to sublet will cause great inconvenience. Anomalies can hardly fail, sooner or later, to lead to practical inconvenience.

15. In sections 214 and 248, Mr. Logan finds fault with the courts for supposing that a poor woman could preserve her rent receipts for nineteen years. He seems to have overlooked the fact that she could not produce even a single voucher. The production of any receipt would probably have raised a presumption that she had paid for all the earlier years also. Upon this point, however, I need only refer to the provisions in chap. IX (C) and (D) of the Bengal Tenancy Bill, 1883, which it seems desirable to adopt for the whole of this Presidency, not excepting Malabar.

16. In connection with the last remark I may call attention to the fact that (Madras) Act VIII of 1865 is not considered in force in Malabar, though apparently it was intended to apply throughout the Presidency. On asking the reason I have been told by one authority that landlords in Malabar have no right of distraint—they ought to have it, if the Act gave it them; and by another that "every Collector has set his face against it, because of the hardships it inflicts on tenants, being unwilling to incur the odium of enforcing the terms of the tenancy and preferring to leave that (the odium) to the Civil Courts"—a curious reason this for declining to exercise a jurisdiction vested in the Collector by law! In any revision of the Act which may be undertaken this point ought to be borne in mind. The right of distraint should certainly not be introduced, if it does not exist by ancient custom, but the revenue officials should not be allowed to shirk a duty which the law casts upon them, and which, as I have stated above, they are far better fitted than the courts to perform. Perhaps some clause, appropriate to Malabar, might be inserted in section 11 of the Act, which regulates the rates of rent, *e.g.*, a declaration that the "local usage" of that district is that the cultivator shall pay two-thirds of the net produce. It may be that this would have been the effect of section 11, even as it stands, if it had not remained a dead letter as far as Malabar is concerned.

17. In section 258 it is alleged that the existing number of vakils up-country is inadequate. The recent extension of the Legal Practitioners' Act to this Presidency has quite altered the old state of things. The profession has now been thrown open. In most districts the number of pleaders already far exceeds the actual requirements of the courts, and is likely to be increased indefinitely.

18. The proposals in sections 485 to 488 seem very desirable. On the whole, therefore, I support the recommendations made by Mr. Logan in—

- (1) Section 436 as to full compensation being given for improvements;
- (2) Sections 448ff as to kudiyruppu holdings; and
- (3) Sections 485ff as to the disposal of, and succession to, self-acquired property;

but beyond this I am not at present prepared to agree in his proposals. I am however disposed to think that rents may be restricted to two-thirds of the net produce from the time of the settlement, and that contracts for anything in excess of that maximum may be declared null to the extent of such excess.

June 28th, 1883.

DEAR MR. GRANT DUFF,

You asked me in your last note to give you my general impressions on Logan's suggested changes in regard to Malabar Land questions, and although I have not yet fully digested the contents of his three volumes, and the subject of them is an exceedingly complicated and delicate one, I am unwilling to keep you waiting any longer for a reply, though I shall hope to supplement it later on. I have studied the report and some of the appendices very closely, but I do not pretend to have arrived yet at a decided opinion as to the remedies proper to be applied to the existing dangerous disease. There is, however, I think no doubt that uncertainty of tenure with its concomitants of rack-renting and reckless evictions constitutes the disease, and that

the remedy to be sought is an equitable amount of fixity of tenure, and limitation of demand, the difficulty being to decide on whom the right of permanent occupation shall be conferred, and what shall be the limit of demand on such occupant.

Logan proposes that the Government shall legislate in favor of "the actual cultivators" of holdings not exceeding 25 acres of grain land or 5 acres of garden, and the property of a single landlord, giving them permanence of tenure for themselves, their heirs and assigns, on a rent limited as a maximum to two-thirds of the average annual net produce of the holding, as estimated *in kind* on the entry of the actual cultivator, to be paid either in money or in kind at the option of the proprietor (apparently), and in the case of money to be revalued at the end of every 12 years (section 379); this permanent tenure, however, to be a matter of sale by the proprietor to the highest bidder on the next vacating of the land by the now existing occupier.

Mr. Wigram raises at once the objection which will strike every one that the result of this must be very widespread and dangerous disturbance of occupation, to which Mr. Logan replies that his limitation of the measure to *small* holdings, and the prohibition against sub-dividing or sub-letting or mortgaging (though the tenant may sell the whole or a portion with the consent of the landlord), will serve to restrict the competition and remove the objection.

I confess that I am not satisfied with this explanation, and it seems to me that Logan goes too far in one direction and not far enough in another.

I am not satisfied of the "proprietor's" equitable claim to sell the value of the unearned "increment" inherent in the quality of the soil (section 383), simply on the ground that he has hitherto been able to extort a rack-rent by the power of eviction which our courts have put into his hands, and the proposal to restrict the permanent tenure to holdings not exceeding 25 acres seems to me destitute of principle, nor do I understand how it is to be reconciled in practice with the fact stated by Logan that larger holdings are as a rule the aggregate of numerous small holdings, each of them the property of a single proprietor.

If this be so, it appears to me that the latter of Logan's proposal would enable this large holder cultivating by hired labor, to obtain a permanent tenure of each constituent part from each separate proprietor; but this would seem to be opposed to Logan's view. On the other hand, I do not see the wisdom of restricting holdings on permanent tenure to 25 acres.

It seems to me that Logan has, by his laborious investigation, arrived at the verge of the position for which I always contended, that the foundation of the land system in Malabar, as in the rest of India, is the recognition of a ryot or peasant proprietary, developed out of the original village community holding in common, where the physical characteristics of the country originally favored such joint holdings, but probably in Malabar and Canara originating rather in individual or family efforts to reclaim the waste by personal efforts thereby creating a property in it, which in time came to be subject to incidents and conditions of holding arising out of social growth and proved need for protection in the exercise of acquired rights.

Logan would define "landlord" as the person from whom "the actual cultivator who is to obtain permanent tenure holds his land" (section 371), but in his reports in many places he states that this holding is *very* often from "intermediaries," and it seems to me evident that these cannot confer permanency of tenure, if they do not themselves possess it (which brings us to much the same dilemma as I always urged against the theory that the State conferred proprietary rights on zemindars in 1802).

It appears to me that Logan's investigation proves the existence of an established proprietary right in the kanomkars, and that it is essential that this must be recognised in any legislation for the benefit of "the actual cultivators," although I think it quite right and proper that in the proved necessities of the case, the State should regulate the exercise of this right in the interests of the community.

I see nothing in this recognition of kanomkar's rights with the concurrent recognition of janmi's rights or claims on the kanomkar. It seems to me then that the legislation to be satisfactory must recognise "the janmi," "the kanakkar" and "the verumputtakar," and that it should proceed on the line of recognising the permanency of tenure of the kanakkar, subject to the (by law) prescribed claim of the janmi, and should deprive the kanakkar of the power of ousting his verumputtakar

except by public sale of his (the latter's) interest in his holding for default of payment to the kanakkar of his (by law) limited claim on the verumputtam holding. This last ultimate power of realizing *his* dues from the kanakkar I would similarly recognise in the case of the janmi.

Thus the law would begin by expressly refusing to permit janmis or kanakkars to evict kanakkars or verumputtakars except by sale of the latter's interest in their respective tenures for default of payment of the *legal dues* of their respective "overlords."

The natural corollary would be to give express recognition to the right of these three classes of persons to deal with their right by gift, sale, or mortgage, and to the right of succession by inheritance of their heirs.

Then would come the definition of the *legal dues* of each class, and here I think that Logan has shown sufficient grounds for limiting the kanakkar's claim on his verumputtakar to two-thirds of the net produce of the holding as a maximum, after deducting all cost of cultivation, village fees, &c., as is done in the case of our ryotwari settlements.

If this two-thirds of the net produce were estimated with reference to the existing condition of the holding and made permanent, irrespective of all subsequent improvements, it would only have the effect of placing the verumputtakar in the position which Sir W. Denison's Government desired to secure for the ryot in direct relations with Government, but which the Secretary of State declined to admit when he limited our settlement to 30 years' duration. My own belief, however, is that *this* ryotwari assessment *in kind* is *practically* a permanent settlement, and that any future revision can only extend to the commutation rate for conversion *into money*. If this be so, there would be no special hardship in similarly restricting the kanakkars' demands, but Logan proposes a 12 years' revaluation in money of the assessment in kind of his demand, and this might, I think, be conceded in consideration of the withdrawal of the right to sell the occupation right which Logan would concede to the "landlord." In very many cases no doubt the janmi possesses kanakkars' rights, and in these cases those holding land directly under him would be in the same position as verumputtakars under a kanakkar. Intermediaries other than the kanakkar I do not think the law need recognise. The recognition of the three classes by express legislation would, I should think, suffice for the present purpose, and would meet the case of the bulk of those concerned. The courts could deal with exceptional cases.

If it should be thought that the above proposal for limiting the kanakkars' demand is too narrow and unfair to him, then I would not object to a revaluation of the two-thirds net produce *in kind* at the 30 years' interval which the Secretary of State has prescribed for our ryotwari settlements. The effect would be to place the verumputtakars much on the same footing as our ryots, and to this I incline to think they are entitled as being their original right.

The further effect would be to give to the kanakkars much the same interest in the proceeds from the *occupied* land as I conceive that the zemindari settlement in other districts ought to have given to the zemindar, and it must be clearly understood that in dealing with Malabar we are dealing with a district which, as far as the State revenue is concerned, is by no means on the footing of a ryotwari settled district, but rather on that of a zemindari at the present day, so far at least as that the State demand is based on what may be called "the landlord's rent-roll," and not on the State's theoretical right to a certain share in the produce of every field. We are not sacrificing State rights, because we do not aim at securing this last income for the State coffers.

There remains to consider the limitation that should be placed on the janmi's claim on the kanakkar, and here I would legalise the "fine on succession" whether by change in the person of the janmi or of the kanakkar (the *Lord* or the *Lord's tenant*, to use our Manor Court's vocabulary), but I am not satisfied as to the need for recognising a 12 years' renewal fine, for which indeed there would be no warrant if the kanakkar's tenure be made permanent by law. (I may note here that this consideration disposes of Mr Logan's argument in section 393 against allowing the verumputtakar to mortgage his tenure. There would be no renewals in that case either, and therefore no danger of encumbrance by borrowing to pay fines on renewal).

Whether the janmi's further claims should be restricted to one-third of the net

produce of the land (*i.e.*, half of what the kanakkar would receive from the verumputtakar or kudian) I am not yet decided in my own mind. It would seem to be the fair deduction from Mr. Logan's evidence, but it may be that we have committed ourselves too far by past recognition of larger claims, and that such a limitation might involve a resettlement of the State revenue demand on the district, though this last argument I should not consider of much weight. If a redistribution of burdens is necessary, it would only be fair that the State should bear its share. I do not think that Mr. Logan's objection derived from the fact of our having sold the janmi's rights in escheat is of much weight. We sold not in the open market, but to the existing occupiers; they might be kanakkars or kudians (verumputtakars), and they would still retain by right of purchase whatever would in future constitute janmi's rights throughout the district.

As regards counter-claims against the janmis, whether on account of advances or mortgages (kanom of otti), I would allow them full value as a set-off against the janmi's claims as restricted by the new law.

No question as to compensation for improvements could arise as between janmi, kanakkar or kudian.

I am forced to stop to save the post.

In great haste, and asking pardon for these undigested remarks.

W. HUDLESTON.

MEMORANDUM ON "REPORT ON MALABAR LAND TENURES."

The subject of this report is so important and difficult that it is only in deference to the desire that Government has done me the honor to express that I submit the following remarks. I shall make them as brief as possible, and only refer to such parts of the report as my purpose compels me to notice, though I have read the whole with care.

Mr. Logan has given much diligence and attention to the elaboration of his propositions, and I sympathize with much that he has in view. But yet I am unable to assent to much that he advocates or concur in what seems the main feature of his proposals. I regret this the more as I am unable to formulate with approach to distinctness any other course that satisfies as really meeting evils by no means imaginary.

2. The first question is, Are the Malabar janmis to be regarded for practical administration as proprietors or not?

To answer this I do not see that Government can now go back on ancient deeds, or need enter into subtle disquisitions as to the precise nature of rights that had long ago become obscure and doubtful and customs that have ceased to have real force. It is said in p. 72 of the report that "the British authorities and British courts have never properly realized the true original state of the relations subsisting between janmis and other classes interested in the soil." Considering that we have been in possession of Malabar well on to a century, and that much time and labor have been bestowed in investigating these questions, this is a somewhat startling assertion. But even if it is well founded it does not give the authorities now *carte blanche* to deal summarily with rights which they have created or allowed to spring up under their administration.

The report speaks of the actual cultivators as the one class whose interests deserve

P. 85, 44.

the most careful consideration. In one sense perhaps this may be allowed, but

with reservation, and certainly in State action of such momentous importance as legislation with regard to land the bearing of any provisions on all classes must be most carefully and impartially weighed and considered.

If the public weal demands that existing rights appertaining to one class be curtailed or transferred justice demands that compensation be equitably adjusted.

If a chip is to be taken off the block of any class rights it must be honestly paid for.

3. The report says that materials for the exhaustive treatment of the land question are not yet available and that we have to deal with facts as they are. In this last sentiment I entirely concur; but the proposals of the report do not seem to me in accordance with it. It can hardly be denied that the janmi, whether originally possessed of the full powers of a proprietor in the European sense of the term or not, has certainly become in the course of events a landlord who can make his own terms with his ordinary tenants whether as to duration of occupancy or as to amount of rental, though local custom, as is the case everywhere, practically influence relations in a sensible degree.

If these powers have hardened in more recent times is not this in accordance with the doctrine of compensation that pervades in some degree all human affairs? The janmis have lost the honorific privileges, arbitrary powers of exaction, and many customary advantages, which have merged in the increasing freedom of their social inferiors. If the well-being of the latter has to be further secured, the remaining and existing rights of the janmis should not be overlooked or disregarded.

4. As regards permanent occupancy—Mr. Logan observes that the common people had rights as well as duties, and that under all the load of modern court-

P. 45.

made law there still lurks the idea that they have duties in respect to the soil as well as rights to uphold.

But I do not see it made out, and I do not think it could be made out, that a right of permanent occupancy by an ordinary tenant as against a janmi was or is one of these rights. Mr. Logan indeed considers eviction of a tenant from his holding,

P. 346.

even where compensation for improvement is given, as "simple expropriation of property." Unless there has been special agreement providing against eviction, or the compensation is not valued according to law or established custom, I cannot agree with him. That "a right of ouster" is valuable property can hardly be questioned; yet with this property it is proposed to deal very summarily.

And here I cannot help observing that the abuse of a right of ouster has, as it seems to me, caused an unreasonable prejudice to attach to the term. Divesting it of associations not necessarily involved it simply means a right to re-enter, on well-known or specified conditions, on property placed for a time by one party at the disposal of another for the presumed advantage of both.

5. To adopt the propositions in the report as to permanent occupancy would in fact involve the deprivation of one class of a right of ouster, possibly of questionable origin, but undoubtedly now vesting in it, and the conveyance of a right of permanent occupancy by somewhat artificial legislation to another class which has questionable (if any) claims thereto as far as the past is concerned, and certainly no existing legal right to the privilege proposed to be conferred on it.

And it is proposed to do this by a declaratory Act without any adequate compensation to the class whom it is proposed to deprive of a valuable existing right.

6. It can hardly be argued that the price to be paid to a landlord by a tenant on entry on a holding is really compensative to the landlord in the circumstances, for loss of right to raise the rent or to re-enter at any future period save in the certain contingencies specified.

What is the value of this provision from the landlord's point of view? A landlord could now of course make the contemplated arrangement, by private contract if he chose, and could find a tenant willing to deal with him.

Then the dictum that the value of a thing is just what it will fetch in the open market would quite properly apply. But

P. 351.

when the condition of conveying permanent occupancy with a lease becomes compulsory on the landlord—when a tenant knows that a landlord cannot by law lease his land without *ipso facto* conveying right of permanent occupancy, at a rent fixed at the time of entry—the transaction assumes a very different complexion. The tenant assuredly will not be prepared to give under the proposed conditions (compulsory on the landlord) what under the existing conditions (to be arranged by private contract between landlord and tenant) the landlord would be sure to get—*i.e.*, just what would be got in the open market, and the

difference is the measure of direct loss that would be inflicted on the landlord by the contemplated legislation on this point independently of the curtailment of his freedom to secure re-entry on his land by private contract.

If I read Mr. Logan's application of the open market value argument aright it appears to me that a distinct fallacy underlies the application, and that his scheme would not, as it apparently proposes, secure to the landlord the value that what he would be obliged to sell would fetch in the open market.

7. Whether public policy demands the conveyance to a certain class of tenantry of a right of permanent occupancy is a separate question.

I have only hitherto submitted my opinion that it cannot be taken from one class and conveyed to another without adequate compensation which the proposals fail to provide.

I would observe that if the public interest demand the step, I conceive that Government would be perfectly justified in appropriating land in much the same manner as land can now be acquired by law for public purposes and conveying it to tenants on such conditions as might be found expedient. But if the desirability of such transaction is apparent to some, I fear the possibility of finding funds for the purpose in a legitimate manner is not apparent to any. The general adoption of such scheme on any commensurate scale seems beyond the range of a practical administration, and I merely advert to the matter here to indicate the principle of compensation, which, whatever the difficulties that beset the question, should not be lost sight of in practical arrangements by any Government, and least of all by a British Government in India.

8. The results of a measure are often brought into strong light if we look at its effect in particular cases. For example, some fifteen to twenty years ago Government sold the jenmom in a large amount of escheated property to sundry purchasers who were almost always occupying tenants. Many of them would have preferred remaining tenants on the old footing as it was an exceedingly favorable one. But Government as landlord, with perfect propriety, determined in the public interest that some larger return should be had from these State jenmom properties, and the tenants were offered the jenm right on very favorable terms. If they obstructively declined to purchase they ran the risk of having their holdings sold over their heads to others. Many tenants thus became janmis, and though on favorable terms, not altogether at their own option. Can these proprietors now be told that our then interpretation of the jenmom right was a false one, and that henceforth their rights will be of a different character to those they purchased from Government at so recent a date? This seems to me to speak for itself.

9. Coming to the proposals to fix a statutory limit of rent.

It may seem that the above line of argument if admitted would condemn the principle of such measure unless specific compensation is provided.

For, passing by the obscurity that involves the question in the more remote past, it is incontestable that janmis have exercised the right of demanding rents independently of any relation between their amounts and the net produce obtainable by tenants from their holdings. If the janmis may now demand unlimited rents how can the curtailments of such rights by law without definite compensation be defended?

But there seems a very appreciable difference between providing that if a man leases his land at all he must abandon right of re-entry save in contingencies that very possibly may never arise; and this is what the adoption of Mr. Logan's proposals as I gather would entail; and providing that if a man leases his land in a particular class of cases (in which special protection of the tenant seems called for by public policy) he must do so at a rent that will give his tenant reasonable opportunity of maintaining himself and his family as useful members of the State, and not on terms that must almost inevitably grind them into pauperism.

If in cases that call for interference with private contract at all certain limits can be prescribed in reference to a demand of a share of the net produce as rent, beyond which a landlord cannot go—due provision being also made for equitable compensation for tenant's improvements on the termination of his occupancy—I cannot but think that without injustice to the one class, all that justice and true policy requires will be secured to the other.

The class of cases calling for interference with private contract should be regarded as admittedly exceptional. The grant of leases of such class should be optional with the landlord (or lessor).

Save that the curtailment of his rights would be certainly small and generally inappreciable directly its measure would be impossible to gauge accurately. Thus the very nature of the case seems here to exclude the necessity of entertaining any question of compensation direct, though, if a well-devised measure leading to the general welfare is introduced, the landlord class will have their equitable share in the general improvements.

10. From the considerations above indicated, however imperfectly set forth, I must hold the opinion that the right of permanent occupancy cannot be conferred on tenants, without manifest injustice, or without adequate compensation (for which I see no provision in the report), to the landlords. But where interference with private contract is called for on public grounds statutory provision for the limitation of the exaction of rack-rents, and provision for compensation for tenants' improvements on the termination of rent periods, may equitably be fixed.

11. Leaving the moral aspect so to speak of the questions involved, the expediency and feasibility of some of the main propositions in the report may be examined.

The most marked effect would apparently be that a janmi would have no power of leasing his lands, whether in small or large farms, without running great risk of depriving himself and his heirs altogether of power of re-entry. If he lets in small holdings, under 25 acres grain and 5 acres garden, the tenant is to acquire by the fact of his tenancy, right of permanent occupancy.

The janmi's only chances of re-entry are if the tenant fails to pay his rent, having perhaps intermediately allowed his holding to deteriorate through poverty, misfortune or neglect, or puts the occupancy right in the market when the janmi has the right of pre-emption, or if the landlord can show such cause for re-entry on his own account as would justify acquisition of the land for public purposes, in such cases as at present the Land Acquisition Act would apply. If the janmi leases large holdings his case seems no better. The tenant apparently is to become landlord in the sense of the report, and may sublet permanently independently of the janmi altogether. This provision is considered clearly necessary to prevent landlords (janmis) getting round the provisions of the proposed law by letting their lands in large blocks to persons who would then sublet them to small holders. And I gather that it is intended that the grant of a lease of any area above that quoted *ipso facto* conveys to the leaseholder the power of conveying permanent occupancy to sub-tenants, and that he and the janmi are to be barred from contracting out of this provision.

To deprive landlords of power to lease without probable permanent alienation of their land is to take a chip out of the block of landlords' rights indeed, and will, as it seems to me, so circumscribe proprietary right as to render it of comparatively little value.

12. I fear landlords in Malabar cannot as a class be looked upon as a public spirited body alive to their responsibilities regarded from an enlightened view of their position. Still there are or may be improving landlords as well as improving tenants, as there certainly are thriftless incapable tenants as well as useless landlords. Undoubtedly if the tenant has a permanent right of occupancy at a rent fixed at his entry he has a strong inducement to improve his holding; but is not all subsequent inducement to the landlord to improve taken away? If in the circumstances a landlord improves a leased holding he only makes the tenant's right of occupancy more valuable and lessens any prospect of landlord's re-entry on favorable terms. Whether Malabar janmis do now take an interest in improving their properties or not it seems a measure of very doubtful expediency to remove or materially weaken their most natural incentive to effect and encourage improvement in their leased properties, viz., the prospect of sharing materially in the enhanced returns which improvements may be looked to to give.

13. The propositions as to sale of the inherent good qualities of the soil by the landlord to an entering tenant seems intended as compensation to the former for the deprivation of right to re-enter on his property at the termination of a customary or

specifically contracted lease period or enhancement of rent during it. I have already expressed my opinion that it is not a fair compensation by any means. Nor does the proposal commend itself to me in the real interests of small tenants.

Setting aside the great enterprises of coffee, cinchona and such like cultivation, the bulk of ordinary improvement in Malabar consists in the reclamation of small holdings and their culture by small tenants, and these improvements are the result of patient and continued personal industry on the part of the cultivators and their families, and not operations involving large money expenditure.

Very few of the class are likely to have capital in money at their disposal, and I do not understand whence it is expected the sums to be paid for occupancy rights on entry by actual cultivating tenants of small holdings are to come. Supposing the system proposed in the report adopted, I fear it would often lead to reckless and ruinous competition, and that the unscrupulous money-lender would be found playing with increased facility and vigour the prominent part which he has already only too great opportunities for taking.

But, supposing some cultivators have capital in money which they wish to employ profitably in agriculture, the question arises whether it is politic and desirable to introduce statutory provisions which may have the effect of leading them to expend their capital in the lump at entry on a holding and probably of tempting them to run into debt besides? It is our special object to get rid of impecunious and debt burdened tenants. If an actual cultivator has no money he cannot pay down for occupancy right without borrowing. If he has but little he must expend it at entry in the purchase, and not improbably borrow to complete. If he has much money at disposal he hardly belongs to the class in whose interests it is argued that special legislation is necessary.

If facilities for the acquisition by fair purchase not only of permanent occupancy but of proprietary right (of which more hereafter) in their holdings can be afforded to small tenants in my humble opinion the effects would be highly beneficial, but the proposals as they stand seem open to the double objection of destroying the interest of landlords in the improvement of their leased properties, and of running the risk in many cases of weakening tenants' means of making improvements.

14. Coming to the proposals for fixing rent shares. It is proposed that the cultivating tenant's rights are to be purchased on entry, and the price is to be paid down, or at least cannot be raised by mortgage of the tenant's interest in the holding.

Two-thirds of the net produce as found on the tenant's entry is to go to the landlord as the statutory rent. Allowing that if we are to interfere with freedom of contract the proportions of net produce assigned to the landlord and tenant respectively may in the circumstances be considered fair, I do not see any adequate provision made for determining the net produce.

The whole must be determined before its fraction can be determined, and without satisfactory provision for the honest, intelligent, and authoritative settlement of this preliminary how are we to get further? Without a firm and correct basis as a starting-point the consequences of interference will probably be worse than those of abstention from meddling with freedom of contract, and will fall most heavily on the very class whose interests it is intended to protect.

15. This necessity of a basis, and of a competent authority, not necessarily to be invoked, but to be available in case of necessity, seems so evident, and the provision therefor so little noticed, that I am doubtful if I apprehend rightly Mr. Logan's views.

He points out very forcibly the "enormous difficulties" which lie in the way

*P. 413 *et seq.*

† P. 349.

‡ P. 417.

of fixing fair rents; or of estimating † the market value of improvements, and he says ‡ that the main principle of his proposals is to accept facts as we find them

and to enable the people to do for themselves what cannot be done so well for them by the State.

But he does not seem to me to accept facts (janmi's powers as now recognised &c., &c.);— and I do not see any means provided that will enable the people to effect settlements on the lines it is intended they should follow:—

P. 377.

"The shares, one-third to the cultivator and two-thirds to the proprietor, are to be estimated at the actual cultivator's term of possession. . . . The estimate which should be made by the parties themselves should be embodied in the lease in detail, and the actual cultivator should be allowed reasonable time to apply to the authorities for a revision of the estimate if it is found to be grossly fallacious. These revisions should be made most cautiously, and no action should be taken unless

NOTE.—I have not quoted the passage in this paragraph beginning "This only right, &c.," to "exclusively to him." I dissent from its conclusion, but it involves a question of political economy that has been well argued and that it would be tedious to discuss here.

This remark I may be allowed to observe applies to several other general questions on which arguments *pro* and *con* are constantly ventilated, and which it would be quite out of place for me to attempt to dilate on in this paper.

the estimate is as already said grossly fallacious."

Surely this is a cursory and inadequate way of disposing of the laying of the foundation stone on which so much is proposed to rest, and yet I see no further elucidation.

I agree with Mr. Logan in thinking it "an extremely difficult thing to say what the gross produce of any particular bit of land really is." It is however more difficult to say what the net produce really is, because further calculations are involved, and when data are more or less unreliable each further step in calculation founded on them is apt to enhance error.

16. To me it seems that the difficulties that are pointed out as standing in the way of fixing fair rents, or values of improvements, nearly equally attend the fixing of the amount of net produce. But the report clearly assumes that the net produce can satisfactorily be fixed at the commencement of a tenant's lease by the parties concerned subject to application to "the authorities" for revision. Surely if this be so the net produce could be similarly fixed at the close of the lease period. I do not think the process an easy one at any time, but I do not see why it should be more difficult at the close (I am assuming that there is a close, and that we have not yet arrived at permanent occupancy), than at the commencement of the lease period. The difference would be an indication of the improvements (or otherwise) effected during the currency of the lease, nor would their valuation be more difficult than other parts of the valuation process. There would be complicated cases possibly where improvement had been partly effected by the landlord and partly by the tenant, but this need not block any otherwise workable scheme.

I repeat I do not think the process would be easy. I sometimes fear the attempt to provide a State agency that could and would beneficially act as an arbiter to fix fair rents between landlord and tenants must end in failure. But of the machinery for revising effectually estimates of net produce for the purpose of fixing relative shares between landlord and tenant exists (which I do not believe), or can be provided (which I should be most glad to believe, but about which I can hardly feel sanguine), then it seems to me that the difficulties in the way of fixing fair rents, valuations of improvements, &c., are so greatly diminished that these difficulties lose much of their force, and the arguments against somewhat speculative and artificial provisions acquire enhanced cogency.

17. Whether the existence of individual property in land is a good or an evil, a blessing or a curse, to a community has been and is as we all know fiercely debated. Without attempting to discuss the abstract question I venture to assume in these remarks that whilst all legitimate practical protection against rack-renting and eviction without compensation should be provided for the class of cultivating tenantry whose circumstances may point to the necessity of legal protection, public as well as private interests will be best served by property in land being strengthened and secured rather than tampered with and mutilated. Reasonable restrictions against rack-renting and unconditional evictions will not require arbitrary or radical measures to secure fair freedom in the use of land by the community. But it is obviously most desirable that interference with freedom of private contract should be minimized with the most jealous care. Ordinarily landlord's interests will sufficiently prevent their shutting up their lands; and necessitate their leasing such as they cannot more profitably cultivate themselves, or otherwise employ to advantage. If we can in some respects define and secure their position we may with the greater freedom introduce conditions that will act as some check against their abusing it.

18. Some of the views I have expressed above may be condemned and others be regarded as mere truisms. I am not without apprehension that the latter may run the greatest risk of being overlooked or transgressed. Be this as it may, I venture in conclusion to indicate somewhat more definitely, though still very generally, what I think may be worked out.

Small holdings may be taken as not exceeding 5 acres of garden or 20 acres of grain land.

Freedom of private contract under of course the ordinary laws and regulations, should continue to rule the leasing of large holdings, save that where tenants of large holdings grant sub-leases of small holdings the conditions attaching to the latter should apply as if the lease had been granted by the janmi direct.

Leases of small holdings should as a rule be arranged by private contract subject to certain conditions which the parties should not have power to contract out of.

They should not convey permanent occupancy unless this is specially contracted and provided for in the lease deed.

Save where permanent occupancy is conveyed to the tenant by the lease deed (in which case no special statutory conditions need apply) he should have right to apply to prescribed authority for statutory settlement of the following points either at the commencement or during the currency of his lease any stipulations in his lease deed to the contrary notwithstanding.

The reserve points should be, duration of lease, fair rent and compensation for tenant's improvement on the expiry of the lease period.

Statutory periods of occupation should be fixed, say not less than five years for grain and twelve years for garden lands from date of tenant's entry (or recognised cultivating season nearest thereto), and on tenant's application he should ordinarily have right to be maintained in his holding for such period counting from the commencement of his lease.

Statutory fair rent should be calculated as occasion arises at two-thirds of the net produce to the landlord, and one-third to the tenant. The tenant should have right to apply for the application of statutory rent to his holding at any time during the currency of his lease. The rent should thereupon be assessed by the prescribed authority with prospective effect for the remaining currency of the lease.

At the expiry of the lease period, or statutory period, either landlord or tenant should have right to decline renewal.

If the landlord declines renewal and the tenant is not satisfied with the landlord's offer of compensation for improvement the tenant may apply to have the amount assessed under such general rules as may be enacted for assessor's guidance in such cases, or possibly it might be provided that the occupancy right for a further statutory period should be put up to auction and the price bid paid to the outgoing tenant. The landlord would have to purchase the occupancy for himself, or settle with the incoming tenant what rent the latter was to pay, and the latter would have the right of applying for a statutory rent to be fixed if he desired it. So that the value of what was being exposed for sale would be well known or fairly ascertainable by those interested.

19. Should some such scheme as that indicated above be adopted the Revenue establishments would best be entrusted with the duties that its execution would entail. The ordinary establishment would have to be considerably strengthened in its higher grades as they only should be employed on the work. The adjudicating authorities would have to be qualified by knowledge, intelligence and integrity to perform difficult and delicate tasks amidst many temptations. The result of ignorance, incompetence or partiality would be serious, and, as already remarked, would fall most seriously on the class whose interest and welfare it is desired to protect. Fees might be charged according to a moderate schedule which would partly meet the increased expenditure, and would tend to check unnecessary applications for interference.

20. I am supported in the hope that if the work proposed is difficult it is not impossible by the consideration that Mr. Logan does not seem to anticipate serious or insurmountable difficulty in settling the net produce of holdings whenever necessary.

And if this can be done satisfactorily, the main difficulty seems to me to disappear. Indeed if instead of unqualified "permanency of tenure" "a right of tenure for the period of a statutory lease" is substituted in clause i, and a modification is made of clauses iv and vii as to the time and continuance of the estimate of net produce for apportioning landlord's and tenant's relative shares; in Mr. Logan's proposals in page 354 of the report, the other clauses would almost as they stand fit into the course above indicated, provision for compensation for improvement being necessarily super-added.

The knowledge that application might be made at anytime for the enforcement of statutory provisions would tend, it may be hoped, to check extortionate demands and have a wholesome influence in regulating private contracts.

21. I have but roughly and imperfectly indicated the lines on which it appears to me that without transgressing principles of equity, and without incurring any enormous State outlay, the progress of some of the evils that would seem to be increasingly prevalent in Malabar may perhaps be checked. The difficult task of filling up details will remain even if the general outlines are approved. But with the details I am now unable, nor will it be expected that I should attempt, to cope.

22. I cannot conclude without one word regarding the petitions which have been so carefully and sympathetically investigated by the Collector. Many I must say seem to me little worthy of attention. Some that in their simple earnestness appeal most to the feelings represent griefs that it is quite beyond the province or the power of the law to deal with. But there are some hardships complained of that we may vain hope careful administration assisted by equitable and judicious legislation may be able to alleviate or prevent.

23. For reasons already given I cannot agree with Mr. Logan's proposal in regard to cowles; but I am happy to be able cordially to assent to his remarks on marumakatayam in paragraphs 481 to 488; as well as to his proposals in regard to mosques and burial grounds in paragraphs 489 to 506 of his report.

SELKIRK,
29th June 1883.

(Signed) G. A. BALLARD,
Madras Civil Service, retired.

12th July 1883.

DEAR MR. GRANT-DUFF,

I continue my remarks on the Malabar Land Tenure subject which I have been studying closely since I last wrote.

I had no time to take any copy of what I wrote, but I think I stated my opinion that fixity of tenure on a maximum rent of two-thirds of the annual net produce of the holding should be guaranteed to the kudians, verumputtakars, occupying kanakkas, subject only to liability to sale of their interests in default of payment of this legal due (but without the purchase of the occupation right as proposed by Logan which seems to me calculated to produce an immense amount of mischievous disturbance), the landlords' or proprietors' interest in the latent capabilities of the land being recognised and guarded by periodical revaluation of the two-thirds share which I thought might take place at a minimum interval of 12 years, or a maximum of 30 years, whether as regards quantity of produce or value in money, and full consideration being allowed to all existing engagements by which the payment of the rent has been forestalled by money down.

There remains the very important consideration of the effect that this arrangement would produce on the janmis, and the question of the security for the State revenue, and as regards the latter I may say at once that I would allow the occupying tenant to pay it on behalf of the janmi, reserving the equivalent in kind or money out of the two-thirds rent, leaving it of course optional with the janmi to make the payment himself. This plan is, I believe, very generally adopted in the adjoining district of Canara. The "mūlgrin-wakuls" (permanent lease-holders) paying the Government dues on behalf of the "mūlgars" or "landlords or proprietors, corresponding with the janmis," the ultimate responsibility to Government resting of course with the latter.

As regards the landlords' or jannmis' dues, I presume it must be admitted at starting that Logan's statutory rent of two-thirds net produce must at once cause a very material loss of income hitherto derived from rack-renting in great measure, but this seems to be not only inevitable, but perfectly justifiable, the two-thirds net produce fully representing what the "over-lord" is entitled to from the occupying farmer, subject to the payment of the State revenue. It is satisfactory to know that the demand for this last is assessed on perfectly reasonable rates, and certainly not more favorable to the landlords than the permanent settlement is to the zemindars, inasmuch as the State does in Malabar derive an additional revenue from extension of cultivation, which is not the case in zemindari settlements.

The question however of the jannmis' rights and the equitable adjustment of their future income from rents is greatly complicated by the existence of the numerous classes of intermediaries, and, after giving much thought to it, I confess I see nothing for it but to do as Logan in fact proposes, to deal with the maximum rent to be taken from the "occupying cultivator" with fixity of tenure, and with the responsibility for the State revenue, and to leave it to the courts to settle the distribution of the balance between the landlord and the intermediaries on an equitable consideration of past transactions and existing engagements. I conceive that the broad rule must be that the legal limit of the landlord's rent (two-thirds net produce) must be adopted as the standard for adjusting claims originating at a time when the rack-rent was much higher. In fact, I conceive that the one-third occupier's share and the State revenue demand must be allowed for as legal encumbrances on the net produce, and that the claims on the remainder must be proportionately adjusted (by the courts if necessary).

There does not seem to me anything inequitable in this result, for the inevitable reduction in claims would, in fact, be in *inequitable claims* based on a system of rack-renting enforced by evictions, both of which, though supported by our courts, are unwarranted by the old system which we desired to uphold.

My plan differs from that of Logan's by recognising existing occupiers kudians and kanakkars of all classes without reference to the extent of their holdings, and by discarding the proposed purchase of the occupation right.

The limitation of the recognition to *small* holdings seems to me destitute of principle, and not calculated to secure what Logan aims at, fixity of tenure on a subsistence allotment to secure which would seem to require the adoption of the American principle that a certain minimum area shall be regarded as "Tools of trade" and be incapable of forced sale for debt of any kind by legal process.

Logan's proposal seems to me also inconsistent with his theory of relative rights based on historical evidence, and also, I may say, with my own view of ryot rights throughout India, the "actual cultivator" of his scheme being I think identical with the ryot in other districts. I think, too, that his proposal is likely to produce the result which I see the Lords Committee say has arisen in Ireland from the working of the Land Act, viz., "that if tenants have, on principles sound or unsound, been protected as regards the *annual sums* agreed to be paid by them in order to obtain their holdings, they suffer now still more as regards the *gross sums* they have to pay on obtaining a holding in the only way in which they can now obtain it, namely, by purchasing.

My further difference from Logan is in the proposed recognition of the kanakkars as entitled to fixity of tenure, but from section 328 of his report, I infer that he would welcome this, if coupled with fixity of tenure for the kudians, and in section 331 he seems to contemplate the necessity for some partial measure of the kind. It seems to me to be not only the logical deduction from his facts, but equitably demanded in the case of *bond fide* kanakkars, not the mere court created class of that name, and I should hope that the recognition might not practically introduce an inextricable complication.

At section 234 Logan gives the number of jannmis of all classes as 24,464.

At section 126 he gives the particulars of 14,034 holdings scrutinised by him. Of these, 10,328 were held *directly* from the jannmis.

If anything like this proportion exists generally we may assume that two-thirds of the occupied land is held *directly* by "actual cultivators" from the jannmis, without the intervention of any intermediary, and the application of my plan would so far be simple.

Of the remaining 3,706 holdings, no less than 2,976 were held by ordinary kanakkars, and in their case also, I should hope that the application of the plan would present little difficulty.

These two items account for over 13,000 holdings out of the 14,000, and seem to warrant the hope that the task of settlement would not be beyond our powers.

The suggestions of the district munsifs, for reforms briefly stated in App. V, seem also to warrant the recognition of the kanakkars as entitled to fixity of tenure, an essential preliminary to which seems to be limitation of demand for "rent" (meaning the annual payment necessary to secure the right of occupation).

I do not see that the Government sale of the jannom right in the escheats to the occupiers offers any serious obstacle to the recognition of a right in kanakkars (section 326). We should still leave these "jannmis by purchase" in the position of all other jannmis, but I believe the fact to be that the purchasers were the actual kudians or kanakkars, so that the proposed recognition could not injure them unless by their own act they have created a class of intermediaries since the sale.

Such, then, are my crude views on the principal of Logan's suggestions. I send them to you for what they are worth, but were I on the spot I should very likely modify them materially in discussion with Logan himself and others. They serve, however, to indicate what I think the weak points in Logan's scheme, and the lines on which I think legislation on the subject should proceed. The object that he has in view is, I think, certainly the right one. His theory seems to me sound. It is rather in the application of it that we differ, and I do so as I have said with the feeling that if I could discuss the subject with him I should very probably see the need to modify my own views. I think he has done excellent work in this investigation. There are several minor matters on which you may wish to have my opinion and which I notice below, but fixity of tenure based on limitation of demand for "rent" seems to me the crying need throughout India to remedy the growing difficulties in connection with the land. Our Madras ryotwary system secures this better than any other, but it contains a weak point which also needs to be guarded against in any application of proposals for fixity of tenure with free right to dispose of interests. I think there should be a limit below which subdivision of land should not be recognised either as regards State revenue or landlord's rent.

Excessive subdivision is fatal to improvement in cultivation and to the creation of a real landed interest, and a limit should be imposed somewhere so as to allow of "petit culture" without creating a mob of pauper cottiers.

Logan's proposals for the creation of what he designates "Sircar Kudigirippu" seem to me very sound and desirable.

So also his proposals to secure *receipts* for payment by tenants whether of rent or revenue. The provisions of our "puttah regulation" in connection with the permanent settlement and later on our Landlord and Tenant Act have not proved effectual.

The last matter that I will notice now is the question of sites for places of public worship and for burial grounds, and for these purposes I would most strongly urge again on the Supreme Government the propriety and necessity of applying the principle of the Act for the acquisition of land for public purposes.

You will doubtless know that the Madras Government urged this strongly on a former occasion, though confidentially, and that the Supreme Government rejected the proposal without so far as I remember giving their reasons.

I confess that I cannot imagine them. If political danger be apprehended, I believe that a far greater one is to be feared from the existing and indefensible position which is inequitable and unreasonable in the extreme.

I must ask your pardon for sending these very crude remarks on the interesting subject of Logan's report. If they in any way contribute to help the discussion, I shall be very glad.

W. HUDLESTON.

From T. KUNHI RAMEN NAIR, High Court Judge, Trivandrum, to the Chief Secretary to Government, dated Trivandrum, 7th August 1883.

I beg respectfully to acknowledge receipt of the proceedings of Government, dated 2nd March last, forwarding confidentially for my remarks a copy of Mr. Logan's Report on Malabar Land Tenure.

2. The report, though the outcome of a special commission, the real scope and objects of which were not fully known to the public—a circumstance that may not unreasonably be supposed to have interfered to some extent at least with the free production by the public of all available evidence touching upon questions referred to the commission—is nevertheless full of the most interesting details for all who desire to master the early history of land tenures and tenant-right in Malabar, and the learned Special Commissioner has, apparently, devoted much learning, time and trouble to arranging in a systematic form, valuable information regarding the precise position and right of landlord and tenants at the time of the British occupation of Malabar. The subject is a complicated one admitting of a good deal of controversy. It is far from my intention to enter into a minute or exhaustive discussion on points which have at best only an antiquarian and theoretical interest. All that I can venture to do in the limited time at my disposal is to make a few general observations, and I shall endeavour to do so as briefly as possible. First, as regards the historical matter. The learned Commissioner's sketch of the political organization of the State in ancient times (with an emperor or perumal at the head, a number of subordinate chiefs or rajahs and the six hundred nayars guild who exercised some sort of supervision over nads, and below whom there are various other classes known as Cheru jenmakars or small birthright holders) however true it might be as applied to the state of things, in a small part of the country at a very ancient period (the history of which concealed amidst the fables and trifling details of such ancient works as Keralacolpathi and Kerala Mahatmya can now be but faintly traced) cannot, if my impressions are correct, be applied to the whole district, as at present constituted, nor could it be said with certainty that the conditions on which land was held and the political organization of the State was the same at any one period throughout the district, and that the state of things in the first eight centuries of the Christian era continued without substantial change until the close of the last century. To stereotype the configuration of a society for all time to come is an impossibility, and it must be conceded that even the most conservative nations do change.

3. The dominion of Malabar was, at a very early period, in the history of the nation, shared by a multitude of petty chiefs often in a state of warfare amongst themselves, and the mode of government and the land laws in the several petty states differed as widely from one another as the government and laws in England and Russia. The Aryan immigrants, amongst whom the priestly class predominated, succeeded early at least in South Malabar, where they chiefly settled in bringing into the meshes of their moral influence the petty chiefs in whose hands the secular power lay, and they met with no difficulty in asserting a supremacy on the land. That they founded and consecrated temples to which large tracts of land were attached as endowments cannot be denied, and that a great part of South Malabar remained, for a long time, under a Brahman control termed Aulachavuttam till the evils resulting from it induced the hierarchy to invite the foreign princes of the Kshatria tribe termed perumals or great men, is also a fact deducible from traditional sayings handed down from generation to generation. It is further an historical fact that the perumals did not exercise absolute sovereignty for long, having early yielded to the Brahmanical demand for an elective government, which confined the reign of each perumal or emperor to twelve years. The local traditions, believed and acted upon by the public for a long time, should not be wholly rejected as unreliable, and they also go to support the view that the state of society and landed tenures in different parts of the country varied very much in ancient times as it even now does in some places. The vast difference in the manners, customs and habits of the Northern and Southern Malayalies, which seem to have early attracted the attention of European writers on Malabar, notably that of Dr. Buchanan, who visited the country at the early part of the present century under the orders of Lord Cornwallis, can only be accounted for on the supposition that they were subject to different social and political rules.

4. The learned Commissioner's theories on the principal Malabar land tenures, jenmom or attiper and kanom, next claim notice. His views are—(1) that jenmom or birthright denoted an office of rank originally in the gift of perumals or emperors, while the kanom denoted an office of protection or supervision, and (2) that shares of produce of the soil, after payment of certain fees to Cheru jenmakars or artizans and

menial servants of a village or tara, were, in ancient times (and for that matter even down to the British occupation of Malabar), distributed equally between the jenmi, the kanakkar or protector and the actual cultivator.

5. Now as regards "jenmom," my view is that in ancient times it denoted the hereditary estate of Malabar Brahmans or Namburies, though, at a later period, every proprietor or attiper-holder of a bit of land came to be styled as janmi. The theory of "no dominum," propounded by the learned Commissioner, does not, in my humble view, hold good with reference to the state of landed tenures in middle ages and downwards. It is opposed to the received notions and traditions of the country and to the weight of authority of such early writers as Major Walker, Mr. Rickards, Lieutenants Ward and Conner, and a host of other writers who touched upon the question incidentally as a sort of historical information and whose opinions, gleaned from general inquiry, not directed towards settling a present and pending question, possess a peculiar guarantee as to their correctness. The Commissioner's new theories seem to be based upon ancient deeds, but with all respect I observe that the evidence furnished by the most ancient deeds is inconclusive, and that that furnished by the early modern deeds properly construed, leads to an opposite conclusion. Nothing can more forcibly define the right of ownership to the soil than the expressions to be found in these latter deeds and other jenm or attiper deeds of more than four or five centuries old rightly interpreted. Indeed, the fact is conceded by the learned Commissioner who remarks "some of the deeds examined express with exaggerated force the completeness of the relinquishment and of the acquisition of rights conveyed," but it is opined that the rights so conveyed were simply nir attiper or "water contact birth-right" and not the absolute right to the soil. Reliance is placed in support of this position upon the meaning and effect of the term nir attiper as used in old documents, but with due deference, I beg to submit that what these documents really purport to convey is not the nir attiper, but nir and attiper, that is, water and attiper, the latter word which is a compound of the two words atti—a row or file, and peru—birth or production, meaning literally that which produces a heap or pile and used technically to denote the aggregate of absolute rights in the soil that centre in a fee simple owner, in contradistinction to melpar, a word now rather obsolete, but used in former days to denote subordinate tenures, such as kanom, otti, &c., popularly supposed to give simply a right to the mere produce of land.

6. It is rather questionable to rest grave issues as to the origin and nature of land tenures upon the interpretation of obscure and elastic terms and expressions occurring in ancient deeds drawn up in obsolete characters by imperfectly educated eyuthachens or village schoolmasters of the day, and even if it be that, looked at by themselves, these ancient deeds bear the construction now sought to be put upon them, it is unsafe to adopt it in preference to a construction which can be reconciled with the established customs. The words in a language may have a technical meaning by usage as well as a literal meaning (and such I believe is the case with most of the terms and expressions in ancient deeds), and a too literal rendering in one language of a peculiar idea with a peculiar name in another is apt to produce confusion. The meaning which by usage any given term or expression has acquired, can best be gathered from the general understanding of the public inferable from their practices and precepts, and bearing these in mind I have come to the conclusion that attiper signifies freehold property of land. The very forms and symbolisms of attiper transfers, which were in vogue in ancient days, afford best evidence of the fact that the attiper or jenmom right carried with it an absolute right in the soil. The practice which existed of denoting the outright sale of attiper in some places by the symbolical gift of a clod of earth, and in other places, of metal put in water, unmistakably points to the fact that the right to the soil on the surface as well as on the mineral beneath, was intended to be conveyed, and it is also noteworthy that custom prescribes four regular stages of conveyance (all partaking of the nature of mortgages) preliminary to an outright sale.

7. The possessor of a landed property in a country essentially agricultural is always a man of note and influence, and, as such, has various dignities and privileges attached to him. These are simply incidents to his position as holder of land, and do

not, in themselves, constitute his tenure. The proverbial reluctance of Malabar janmis to part with the jenmom right did not arise from any consciousness of the value of the empty title of janmi, but from a deep-rooted conviction that to part with full dominion over lands, constituting their hereditary estate, is a sin, the precept "not to sell land" being early imparted into the minds of every youth for the purpose of preventing the disruption of ancient family estates.

8. It may also not be out of place to observe that the fact of the existence of private property in land in Malabar and Canara is constantly referred to by the early British administrators of Southern India in the course of their discussion of the merits of the zemindary and ryotwary systems of revenue settlements, and that the consensus of opinion on this point among the early commissioners and other English observers is remarkable. The opinion in favor of janmi's claim to absolute ownership formed by local English officers of the day having extensive means of knowledge as to how the matter then stood, is entitled to great weight and should not be lightly discarded, and it is also worthy of remark that these opinions were persistently maintained, notwithstanding the warnings of the Court of Directors who seem to have been led away at one time by the idea that land in Malabar could not but be the absolute property of the sovereign. Another circumstance which adds value to the impression formed by the early commissioners is that the native officials of the day who, as large holders of land on kanam, were interested in ignoring the pretensions of their superior janmis quietly acquiesced in such pretensions, and it is inconceivable that if the view taken by the early British authorities was not substantially in accordance with popular feeling, that those who are most interested in disclosing the fact should unite in a conspiracy to conceal it. Some of the Hindu kanamkars of the day were, in point of education and worldly knowledge, far superior to the ignorant, indolent and bigoted janmis, and their silence at the time is significant.

9. With respect to the origin of kanam tenure, my humble view is that the word kanam, whatever its original meaning, has a secondary meaning, and that is "money invested or deposited," and it is in this secondary sense that the word is used in all early modern documents. The phrase kanam ituka (കാണി ഇടുക) is popularly still understood as signifying the making of a deposit as security for the performance of an act or obligation. For instance, when pagoda servants are entertained they make a deposit as security for due performance of services, which is styled as kavaka kanam or service kanam, and the money given at the time of marriage among low castes as a token or security for the future good behaviour of the couple is styled penkanam.

10. The present generation of kanamkars are all parties whose possession, in ninety-nine out of a hundred cases, may be traced to an express grant of the janmi, though at some very remote period, and these grants or kanam deeds afford best evidence that the janmis were treated as allodial proprietors and the kanamkars their lessees, although, perhaps, in some cases permanent. The very term pattolakaranam, obhaya pattola and oyavu otti, by which the ancient kanam deeds were designated, import its real character as a lease. The relation of the janmi and his lessee was, at an early period, when the society was in a backward state, eminently feudal. The nayars who, in Malabar, assumed the rôle of warriors and who were also the real cultivators of the soil, the other inferior castes being simply their slaves or laborers, rendered valuable military services to the janmis, and the principle then governing the relation between them and the janmis was mutual protection from dangers incidental to lawlessness and to the supremacy of might over right. The nayars were consequently allowed to hold lands on very favorable terms and at a moderate rent, but, as times changed and law and order became supreme, the governing principle became one of pecuniary interest, and people began to confirm the most common transactions regarding land by written agreements. Evidence of this fact is furnished by the nature and tenor of ancient deeds in use in Malabar, of which there are several kinds besides the jenmom and kanam deeds.

11. It has been truly said by an early European writer that "in no country in the world is the nature of the species of property better understood than in Malabar, nor its rights more tenaciously maintained." It may be that in Malabar, as elsewhere, divided property in land existed at a remote time, but that stage of society has long

since passed away, and there had been a slow but sure extension of the landlord's property and destruction of independent rights in the tenant.

12. The active progress in society, the power wielded by janmis and the helpless state of tenants in Malabar in bygone days, tended more and more to absolute landed property in the large landowners, to the destruction of proprietary rights in tenants who have now for ages been accustomed to look upon janmis as absolute proprietors. It suited the janmis of the period, when no great competition for land existed, to allow the land to remain in possession of the same family for generation and generations together, but such possession was permissive and not independent of janmis.

13. While on this point I may be permitted to remark that there was, in North Malabar, no such tenure as kanam at least in the sense in which it was understood in South Malabar, and that there is a well-marked distinction between the kanam tenure of North and South which the early writers and superior courts have overlooked.

14. The North Malabar kanams are really mortgages, while the South Malabar kanam partakes mostly of the nature of a lease, the kanam amount advanced being received simply as a security for the punctual payment of rent, and husband-like cultivation. The rent reserved in South Malabar kanam is a substantial sum, and the tenant has implied authority to effect improvements. It is also the custom to exact fees at the time of the first grant and of renewals. On the other hand, in North Malabar most of these incidents indicative of a lease are wanting in the case of a kanam tenure. There the transaction is regarded as one between lender and borrower, and the land demised in security for the loan. Generally there is no purapad or net rent reserved and there is no periodical granting of renewal or the exaction of renewal fees, and the kanamkar is not at liberty to effect improvements without the consent of the janmi. The non-recognition of this distinction by superior courts, acting, as they do, on the supposition that all kanam partakes of the nature of mortgages, has been productive of some mischief in that the janmis, however unwilling to eject their kanam tenants, were obliged to go through the form of obtaining a decree for redemption as the only safe mode of saving their rights from the operation of limitation law. They were afraid that if the land be allowed to continue in the possession of the same family for more than sixty years under the original grant, their (janmis) title would be barred, notwithstanding that the tenants continued to pay rent all along, and instances are not wanting in which some janmis have been deprived of their lands simply because they let the kanam tenants continue in possession in the old mode. If the South Malabar kanams had, from the first, been treated and acted upon by the courts as a lease, which it really is, possession for even thousand years on the part of the tenant with payment of rent would not have prejudiced the landlord's title, the possession of the tenant being, in the eye of the law, possession of the landlord, and the tenants would also not have to complain of the injustice alluded to by the learned Commissioner of the arrears of rent for many years being, in the absence of proper vouchers for payment, deducted by the courts from the kanam amount. Only three years' rent are recoverable under a lease.

15. The explanation of the difference between North Malabar and South Malabar tenure is probably to be found in the fact that the perumals or emperors, as we are pleased to call them, did never extend their dominion over a considerable part of North Malabar and the sacredotal Brahmans who monopolized the great bulk of land in South Malabar did also not succeed in settling there in large numbers and exercising any great influence over the sturdy inhabitants of the north, the only Brahman family of note who first settled in that part of the country having been compelled to adopt the Marumakkatayam system of inheritance. As a consequence the North Malabar abounds with peasant proprietors, and every ancient family, however poor in circumstances, can boast at least of a parambu or garden in respect of which they need pay no rent to any superior.

16. Now to revert to the historical matter, it is said there were besides the janmi and kanamkar a third and distinct class who actually cultivated the soil and possessed permanent interests, and that the right of the latter has been ignored, but such a view is opposed to what little we know of the ancient state of society in Malabar. The enyuvas, cherumas and other inferior classes, represented as the original planters

and irrigators of land, were, in ancient times, little better than slaves; were not even at liberty to come in close contact with their superiors, their very presence being considered by the higher castes as producing pollution, and it is not too much to say that it would have been considered treason in these people to assert any right on the land, much less an equal right with the janmi and kanamkars—the sacerdotal Brahman and the *quasi* military nayars. It is doubtful if anything more than mere pittance in the shape of wages for labor was given to these people, and it is noteworthy that cherumas are known by the name of vallyalars, i.e., receivers of wages. The nayars and other castes inferior to Brahmans but superior to slave castes, constituted in ancient times the great bulk of actual cultivators of the land which they held on various tenures, such as otti, kanom, kuyikanam, and pattam, and these actual cultivators, who, as already observed, were of great use to the landlords in defending their person and property, were probably treated with great consideration and were never ejected from their holdings, but that every slave was treated with equal consideration and conceded substantial interests in the soil, is a proposition which cannot for a moment be maintained. The treatment still meted out by their betters to these low caste people in the interior where they are to be found in an unsophisticated state, and the great influence the so-called superior castes exercised until very lately over the so-called low castemen, and the fact that the Malabar branch of Aryan race was proverbially the most intolerant towards their inferiors as the ancient customs and manners of the people sufficiently show, are all against the supposition that the low castes were allowed equal shares of produce in days gone by, and it is also very doubtful if these low caste people ever cultivated land in ancient days on their own account.

17. Shortly stated my views are these:—There were, in former days, that is after the eighth or ninth century of the Christian era, only two principal classes of landholders substantially interested in the soil, viz., 1, jennu or attiper holder, and 2, kanamkarer or patamkarer. In South Malabar the janmis consisted of 1, the rajahs or other representatives of the petty chiefs, and 2, the Malabar Brahmans and devasams, and the kanamkars consisted of nayars and other kindred races. In North Malabar (and probably in few places in South Malabar where owing to local circumstances the Malabar Brahmans had not succeeded in establishing their influence and supremacy), the great bulk of the janmis consisted of the representatives of the original village communities, with here and there, a rajah or other chief who owned demesne lands, and the pattamkars consisted of the former dependents of rajahs and petty chiefs who hold land of their masters or lords. The great Namburi houses of South Malabar—adhinumars or lords of eight houses—as well as the rajahs, chiefs and devasams never cultivated lands on their own account, and contented themselves for a long time with collecting rent, calculated in some places at one-fifth and at others at one-third of the gross produce, but the inferior janmis or representatives of the village communities whose possessions are very limited, not being more than a few acres, generally cultivated land on their own account in the same way as the kanakarens of South and patakarens of North did, appropriating to themselves the whole produce. The enyuvans were simply laborers who assisted the farmers or landlords in improving their estates, especially gardens, and cherumas were slaves who labored on wet lands. These two were treated as part of the domestic establishment of the farmers of the country and received wages for labor until the advent of the Portuguese and other European settlers, when the position of the enyuvans of the sea coast towns improved considerably and there were founded here and there a few families which acquired land for farming purposes on their own account. The number of these, however, was not at any time very large, and the great body, especially in the interior, remained as dependents and laborers of the ancient farmers of the country. The old sentiments of respect which the tiens or enyuvans had for their superiors—the nayars, and those entertained by nayars for namburis are now owing principally to the prevalence of new ideas of independence and of fitness of things becoming things of the past. Hence the relation between the two classes is not in some places all that one could wish, and the inferior caste Hindus, suddenly raised to the position of free and independent citizens, probably considers they had been left out in the cold. It is, however, doubtful if they were ever in better position than now. The condition of an average Malabar tenant is much better than

that of a typical ryot of the Eastern Coast, and the position of the ancient laborers who are trying to become farmers would compare favorably with their position in former days.

18. I pass on to chapter IV which calls for but few further observations, and here I may endorse every word of what the learned Commissioner says as regards the punam or jungly cultivators of Chirakal taluk and their condition. I venture to think that if divisional officers would but interest themselves in the welfare of these poor cultivators as Mr. (afterwards Sir William) Robinson is reported to have done while Head Assistant Collector of Malabar at Palghat where he succeeded in prevailing upon the janmis to grant permanent or long leases to the cultivators of barren jungles (now converted into rich paddy fields) much improvement in the condition of North Malabar punam cultivators may be expected. The janmis of North Malabar, where the punam cultivation is largely carried on, are not as a class stubborn or unamenable to reason, and would at once take any steps when it is once clearly demonstrated that such steps would, in the long run, conduce to their own benefit.

19. It must also be conceded that the system of rack-renting paddy lands now prevails in most taluks of Malabar and that customary rates which in Malabar as elsewhere regulated rent in former times are not nowadays adhered to. The present system must, no doubt, result in the serious and progressive impoverishment of the soil, but there is difficulty in remedying the evil without unduly infringing private rights. The parties who take lands on rack-rent are, however, the ancient laborers and slaves whose position is comparatively bettered by cultivating lands on their own account rather than on account of their former masters, and it would be a pity if any thing is now done to discourage the attempt of these men to lead an independent life. Their present condition as cultivators is much better than what it was as simple laborers, though, of course, it is not still what it should be.

20. The courts have done much to improve the position of garden cultivators by enforcing the customary law for payment of compensation to tenants to its fullest extent, and legislation is necessary to enable the courts to do complete justice by awarding the full market value, irrespective of ancient custom.

20. (b) The large number of eviction suits can hardly be taken with any approximation to truth as criterion of the oppressive impatience of janmis to eject. Most of these “eviction suits” are not actions of ejectment, pure and simple, but are (if my impression is correct) actions brought to try questions of conflicting title, the tenant in most cases being the admitting defendant and the rival claimant to the janmum title, the real contending defendant. The number of minor janmis or peasant proprietors is large. The boundaries of their small holdings have not at any time been accurately defined by proper survey. The disputes regarding boundaries and title are, consequently, increasing day by day, and the favorite mode of bringing such disputes for adjudication before courts is an action for resumption of the land.

21. The complaints of social tyranny on the part of a few petty chiefs and namburi janmis to which allusion is made in section 2, is, to my own knowledge, well founded. There are not wanting instances in which poor families have been ruined as it were by these cruel acts of petty chiefs and janmis. Excommunications and fines are the order of the day in some taluks, especially in Chirakal in North Malabar, and Valuvanad in South Malabar, and these proceedings on the part of these chiefs are, in most cases, the outcome of petty jealousy. The evil is increasing day by day, and it would be a source of happiness to the people in general if the District Magistrate would, by a notification in the District Gazette, warn the chiefs generally of Malabar of the consequence of their conduct, and make it plain that their unwarrantable acts will not be allowed to pass with impunity.

22. Equally well founded is the complaint on the score of the exaction of excessive and exorbitant perquisites by some superior janmi, and it is the greatest source of grievance to the poor farmers of the country. The system of demanding exorbitant rates of fees at the time of grant or renewal of kanams in South Malabar and patom leases by rajahs and devasams in North Malabar, has, more than anything else, led to the indebtedness and impoverishment of the peasantry of the country. The evil is

spreading far and wide, and any legislation having for its object the regulation of rates of fees and other dues payable to the superior janmis would, I venture to think, be a step in the right direction. The Government assessment on lands in some villages is also unduly high, and the notion that Malabar is a rich country has led to imposition of large local and municipal cesses which have ultimately to be made good out of the scanty profits of tenants.

23. I have but little to say as to chapter V, except to express my general concurrence in what is therein stated regarding the general character of the principal janmis and their agents. The tenants also are not blameless, and they try their utmost to evade payment of rents at the proper place and season.

24. The increase of litigation, alluded to in chapter VI, is due to several causes, the uncertainty of boundaries of small holdings, the complex nature of the land tenures, the ignorance and bigotry of janmis, and the spirit of independence which has recently taken hold of inferior classes of farmers, and last but not the least, the love of litigation for its own sake entertained by both the landlord and tenant classes in some amshoms. If this increase continues as there is every reason to suppose it will, the present number of munsifs will have to be necessarily raised, but even under present circumstances an increase in the number and a decrease in the area of the limits of the territorial jurisdiction assigned to each munsif are called for. The munsif may then be expected to conduct personally local investigations in important cases of dispute regarding value of improvements, and a correct and satisfactory decision in such cases cannot be come to without a personal inspection of lands.

24. (b) The defeated suitors who mostly flocked to the Commissioner can, of course, not be expected to speak in praise of the courts, but any impartial observer of events in Malabar must admit that under the direction and superintendence of able and sympathetic District Judges of the stamp of Messrs. Holloway, Sharpe and Wigram, the Malabar Courts have improved very much within the last twenty-five years, and the learned Commissioner whose experience of Malabar is great, and who has also done much to improve the departments under his charge, has, it is satisfactory to note, borne testimony to the general efficiency of the native subordinate courts.

25. Notwithstanding that the Malabar Courts, unlike the Courts on the East Coast, have, in a large percentage of cases, to fix value on improvements made by actual holders of lands, large and small, no efficient staff of men competent to assess the value have hitherto been entertained by Government who derives large revenue from Malabar litigation. The entertainment on fixed salaries of experienced men as commissioners for valuing improvements will, I believe, be productive of much good. A better class of men can then be employed which, however, is not now possible. The income being precarious and small, no educated men of real experience and intelligence are found willing to undertake ordinary commissions for valuing improvements.

26. I would further beg leave to suggest that the munsifs be empowered to decide disputes relating to the value of improvements with the aid of assessors to be selected from the principal inhabitants of the amshom where the land is situate.

27. Some experienced officials, for whose opinion no one can entertain greater respect than myself, attribute the occasional Moplah outbreaks in Malabar to agrarian discontent, but opinion on the point of the general public is divided. I believe I simply echo the opinion of the non-official public who have great means of knowledge on the subject when I say it is hardly fair to hold that the oppression of Hindu janmis is at the bottom of these outbreaks. The fanaticism and restless temper of the ignorant Moplahs in the interior of the country are well-known facts observed even by European visitors at the commencement of the present century. Their temper, morals and civilization have not improved much, and occasional ebullitions of misdirected religious zeal will be witnessed even while they are brought under the best and most considerate janmis, not of their own religion. The education is gradually but slowly working a change for the better in the ideas of Moplahs of towns, but the means of education have not been availed of by the masses, and the establishment of a few more elementary Moplah schools in the interior is highly desirable. For the present, the measures recommended by the learned Commissioner in sections 498 to 506 of the

report are well calculated to effect the end in view, that is to check the growth of evils resulting from religious fanaticism.

28. The other proposals and suggestions contained in chapter VII remain to be noticed. The first and foremost of these is the proposal for the creation of a new statutory tenure under which there is to be no power of eviction so long as the rent is paid, such rent being fixed according to the supposed ancient custom at two-thirds of the average annual net produce of the holding at the time of entry.

29. The proposed tenure introduces a new element into the agricultural laws of the country, already too complex, and we have not the least experience to show how this provision would work in Malabar.

30. Further, it would, instead of improving the position of non-capitalist tenant as hoped for, will, in the majority of cases, tend to their poverty and ruin. Most of the janmis will, I am pretty sure, avail themselves of the option to be given by the law, of resuming the management and cultivation of paddy lands. When it is once known by the present generation of wary and speculative janmis that the moment they let a tenant into possession for the purposes of cultivation (which so far as the rice lands are concerned can be carried out at no great expense and trouble) a right of permanent occupancy accrues to the tenant by mere operation of law, they will, true to their nature, try as best as lies in their power to avoid the effect of such a law, and scrupulously keep the land in their own possession, some of them carrying on cultivation by means of hired labor, and others by means of agents. To evade the provisions of the law all that is needed is a little hypocrisy. A landlord has only to authorize another to cultivate the land as his agent and on his behalf instead of letting the land on verumpattam as hitherto. The fertile brains of *fac-totums* of the principal Malabar janmis will be at no loss for this and many other devices, the effect of all of which will be to render the position of the existing classes of tenants far worse than at present. In a country like Malabar, where the great majority of the middle and lower classes are cultivating tenants, the consequence of a combination among janmis not to let their lands, can be better imagined than described. The class of tenants will, on the one hand, be rendered hopelessly poor and destitute, and cultivation will, on the other hand, not prosper very much in the hands of inexperienced agents of janmis. Any benefit that may be supposed to accrue by reason of the cultivation of land passing into the hands of men with money, is more than counterbalanced by the misery the measure must cause to the thousands who now fill the soil on their own account and constitute the backbone of the nation, and it is, to say the least of it, unjust to attempt to improve agriculture by depriving the present generation of cultivators of their independent means of livelihood. Supposing the janmis are gracious and public spirited enough to let the land to old tenants, the majority of the lessees or purchasers of the new tenant right will have to find money by borrowing for the purpose of paying at once the premium to the landlords who are sure to fix the amount at a high rate, as they now do in the case of renewal fees, and the tenant right will, in the long run, have to be sold to satisfy the creditors' claim. The boon intended to be conferred upon the tenant is therefore at best questionable, and I do not myself see why an innovation, which, in all probability, will be looked upon with disfavor by both the landlord and tenants alike, should be introduced.

31. In case the Government approve of the proposed measure, I would humbly suggest that its operation be, in the first instance, restricted to a small portion of the district to be selected by the Collector of the district with the previous sanction of the local Government. This will enable the Government to see by actual experience how the law works, and the law can then be gradually introduced in other portions of the district, if considered expedient.

32. The proposal regarding the formation of a class of small gardeners by conferring a right of occupancy upon holders under Government cowle has much to recommend it. It serves the double purpose of increasing the public revenue by the reclamation of waste lands, and bettering the condition of many a laborer for whose labor and industry there is at present no scope.

33. The Malayali laborer, unlike his brother of the East Coast, does not easily take to emigration to foreign countries in quest of work, and it is very desirable that every

inducement consistently with the maintenance of the rights of the other classes should be held out to the laborers to settle peaceably in Malabar. The present rule, I believe, is not to grant the cowle to a third party unless and until the janmi declines to take up the waste land for cultivation, and if this rule is maintained, and the fixity of tenure attached to every cowle for small holdings as proposed, the interference of the State with vested rights would be reduced to a minimum, and the janmis, who at present own large tracts of unremunerative waste land, would not feel much an arrangement which, in the long run, would benefit them by increasing their rent rolls. The garden cultivation, unlike the cultivation of rice lands, requires constant care and attention, and no superior janmi would care to take such cultivation in his own hands; and any measure having for its object the fixity of tenure to cultivators of gardens is unlikely to cause widespread discontent among the janmis, and will, at the same time, tend to benefit the industrious tenant and make him an independent man.

34. As to the proposal regarding rent receipts, all that I have to say is that it is, on the whole, a beneficial measure, if applied to the principal janmis holding, say, 100 pieces of land and upwards, who alone are in a position to keep the books regularly. The country, however, abounds with peasant proprietors, and if the law is to be held applicable to them too, it would be felt as a hardship. To them, it is very inconvenient to keep such books and receipts. Nowadays a piece of cadjan suffices for their receipts, but in the event of the proposed law being extended to them they will have to incur expenses for the purchase of stationery and for the employment of a temporary writer, the majority being half educated. I am afraid that the privilege given to the tenant of depositing the rent in money in the revenue treasuries in the event (1) of the tenant being unable to obtain a receipt from co-parceners, and (2) in the event of his entertaining a *bona fide* dispute as to who is entitled to receive the rent, is open to great abuse. The ill-disposed or recalcitrant tenants would find much scope for doubting the right of the landlords belonging to Marumakkatayam tarawads with several members, and it will enable the tenant to put the managers or karnavers of tarawad to immense trouble and loss by professing unnecessary doubts. Revenue offices are, further, not the proper places where rent under such circumstances is to be deposited. They cannot finally adjudicate upon the right to receive rents. The deposit should be made in the nearest court which should be authorized to adjudicate summarily upon the claim to rent in such cases. The provisions of the ordinary law contained in the Civil Procedure Code relating to inter-pleader suits meet the cases of *bona fide* doubt as to the persons entitled to receive money or property, and a special law on the subject seems to be unnecessary. There is, however, no objection to rent being deposited in the nearest revenue office in cases where the landlords refuse to accept the rent.

35. The proposed organization of a body of practitioners to do all the preliminary work preparatory to the filing of a suit in court is one of doubtful expediency. No doubt there is considerable truth in the description given of the mischief by the so-called "law agents," but the difficulty is to get a body of efficient practitioners to discharge these functions of solicitors without the right to practise in courts. Those who are qualified by their education and talents to do justice to the situation will hardly condescend to do this work, which, in the present state of the district, cannot be very remunerative. There is no ignoring the fact that the majority of landholders are not in a position to employ a double agency for the transaction of their legal work—a body of attorneys, and a body of vakils.

36. The proposal regarding the legislative recognition in Malabar of the power of testamentary disposition of self-acquired property seems to be happily conceived, and it undoubtedly echoes the views of the best informed and most intelligent of the Malayalis. A decision of the Madras High Court has upset the prevalent notion on which people have, for a long time, been acting, namely, that the Malayalis, like other Hindus, have the power of disposing of their self-acquisitions by wills.

37. The principle underlying the recognition of Hindu wills generally is that what a man can alienate during his lifetime, he may be permitted to dispose of by a will, and in fact the testamentary power has always been considered co-extensive with the power of alienation. That a member of a Malabar tarawad can alienate his

self-acquisitions during his lifetime is undoubted law, and I fail to see why he cannot dispose of them by a deed to take effect after his death. The High Court decision above alluded to has, however, tended to create uncertainty on the point, and it is well that the Legislature should step in to remove the uncertainty. If the power of testamentary disposition is beneficial in any country, it is emphatically so in Malabar, where a man who has not made any disposition of his property in favor of his wife and children has to die under the painful consciousness that they are thereafter to be utter strangers to the fruits of his labor and industry.

38. As regards the proposal to give one-third of a man's self-acquired property to his children in case of his dying intestate, I may say that the opinion of the majority of the Malabar public will be found to be in favor of some such provision being made for the wife and children. The customs of Nanjenad Vellalers, alluded to in the report, furnish a precedent, if one is wanting, and there is also the long standing custom of North Malabar, which, as recently pointed out by the Madras High Court, permits of one's wife being maintained in his lifetime at the expense of the tarawad. There is now a great stir in the minds of educated men of Malabar in regard to the law of Marumakkatayam. Wholly to change it, as advocated by some, is quite inexpedient at the present state of society. First of all, there is considerable difficulty in carrying out the change; and, secondly, even if it be practicable, the minds of the great body of the people are not prepared for it. Moreover, the Marumakkatayam law of inheritance, in spite of its unsuitability to the requirements of a progressive civilization, is, when considered solely in its socio-political aspects, an admirable institution. It tends to keep tarawad property intact, preserves from diminution the wealth, influence and respectability of ancient families, and conduces to simplicity of habits and to a spirit of self-reliance on the part of junior members, but notwithstanding all these, there is no denying the fact that some of its provisions are opposed to the genius of the present age. The best way of satisfying the demands of modern civilization will be to legalize the award of a sufficient allowance out of the deceased's property to his children, if the latter are left without adequate means of maintenance. In other words, what I would humbly suggest is that, on the death of a man without making adequate provision for his children, the law should come in to give the latter, out of the deceased's estate, an allowance for maintenance, fixed with reference to the extent of the deceased's estate and the position of the deceased in society.

39. I have now, as I believe, touched upon the salient points in the report. Before concluding, however, this letter, I beg to be permitted to bring prominently forward a few further proposals which will, I hope, have the effect of removing the causes for agrarian discontent in Malabar:—

- (a) Tenants, holding directly as janmis on otti, kanam and kuyikanam tenures of parambus or garden lands of small extent (say, two or three acres) originally waste, and subsequently reclaimed by themselves, without the assistance of the janmi, should, when a suit for ejectment is brought against them on any other ground than wilful default to pay rent for three years after notice in writing, have the option of continuing in possession of their homestead or their agreeing to pay the janmi in such instalments as may be determined by the court with due regard to their (tenants') circumstances, the jenmom value of the land to be ascertained by the court. The janmi may be allowed interest at 5 per cent. per annum on the unpaid portion of the jenmom value till payment.
- (b) The existing kanamkars and patamkars of devasams in Malabar, whose original entry into possession took place at a period anterior to the pymash of Mr. Grame in 1820-1825, should be protected from arbitrary ejectment so long as they pay regularly rent and customary dues payable to the devasams, who should, in their turn, have the right to enhance rents at the end of every twelve years, to levy the customary fees, &c., and also to eject such of the tenants as do make wilful default in the payment of rent for three years at a time after express demand.

- (c) The janmis should be compelled by law to set forth truly and correctly, in the written agreements between them and their tenants, the amount of fees, perquisites and other dues levied by them (janmis) on occasions of grant or renewal of leases.

40. As regards (a) and (b) the proposals will, I believe, be found to suit admirably the Malayali ideas. It has always been considered improper to eject a kudiyrupu tenant from his homestead except on good cause. The ooralers of devasoms simply collected rents and profits, and did not, as a rule, eject the ancient holders of lands attached to the devasoms. Until very recently, it was a point of honor with the large devasoms not to eject their old tenants, and the idea has not still been wholly uprooted. True, the superior janmis, the rajahs, the petty chiefs and namburies did, as a rule, not eject their kanom and pattam tenants in former times, and it may naturally be asked why a distinction should be made between their tenants and the tenants of devasoms. The answer is plain. The position and prospects of superior janmis have changed in some cases for the worse after the introduction of the British rule. It is now rather difficult to draw a line between superior and inferior janmis. Those who were formerly mere tenants have now become janmis of considerable extent of lands, and some of the former janmis have lost much of their possessions. The large devasoms, however, still remain substantially as they were sixty years ago. The present generation of superior janmis, unlike the devasoms, have always exercised full dominion over lands, and it would be considered nothing but confiscation of their rights if they are now, for the first time after British rule, to be deprived of the power of ejectment.

41. On the other hand, the devasom lands are looked upon as a sort of trust property, wherein the villagers have a common interest, and the ooralers are simply the self-constituted trustees, for the due collection and application of the rents and profits, without interfering with the actual holders of lands.

42. The maintenance of old customs in the case of devasoms involves the least hardship, and this is also an additional reason for perpetuating the ancient state of things in the case of devasoms rather than in the case of private janmis who will feel it very hard to be now deprived of their main sources of comfort, and it may be, of livelihood.

43. The adoption of the proposal (a), while it is likely to conduce to a habit of thrift by encouraging the peasantry to save a portion of their incomes in the hope of securing their independence, will not operate very harshly upon janmis, the fact being that, unless instigated by an interloper, the janmis will not think it worth their while to pay off the substantial claims of the tenants of the class of otti, kuyilikanam and pattam-holders of small pieces of lands on whom alone the privilege is proposed to be conferred. Such of the janmis as may wish to retain their hold upon the property can still do so. The proposed privilege will only be exercised when the janmi takes it into his head to eject the tenant without good cause from his kudiyrupu (homestead), and public interests require that some such indulgence should be extended to tenants of small holdings. The purchase money of these holdings may, without much difficulty, be found by those tenants if the payment is to be made in instalments, and, as the courts are to take the circumstances of each tenant before fixing the instalments, it is to be hoped that justice will be done to both the tenant and the janmi.

44. With respect to (c), it may be said generally that the main inducement on the part of rajahs and superior janmis to make exorbitant demands for fees and perquisites on the occasion of renewals of leases, is the fact that such fees, not being mentioned in the deeds, can be appropriated by them to their own use, without any liability to account to their co-parceners or tarawad. If, however, the janmis, who are simply the managing members of the tarawads to which the lands belong, are to preserve evidence of the amounts levied by them, they will, very probably, not care to put forth their whole strength to screw out of the kanam tenant every pie he (the tenant) is able to pay.

Mr. M.R. Ry. C. SANKARAN NAIR Avargal, Vakil, High Court, to the Acting Chief Secretary to Government, dated 26th September 1883.

have the honor to acknowledge the receipt of the Proceedings of the Madras Agent, dated 2nd March 1883, No. 612, and forward herewith a memorandum along with a few remarks on Mr. Logan's report.

ENCLOSURE.

MEMORANDUM.

I agree in the Commissioner's conclusion that the relation existing between the landlords and tenants is most unsatisfactory. I agree also in the conclusion that crime has increased on account of the oppressive conduct of the jenm's in general. The old class of kanomidars, as a body, is fast disappearing, and the actual cultivators, sunk in poverty and wretchedness, "are degenerating into a state of insolvent cottierism."

All these consequences are attributed to the action of the civil courts. They are charged with ignoring the rights of all those below the jenmis and giving the jenmi the absolute proprietary interest in the soil, a right which he never asserted before the English Government took possession of the country.

And this is his conclusion:—

"The first and by far the most important conclusion to be drawn from the evidence is that it is absolutely necessary to devise some means for giving to the actual cultivator of a small holding full security that, if he plants trees, he will be left free to gather their fruits, and that if he reclaims land from the waste, he will be left free to enjoy the profits of his labor and capital.

"It is, as I have already pointed out more than once, the position occupied by the actual cultivator which deserves the most consideration at the hands of the Government, and by actual cultivator, I mean not merely a tenant of the land, but the cultivating proprietor or the farmer who rents or cultivates the land employing hired labor, or the renting cultivator, pure and simple, who is dependent for the necessary labor on the services of his own family."

In this conclusion I cannot agree, and it is necessary to refer to history to show that it is not the claims of the actual cultivator of the present-day that require protection, but the claims of the representatives of the old body of holders of land who were entitled to a certain definite share of the produce in the lands.

We find that there were two classes of people interested in the land, one class claiming the overlordship over the soil, and the other being tillers of the soil. The agricultural class is found usually subservient to the other class, whether priestly or military; a part of the produce was paid and certain services were rendered by the one to the other. By long occupation, the agricultural class came to regard themselves as joint owners with the other class. There was apparently no contract. Everything was regulated by custom, and so long as the customary requirements were fulfilled, there was hardly any danger to the occupying tenant's ejectment. Gradually as civilization advanced, a monied class arose; tenants began to acquire wealth of their own, which in remoter times would have been claimed by the landlord. The necessities of the landlords would furnish them with opportunities to purchase the landlord's interest, and the enfranchisement of the holding would gradually follow. Tenants who would not work would not prosper in the midst of industrious tenants. The fittest alone survive, and one or the other of the persons interested in the soil is sure to come out finally as the sole proprietor of the land after having got aid of the other persons by purchase or otherwise.

We thus come to the stage when a man would be generally free to deal with his land as freely as he likes, and then he ought to be allowed to do so without any State interference unless called upon to interfere on account of the helplessness and poverty of one of the contracting parties.

The owner now, as we may call him, does not care to till his own land, and he lets it to a man who makes agriculture a trade. This is the "tenant farmer" of England whose rights and obligations are fixed by the lease. This, perhaps, is the usual process. I believe it also took place in England probably earlier than in the other countries. It was not allowed to take its usual course in Ireland, and probably in the Highlands of Scotland. At any rate in Malabar we

See the Malayalam passage.

find the Brahmin grammoms claim the jenmam interest in the soil, below them Nair taras, and next to them the other castes, the Cherujennakars, who also were entitled to a certain share of the produce (see Graem's Glossary). The village system of the Brahmins is still in full force in many places. In some of the grammoms mentioned by Mr. Logan it prevails, I know, in its integrity. The rent and the other profits are collected by the managers of the Sabhayogam, as it is called, thrown into the common stock, and the produce is divided amongst the members of the Sabhayogam. It was, and is a sort of tribal ownership. The rent and other fees are collected from the actual cultivator. There was then, I believe, no such thing as individual ownership except in the case of chieftain and the Rajahs. So far as the Brahmins are concerned they appear

The kanomdar was absolutely necessary to the jenmi. When it is remembered that Nambudiri female cannot even now go out of her house without a Nair female attendant Nambudiri must be assisted by a Nair in the performance of most of his ceremonies, and younger members of the Nambudiri families consort with Nair females, the harmony subsisted in the relations between the jenmi Nambudiri and the Nair kanomdar will not be surprising. In the case of the local chieftains their power and their safety from the attack of chieftains depended upon the loyalty of their militia, and an assertion of his right to dispossess a single kanomdar, unless sanctioned by the whole body in the particular case, would be fatal to his influence.

The Muhammadan invasion finally swept away most of these institutions. Probably even before adverse influence were at work; the Nambudiris fled from Malabar to Cochin and Travancore, and twenty-five years of anarchy completed the dissolution of society. At any rate when the British took possession of the country, the Nambudiris' grammoms were split up into illoms and the Nair taras into tarawads of the present day. And I have never yet heard of a case where any of the lower caste people, the Cherujenmakar, as Mr. Graem calls them, the astrologer, &c., has claimed his customary dues from his superiors though, as a matter of fact, it is usual for old and influential tarawads to give them a few paras of paddy in the harvest time.

The British Government succeeded the Mysore Government. They found everything in confusion. For revenue purposes it became absolutely necessary to come to a settlement. An attempt to collect the revenue through the Rajas completely failed. The ill-advised measures of Major MacLeod produced a general outbreak, and the task of pacifying the country and of determining the share of the produce, which had to be paid to Government, devolved on Mr. Rickards, and in the measures he adopted, it appears to me, we find satisfactory evidence to show that those interested in the land below the jenmi were entitled to a certain share of the produce as defined by custom. Let us see whether Mr. Rickards, in computing the jenmi's interest, excluded the tenant's share. The principle adopted by him, after consultation with the principal inhabitants, was this:—

“ On rice lands after deducting from the gross produce the seed and exactly the same quantity for expenses of cultivation, and then allotting one-third of what remains as “ koroo labham ” (plough profit) to the kudian, the pattam is to be divided in the proportion of six-tenths to the Company and four-tenths to the jenmakar, i.e., in the case of a plot of land yielding twenty fold and requiring five paras of seed, the gross income would be . . . 100 paras.

Deduct seed	5	"
Cultivation expense	5	"
Deduct one-third koroo labham as tenant's share	30	"
	60	"
Six-tenths to the Company	36	"
Four-tenths to the Jenmakar	24	"

Now what is the meaning of deducting one-third for "koro labham" or plough profit. It clearly shows, in my opinion, that the tenant was regarded as having a substantial interest in the soil. It was not set apart for expenses of cultivation; for it will be found that for such expenses an amount equal to the seed has been already deducted. It may appear very little in this particular case, but the table at page 236 of the appendix will show clearly enough that in some cases a large share is set apart for cultivation expenses, and in fact such share varies inversely with the quality of the soil. It appears then that out of 90 paras available for division between jenmi and tenant, one-third goes to the tenant and the other two-thirds to the jenmi, and it is out of the jenmi's share alone that the revenue had to be paid. Thus, after paying the expenses of cultivation, the produce was divided between the jenmi and the tenant in the proportion of 2:1.

This was also the opinion of Lord William Bentinck—

"Agriculture is considered as an honorable occupation, and the right of landed property and the division of the produce of the soil between the landlord and tenant, are perfectly defined and confirmed by immemorial usage."

And if any more evidence is wanting, it will be found in the correspondence which preceded the adoption of Mr. Rickard's scheme.

The old deeds collected by Mr. Logan show the same state of things. They have been so fully commented upon in the appendix that I shall not here attempt to show how they support this view.

There is also the fact noticed by Mr. Logan that when the Nambudiris fled to Travancore on the Mysorean invasion, the Moplahs contented themselves with purchasing a kanom interest when they had the power to have become jenmis if they liked. This can be explained only

on the supposition that they fully believed they thereby acquired a permanent interest in the properties (see report, paragraph 67).

Further, the tradition embodied in Kerala Ulpathi is to the effect that Parasurama organized the Brahmin associations and granted the jenmam to the Nambudiri, and organized the Nair taras and granted the kanom to the Nair, the inference being the kanom was not derived from the jenni, and that it was as such a substantial interest in the land as jenmam itself and not simply a derivative tenure.

This account of the origin of the tenures of kanom and jenm is very important as showing, at any rate, the views prevalent on the subject among the natives—

[illegible][illegible]

The first paragraph says: —“Parasurama' after creating the Karmabhumi, Malayalam gave (gift by water) to the Brahmins of sixty-four grammoms. First gift (flower and water) was made to the sixty-four grammoms for enjoyment, and the right so acquired is called jennm. This gift was made to the tarawads of the grammoms collectively. Then to the 36,000 Brahmins of the ten grammoms gift was made by pouring water on the sword, and this is called Ragamsom (Rag and Amsom = share). They have not the jennm. They have the land only for enjoyment.”

The second paragraph states that the Sudras were brought from various places and settled in Malabar. Their customs were defined. The people were divided into Sankethams (Brahmin Sahhayogams) and Taras (Nair communities). They were made the protectors and managers. For them (the Brahmin) was given the melkur (superior right); to the kudian was given the killkur. To the Brahmin was given the jenm, to the kudian kanom, and the law of the jenm and the kanom was thus ordained.

It was not the land absolutely that was granted to the Brahmin according to his own account, but only a "superior right;" simultaneously with the creation of his own *jenm* right, the *kanom* right of the *Sudra* was created.

There is a passage following the first paragraph, not quoted here, which shows that the lands were given for enjoyment to another class of Brahmins. But they had no *jenm* right in the lands, and for those lands there was no *jenmi* at all.

Jemmi, therefore, was not regarded the owner. The jemmi was simply the superior right for a certain share in the produce of the lands.

This is also the conclusion arrived at by Mr. Logan.
The civil courts refused to recognize the kanom claim; and in this respect I do not agree with Mr. Logan in laying the blame entirely on the courts.

He attributes all these consequences to the influence exercised by the Brahmins. They managed to cast over the first European administrator "a glamour, so to speak, from which we are now only half consciously and painfully emerging." It was the Brahmin who was ordinarily selected to explain the laws of the country and to help to control the administration, and their influences served to direct attention from the real state of facts connected with land tenures, and to bolster up instead a theoretical system of Brahminical origin as little representative of actual facts as the laws of Menu are in his or in any other time."

Whether the civil courts were right or wrong, I do not believe that the above statement, so far as the Malabar Brahmins are concerned, is correct. It clearly was not the Malabar Brahmin who was selected to explain the laws. I do not believe that there is now a single Brahmin in Government employ, and I believe not more than one or two were ever in Government service.

Then to what is this misconception due?—Very probably to the erroneous assumption made by the English administrators themselves. When they found that no revenue was levied by former Governments, they concluded that the Government were not the proprietors of the soil, and that the jenmi is the proprietor, the other classes who held the land under him being merely tenants who could be ousted at the landlord's pleasure.

The social system also, to a superficial observer, justified the above inference. The jenmis I have already remarked were generally the Nambudiris and the ruling chieftains, the devasom being under the control of either the one or the other. The kanomdars were generally Nairs. A Nair who committed a serious offence against the community, probably the guild of 600, as Mr. Logan puts it, was generally turned out of the guild, and his lands were taken away from him. He loses, as it is said, both his "adima and kudima" (adima, state of dependence on his superior; kudima, holding of lands under another). This was done by the jenmi, the chieftain or the Nambudiri to whom the caste assembly notified their resolution.

This is practised, so far as it could be, even now. Adima and kudima generally used to go together. Theoretically then it was the jenmi who turned the kanomdar out of possession. Practically he was never turned out of possession unless he committed an offence against the community.

When therefore the English lawyer turned his attention to the fact, he found that the kanomdar did not assert an absolute right to hold his lands against the jenmi; he found that the fee was paid, and he probably found that theoretically the jenmi's right of ouster was admitted.

But the evil was not felt during the earlier years of British rule. The usage was well-known and the assessments were so heavy that the eviction suits, without good cause, were very rare, and even now it is usual to allege in a plaint that the suit is brought on account of the tenant's neglect to pay rent or to take out a renewal.

But even then the kanomdar's position till very recently was very different from that of a mortgagee in many respects. A jenmi, for instance, could give no good title to a second kanomdar, while the lands were in the possession of the first kanomdar; so Mr. Holloway held when he was in the High Court. And the very recent decisions of the High Court, that there is no such restriction on his power, completed the downfall of the common law, if I may so call it, of Malabar.

I hope I have shown clearly that there were certain classes of people who were entitled to certain definite shares in the produce of the lands, and whose claims to such share are not now recognized.

Who is it that then require relief? The man who recently obtained possession of the lands under a lease (the actual cultivator, as Mr. Logan calls him), or these representatives of the above class.

Clearly, in my opinion, these classes of people who were entitled to a definite share of the produce in ancient times, i.e., the kanomdars and the old verumpattakars.

I shall here state what I believe is the difference between these two classes.

The jenmis were generally the Nambudiris and the ruling chieftains. Under the Nambudiris the lands were generally held by the Nairs on kanom, and these lands were generally cultivated by the kanomdars themselves with the help of cherumars, &c. These cherumars were not coolies as now understood, but they were real slaves fed by their master, bought and sold generally with the land on which they lived.

In the case of these lands, the net produce, after deducting the expenses of cultivation, was equally divided between the jenmi and the kanomdar, the latter paying to the former his share as the interest on the sum advanced. In this view I am supported by Mr. Farmer, one of the Commissioners:—"Of the produce, one-third was allowed to the former for maintenance, profit, &c.; one-third for the expenses of tiyans, cherumars or other cultivators attached to the soil; one-third went to the jenmi or landlords."

Under the Rajas, I believe, the lands were generally held in what is called the verumpattom tenure where no money is paid by the tenant to the jenmi, and here also the lands were cultivated by the tenants with cherumars, the verumpattom-holder receiving one-third of the net produce, and the jenmi the remainder.

And it was to this latter class of landlords and tenants that the attention of the early English administrators was directed, and this affords, in my opinion, a sufficient explanation of their inability to recognize the claims of the kanomdars.

If this is a correct statement of what then existed, then these proposals have partly the effect of restoring the ancient customary law.

It will be observed there is apparently some difference between this account and that in the report. Mr. Logan seems to be of opinion that originally there were two classes of people interested in the land besides the jenmi, i.e., the kanomdar and the verumpattom holder, between whom the net produce was divided into three equal shares, while I believe that under the jenmi the lands were held by the actual cultivator himself, and the produce shared between them.

This is also the inference to be drawn from Mr. Farmer's report, who states that a third part of the produce was set apart for expenses of cultivation, and the remainder divided between the tenant and the jenmi.

And when we find that the laborers were cherumars (slaves) who were generally sold and purchased often with the land, it appears clear that Mr. Farmer believed that besides the jenmi and the pattakkar under him, there was none else who had a saleable interest in the land.

As this difference is not now of any practical importance, I shall not here attempt to show how my view is supported by the present status of the various classes of tenants and to show that there are many facts set out in the appendix which cannot be satisfactorily explained on the view adopted by Mr. Logan. It must be borne in mind that this description applies only to a state of things which once existed, and I admit that Mr. Logan's description now holds good in many places, and there are generally three classes of people interested in the land, the jenmi, the kanomdar, and the verumpattom holders.

The causes which brought about this state of things require full consideration. Most of the kanomdars are Nairs; amongst them there is practically no division of tarawad property. The

tarawad or the joint family remains under the control and management of the senior male member who is bound to maintain the others so long as they live in their tarawad home. Now the official class in Malabar is mainly composed of Nair and Tiyans, members of such tarawads, and I might here remark that if Mr. Logan's proposals are accepted they will have either to become actual cultivators or substantially give them up. That they will be affected by these proposals there is no doubt. For most of them hold their properties in blocks of not more than 25 acres belonging to a single jenmi. Those who are not in Government service will be prevented from entering Government service, and it must of course suffer on account of the exclusion of such a large body of intelligent men. It might be answered that the evil will not be felt where the joint family system prevails, as one of the members of the tarawad might remain to look after the tarawad properties, while the other might seek their fortunes elsewhere. But the difficulty cannot be so got rid of. The labor of a member in possession of tarawad properties bring no gain to himself personally though the tarawad collectively might be enriched thereby, while the gains acquired by those not in possession of such properties are their own. If a man cultivates tarawad lands, he does it for no remuneration. He is regarded as an agent whom it is not even necessary to pay, and the High Court have declared that even the improvements, &c., on the tarawad lands belong not to the man who made them, but to the tarawad. If a man works for himself his savings are his own, and any time he comes back to the tarawad he can enjoy the produce of the tarawad properties. Under such circumstances, who will care to cultivate the tarawad lands and remain individually poor, while he may work elsewhere and make money which will be his own. It is, therefore, clear where the tarawad system prevails no member will be found willing to cultivate the tarawad properties.

Mr. Logan's proposal insists on the cultivation being carried on by him, the tarawad member. In the old days it was so actually carried on as no such facilities for self-acquisition then existed (trade was almost unknown to Nairs).

How can then this joint family system of property co-exist with this law of landlord and tenant.

The law of landlords and tenants insists on the cultivation being carried on by a member of the tarawad. The joint family law is such that a member can hardly be found willing to cultivate the lands.

The difficulty is now avoided by sub-letting. The tarawad members have only to collect the rent from their tenants and each member is free to follow any profession he likes, and this was also the fact which brought about the present state of things. When he found that cultivation interfered with his other occupation he found it profitable to sublet the land.

And these tenants who cultivate the land and pay the full produce as rent are also called verumpattom tenants, and this distinction must be clearly borne in mind between the old verumpattom holder under the rajas, entitled to a definite share and the modern verumpattom holder, the actual cultivator of Mr. Logan.

Looking at their past history the classes of people who have been most unjustly treated are the old kanomdars and the verumpattomkars. They do not now ask to be restored to the position they would have now occupied if their claims had been recognised earlier; but clearly they have a right to be protected from the further exercise of those rights which have been usurped by the jenmis, and which has been found to be so disastrous in its consequences.

So far as the proposals of Mr. Logan go to give security to these classes of people they ought, in my opinion, to be adopted.

Mr. Logan thinks that it is the actual cultivator of the soil who require the Government protection. If he is an old resident cultivator, one who was originally entitled to a definite share, then I have already said he ought to be protected against eviction.

But if he is one who entered into possession recently and under a contract the terms of which are defined in the deed itself, then I do not see how his case does require interference. It is admitted that the customary law of the country gives him a right to demand from the jenmi the full value of improvement on eviction. He is then, in my opinion, entitled to what he has bargained for and nothing else. If individual ownership in property is to be recognised, then the parties must be allowed full freedom to come to any agreement they like. In the interests of agriculture also, the creation of these peasant holdings (not the creation of a class of peasant proprietors) is not advisable.

Mr. Logan appears to be of opinion that the kanomdars do not now require any protection, as they may now be regarded as simple mortgagees and nothing more, and therefore men who may be expected to be able to look after their own interests.

Now, I venture to deny the assertion that the kanomdars are only in the position of mortgagees. If they are simple mortgagees and nothing more, it is difficult to understand why they pay these exorbitant renewal fees every twelve years to get their kanom leases renewed. These renewal fees are never entered in the instruments of mortgage, and of course are never recovered by the tenant when he has to deliver to the jenmi the possession of the land.

Further, if the kanomdar is only a mortgagee who has possession of the property only as security for the money advanced, it is not easy to see why he should regard redemption by the landlord as a very great loss to himself.

And I may also state in Malabar the distinction between a panayom (mortgage) and a kanom is well recognised. When a landlord really wants money, the land is mortgaged (delivered on panayom). Kanom is the usual mode of enjoying the property.

The old customary rules have been broken through. The kanomdar has been paying exorbitant renewal fees, the kanom amount in many cases has been largely increased, but that is no reason why he should not be secured against any further interference on the part of the jenni. That much evil has been done is no reason for letting things alone, and, so far as I am aware, the majority of those who now complain are now kanomdars and the old verumpattom holders, not the modern tenants who are creatures of contract.

I shall now proceed to consider the suggestions made in the report.

It does not appear plain at all why these proposals are to apply only to tenants holding only less than 25 acres. It leaves untouched the great body of people who do require protection, and further the test, though certain, is most unsatisfactory.

There are places in Malabar, Calicut, and Chowghat, for instance, where the lands do not yield more than three or fourfold. There are other places, Shernad for example, where the land yields generally sixty or seventyfold. On what principle is it then that tenants holding 25 acres in Shernad and Chowghat are treated in the same way. The one is certainly a poor man when compared to the other.

Further it will have this effect. The jennies will let their lands only in blocks of not less than 25 acres, and the result will be that a measure apparently designed for their preservation will end in their extinction or extermination.

If it is the actual cultivator who requires protection, then of course it is practically necessary to prevent subletting, i.e., the man who actually cultivates must have a permanent interest in the land (vide para. 354, clause 7 of the report).

But let us see how it will work.

A man is temporarily disabled for work, or a man becomes old and his son is young. It is only natural, under such circumstances, that he should like to let his lands, and men willing to cultivate it are of course sure to be found. Is he to be compelled to let the lands remain waste or practically to part with it for ever?

Take another case. A man improves a plot of land all his life. He becomes more attached to the land as he grows old. Suddenly, by some contingency or other, he becomes unable to cultivate the land himself. What is he to do? B may be very willing to cultivate in addition to his own lands A's lands in consideration of a share of the produce. I do not clearly see my way to exact a law prohibiting him from doing such things.

It is true Mr. Logan says that a man may sublet or mortgage for temporary purposes, but it appears to me that practically it is exceedingly difficult to work a system in which the courts have frequently to determine the question whether the peculiar circumstances of each particular case justify the act complained of.

In Malabar there is also another reason why subletting should be allowed. The joint family system and the law of inheritance is such that no man able and willing to work is likely to work on behalf of the tarawad, and it becomes necessary to sublet the lands. My reasons I have already stated. Further the extinction of middlemen will have this effect.

There are now three classes of people interested in the land. A, the jenni, B, the middleman, and C, the simple verumpattakkur, often a yearly tenant or tenant from year to year. Now, either B or C must give up his interest in the land or be a mere rent charger if the actual cultivator is to be a permanent holder.

"If these measures have the effect I anticipate and hope for, a large portion of the numerous class whom I have termed cooly cultivators will be converted into day laborers and relegated to their proper function in society for working for hire."

Assuming these hopes are realized, then there will be a large addition to the labor population; and what will be the consequence? The laboring class is already 27.4 per cent. of the male population. The cultivating class is only 15.9, and the people who will be thus thrown out of employ will be Nairs, Tiers and Moplas, and where can they find employment? I am afraid not under the cultivating classes. They have their cherumars (slaves to work) who work on mere subsistence allowance, and here also the question becomes important whether the criminal class is composed more of the laboring class or evicted tenants.

The report does not enable me to answer this question, as Mr. Logan's notice does not appear to have been directed to the position of the laborers.

On this point, Mr. Hule's remarks are important. He is of opinion that the large increase in the number of eviction of late years, the increase of the poorer classes, their poverty, the difficulty of obtaining employment, and the low rate of wages prevailing, account for the increase in crime.

Evictions in Malabar do not generally increase the labor population as somebody is let into possession in the place of evicted tenant.

And it appears to me there are good grounds for believing that the increase in crime is due more to the distress and helplessness of the laboring classes than anything else.

And it is a well-known fact that laborers prefer to work for jennies and wealthy kanomdars, rather than for any other class of people, as they are better paid, and treated more fairly by them. The peasant permanent tenant of Mr. Logan will certainly be a harder taskmaster than

the present jenni or kanomdar, and the laboring classes are not likely to find themselves better off under the new state of things hoped for.

Further, what is the principle on which this is based?

Mr. Logan says that he came to the conclusion that many of the present actual cultivators are persons whose proper business is to work for hire, and that they ought not to remain cultivators.

And no doubt one of his suggestions that the tenant must pay to the landlord the market value of one-third of the share of the produce will effect the change desired by him, since in my opinion the actual cultivator, the verumpattomkar, will certainly not be able to pay that value, and he will have to give up his interest in the land.

Now, what will be the consequence? These people are to work for hire. I suppose they must have some cottage to live in. In that case they will have to pay for it.

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The Marumakathayam system, the joint family system, as it now prevails, in Malabar, is an unmitigated curse. Trade is impossible—I say impossible, because a kariatavan cannot honestly and conscientiously embark the tarawad property in speculation, and a junior member having no right to demand his share of the tarawad property has of course no capital.

All restrictions on free alienation of property must be removed, and that can be done only by giving each member the right to demand his share of the tarawad property.

I wish to say a few words at the mode in which the inquiry was conducted. The general impression was, not that an attempt was being made to bring to a satisfactory conclusion the disputes between the landlords and tenants, but that a Commissioner has been appointed to do something for the tenants. The petition register has not been forwarded to me, and I am not therefore in a position to say whether any jemmies and how many came forward with their grievances. That they have many grievances I know, and from the fact that nothing is noticed in the report or appendix, I believe that not many have been brought to the notice of the Commissioner, and that there was a general apprehension on the part of the jemmies that the Commissioner's duty was to do something against their interests I can assure the Government.

C. SANKARAN NAIR.

From M.R.Ry. K. KRISHNA MENON, Avargal, to the Acting Chief Secretary to Government, dated Mangalore, 6th October 1883.

With reference to the Proceedings of Government, Judicial department, No. 612 (Miscellaneous), dated the 2nd March 1883, forwarding confidentially, for my remarks, a copy of Mr. Logan's report on the land tenures of Malabar, I have the honor to submit the following observations.

2. The report is the one called for in G.O., Judicial department, No. 281, dated 5th February 1881, and as would appear from the report the appointment of Mr. Logan as a Special Commissioner in Malabar was for the special purpose of inquiring into and reporting upon—

- (1) The general question of the tenure of land and of tenant right in Malabar, and the alleged insufficiency of compensation offered by landlords and awarded for land improvements made by tenants.
- (2) The question of sites for mosques and burial grounds with suggestions for a measure rendering the grant of such sites compulsory under certain conditions if such a measure appears to him called for. He was further authorized to submit his views as to the best means for redressing any existing grievances which are in his opinion well-founded and which after due inquiry he thinks ought to be redressed, and to suggest appropriate remedies.

3. Upon the first question the Commissioner has come to the conclusion that prior to the commencement of British rule no private property in the European sense of the term existed in Malabar, that the jenm did not import absolute property in the soil, that British authorities were wrong in treating it as the dominium of European lawyers, and that it entitled to the holder thereof only to one-third of the net produce of the land, the remaining two-thirds being equally distributed between the kanomkar and the actual cultivator.

4. Upon the question of tenants' right the Commissioner is of opinion that tenants possessed a higher interest in the soil in former days than they do at present, that the tenure of kanom was practically permanent, that actual cultivators were entitled to one-third of the net produce, and that toddy-drawers, carpenters, blacksmiths and other low class people possess with jemmies co-ordinate interests in the soil termed "cheru jenm" or small birthrights. He does not, however, think it expedient to restore the kanomkar to his old privileges, because such a measure, however just, would now have the effect of reversing the policy hitherto followed, because the measure would operate prejudicially on the purchasers of escheated jenm lands, from whom the Government have realized thirty lakhs of rupees by the sale of such lands, and also because the measure has not satisfactorily worked in the neighbouring state of Travancore. For the protection of the interests of the actual cultivators, however, he suggests certain legislative measures in order to make their holdings permanent subject to certain limits and conditions.

5. Upon the question of improvements his opinion goes to show that no adequate value is offered or awarded to the tenants for the land improvements, and the remedy he suggests is the award of their value at current market rates.

6. As regards the question of sites for mosques and burial grounds the Commissioner is in favor of the absolute prohibition of erecting new mosques even on lands about which there is no dispute, and the use of other buildings as a place of public worship without the previous sanction of the authorities, and, with the view of making the prohibition effectual, he recommends the extension to such cases of the penal provisions contained in the Moyla Outrage Act XX of 1859. Wherever the authorities consider a site for a religious edifice or a burial ground necessary for any one class he thinks that the same may be obtained under the existing Land Acquisition Act X of 1870, so that fresh legislation is unnecessary on this account.

7. Under the head of existing grievances he mentions the present unsatisfactory state of the Marumakatayam law of inheritance and suggests certain remedies.

8. His report is divided into eight chapters with twenty-one appendices attached to them. My remarks on the appendices are embodied in a separate paper, which I beg to annex as appendix A to this letter.

9. The first chapter describes the manner in which the commission was executed. The secrecy with which the inquiry was conducted as a matter of course detracts much from the interest otherwise attaching to it, inasmuch as if the public had been apprised of the real scope and objects of the commission much of the misunderstanding that has lately sprung up between the landlord and the tenant would have been avoided and more reliable evidence bearing upon the general question of land tenure made available. The kanom and kuyekanom tenants who constitute nine-tenths of the actual cultivators of the soil in Malabar hopefully looked upon the commission as a precursor of the restoration of their ancient privileges, and in that belief flocked to the Commissioner's camp with tales of oppression on the part of their landlords, while the jemmies acting on the same belief resented Mr. Logan's appointment, and several of them did all that lay in their power to prevent any valuable evidence reaching him. Only two jemmies of British Malabar came forward with ancient deeds, and the number such deeds supplied by them is only eight and six, respectively, while it is a well-known fact that hundreds of such ancient deeds are forthcoming in the archives of old jemmies throughout the district. In many instances the good feeling that existed between the landlord and the tenant prior to the inquiry has been since disturbed, and a good deal of this untoward state of things could have been avoided if strict secrecy had not been observed in conducting the inquiry, and if the real object of the commission had been made known to both parties beforehand.

10. The second chapter relates to the arrangement of the facts brought to the Commissioner's notice in the course of the inquiry, and it simply serves as an index to the report.

11. The third chapter affords historical information. This and the third section in Chapter IV, to use the Commissioner's own words, are so intimately connected with each other as to form but one subject of inquiry, and both proceed upon the materials collected in the appendix I, and I therefore propose to consider them together. I have already stated in appendix A that the outline given by Mr. Logan of the former history of the country materially differs from our account thereof. There are two special works called Keralamahatmyam and Kerala-Ulpathi, the former written in Sanskrit, and the latter in Malayalam, which contain the ancient history of Malabar. It is true that some fabulous narratives have crept into these works, but I submit that the defect is not peculiar to them alone, but is common to all ancient works, and that simply on that account they do not deserve to be altogether discarded. The fabulous narratives might be well sifted, and authentic and credible information culled therefrom. The following are some of the facts which are so gleaned from the above works:—"A brahmin hero from the north, by name Parasu Rama, discovered the Malayalam country which had newly come to existence by the recession of the sea and made a free gift thereof to brahmins with whom he peopled his new dominions. To prevent their properties being split up and to preserve the importance of their families he

12. The above is the substance of our former history as is recorded in the two works above alluded to, and it is consistent with our traditions. The Commissioner is, however, of opinion that the whole country formed an empire, that the perumals were their emperors, that the rajahs of nads were vassals, that the former alone could create jenn titles, that the Nayars as protectors of nads were organized into corporate bodies of 600, and that it was from this body that the kanom tenure was subsequently evolved. The ancient deeds 1, 2, 3 and 4 apparently constitute the sole evidence on which the Commissioner's view is based. He thinks that the deed I (the Jew's grant) is of a prior date to the Syrian deeds 2 and 3. But Mr. Shangunni Menon, the Historian of

14. In the face of the overwhelming evidence to the contrary furnished by the ancient deeds and other records of the country and also by the official reports of British officials such as the Revenue Board's general letter of 31st January 1803, the Honorable Courts' Revenue letters, dated 24th August 1804, and 16th December 1812, respectively, Mr. Thackeray's report, dated 4th August 1807, Fifth Report of the Select Committee of the House of Commons (Madras, page 77, Higginbotham's edition), and Board's minutes, dated 5th August 1813 (Proceedings selections, page 587) and 5th January 1818 (Revenue selections, volume I, page 889), it would be impossible for the Commissioner to establish his new proposition that no private property existed in Malabar before the commencement of the British rule. Mr. Logan thinks (paragraph 36 of the appendix I) that the brahmins cast a glamour over the first European administrators as to the nature of the jenm title, but to assume that they

succeeded in imposing upon all the early British authorities in Malabar is, to say least, disparaging to the intelligence and common sense of those gentlemen and whom were many eminent lawyers, experienced statesmen, and skilled administrators, and I am not therefore prepared to agree in the Commissioner's view of the jenm as propounded in paragraphs 37 and 38 of his report, particularly where proceeds upon mere surmises and conjectures wholly unjustified by any evidence and when the mass of evidence from which he attempts to draw the conclusion tends in an opposite direction. The information obtained by Mr. Farmer, one of the members of the joint commission, from some unknown sources, is the sole evidence to establish the proposition that the jenmie's share was limited to one-third of the net produce or pattom. On referring to Mr. Farmer's statement contained in paragraphs 224 to 226 of the appendix I, I find that his information had reference to lands already demised on kanom. It is clear from paragraph 226 that the teyans (toddy-drawers) and cheri mars (pariahs) were then treated as mere slaves and as part of the property of the land in the same manner as cattle would be the stock of the farm, and the one-third which the kanomkar deducted on their account was nothing more than the "valli" which is elsewhere described as the expenses of cultivation. The information further shows that the rent payable was what was fixed by the parties and not by any custom, and the valli and other circumstances were mere elements in the calculations made for fixing the rent. The statement would then be as much correct as to say that dominium did not import any proprietary right in land because the dominees did not get the whole produce or no produce at all during the continuance of a mortgage. The mortgage is only a fragment of the dominium, and so a kanom in the same manner that of the "jenm." The one-third of the jenm was originally carved out and given to the tenant on condition of his agreeing to pay regularly and punctually the remaining two-thirds to the jenmi, and a pledge of this two-thirds was made in consideration of money received, and for the deduction made on that account the jenmi has the use of the tenant's money. The circumstance of the hire of the slaves being taken into consideration in calculating and fixing the rent as between a jenmi and kanomkar did not make those slaves proprietors of the portion of the produce allowed to the kanomkar on account of their hire. I am therefore unable to concur in the Commissioner's opinion that the jenmies' interest was limited to one-third of the pattom, and that an actual cultivator other than a kanomkar had any defined share in the produce except for the seed and for the expenses of cultivation.

15. I agree with the Commissioner's conclusion that a kanom was practically permanent in ancient times, although I am unable to follow his reasons for arriving at that conclusion. Its origin is fully explained in clause 10 of paragraph 2 of the appendix A. As long as the tenant paid the stipulated rent and cultivated the land demised to him in a husbandlike manner the jenmi was not at liberty to eject a kanomkar. Mr. Reckard, the second of the Principal Collectors of Malabar, bears testimony to the permanent character of this tenure, and paragraph 178 of the general report of Board of Revenue, dated 31st January 1803, spoke of it as a copyhold. The Government settlement of assessment with the kanomkars also partially evidences the fixity of their tenure. The non-appearance of the jenmies in the Muhammadan cutcherries through fear caused by the terror of the Muhammadan rule is spoken of as being the cause of this settlement with kanomkars. I am, however, unable to regard it as a sufficient reason as chowkaran and other Mopla jenmies to whom it did not apply and also the Palghat Raja and Kurungot Nair who were on good terms with Tipu also allowed their jenm lands to be assessed in the name of their kanomkars. The cremation ground and the tarwad houses of many well-to-do families of jenmies such as the Royal family of His Highness the Zamorin Maharaja Bahadur are found situated on kanom lands which could not have been the case if the tenure did not convey a permanent title to the tenant at the time of their establishment. The indifference evinced by the Moplas in the matter of converting their kanoms into jenm holdings when they had an opportunity of doing so, at the time the jenmies fled to Travancore also goes to afford some illustration of the fixity of the kanom tenure as argued by the Commissioner. Further, the ancient form of a kanom deed contains no clause to stipulate for the return of the land although a panayam (an ordinary mortgage) deed

contained such clauses. If all the kanom deeds of the country be examined no covenant for the return of the land will be found in any of the documents executed prior to the publication of the Travancore proclamation on the subject in 1867. Here and there may be found some documents in which the parties took care to insert that no renewal fee had been received, and that the transaction did not therefore amount to a kanom; but if it once amounted to a kanom the parties did not stipulate for its return. The above proclamation declared kanom to be permanent tenure, but allowed the parties the liberty of contracting to the contrary. From the publication of this proclamation in the neighbouring Native State of Travancore, the shrewd portion of the jenmies of British Malabar began to see that so wise a policy for the encouragement of agriculture could not fail to attract the attention of the British Government and to become the law of the British Malabar on some day or other. They therefore began to insert a clause in the deed that the land is returnable on demand. Again, in all the complaints in suits for the eviction of kanomkars, the non-payment of rent or renewal fee or the misuse of the land would be found invariably assigned as the cause of action. All these circumstances strongly tend to prove that kanom was at least conditionally permanent at the commencement of the British rule in Malabar, and, as to the expediency of restoring this right to the tenure, I shall speak when I come to consider the eighth or the last chapter.

16. I fully concur in the Commissioner's opinion that the value offered by landlords or awarded by courts to the tenants for improvements effected by them in the soil of their landlords is inadequate, and that the award of their value at the current market rates appears to be the only remedy for the grievances of the tenants.

17. In the fourth chapter the first, second, and fourth sections remain to be noticed. In the first section, paragraphs 73 to 87 are devoted to preliminary observations on the condition of the agriculture and the agriculturists of the country, and although I have no special remarks to make upon them I cannot bring myself to think that the great bulk of the cultivators are mere coolies. The remaining portion of the section (paragraphs 88 to 97) relates to personal matters of the agriculturists. It is true that some of the cultivators are in debt, but what Government however patriarchal would be able to prevent its subjects from incurring debts. The tenants do not attribute their indebtedness to oppression on the part of their landlords. Complaints of having no house to live in and having no means of livelihood are entitled to some weight. Many tenants are evicted from their ancestral holdings, and it is rightly observed by the Commissioner (paragraph 159) that the light in which such evictions present themselves to a Malayali cannot be correctly judged of from the European stand-point of property. The cremation grounds for Nairs, Namburies and for many other classes of Hindus generally stand on the parambas on which their family houses are situated, and in many cases such houses and cremation grounds lie on kanom lands, their ancestors having established them there placing implicit faith in the permanent character of the kanom tenure, but the law as it now stands permits a capricious jenmi to eject them from such lands, and the feelings of the tenant at such evictions can better be imagined than described. *It is not the excessiveness of the rent that they complain of so much as their evictions from lands on which they as well as their ancestors had regarded themselves as settled.* The attachment of a Hindu to the place of his birth and to his ancestral lands is proverbial, and in the case of a Malayali this attachment is tenfold increased by this love for his house and for his relations and friends which reside in the place in which he was born and in whom now lies the power of tearing him away from his home, his friends, and his relations.

18. The fifth chapter deals with social matters and comprises paragraphs 98 to 100. I fully concur in the opinion of the Commissioner contained in these paragraphs. Mr. Logan has done much for the people for having lucidly and pathetically portrayed the sufferings of the hands of their Namburi landlords. The sufferings are by no means exaggerated. I know of one instance in which a Nair who had the misfortune to be the son-in-law of a Nambudripad was obliged to die unattended by his relatives and was buried in a temporary shed as he was not admitted into his own family house. His friends and relatives by the inmates of those houses lest the Nambudripad should be displeased with them. Another family was heavily

fined by him for a female member thereof having visited her own son at his last moments without caring for the excommunication pronounced upon the dying man. Compulsory divorce between his Nair tenant and his wife when the former has offended this jenmi is also of frequent occurrence. A comparison of the modern kanom deeds and their counterparts with those of the like kind executed prior to 1853 will at once satisfy any one of the immense power which the Namburi jenmies have acquired within the last thirty years. In the old deeds the Nambudripads contented themselves with being described simply by their proper names without the addition to them of any honorific titles, but the Nambudripads of the present day arrogate to themselves the royal title of tampuran which was formerly confined to the rajahs, and any omission to accord this title to them to which they have no manner of right is severally punished. A Nair jenmi has also lately assumed the title of tamburan, and this has caused no small amount of trouble to his tenantry, particularly to the brahmin portion thereof. It is true that the smallest show of independence is resented as being a personal affront.

19. I have no special remarks to make upon section 4. I do not, however, think that the trees are the property of the tenant. By law he has only a claim for compensation for rearing them, but the property in them is vested in the person on whose land they grow and consequently the tenants' complaints to which allusion is made in paragraph 213 are not entitled to much weight.

20. The fifth chapter is divided into three sections of which the first relates to individual jenmies, the second to religious institutions, and the third to the management of the estates. I have nothing to say regarding the first section except that the test used by the Commissioner for ascertaining the importance of the jenmies appears to me to be faulty. The size of lands varied considerably from each other, and the lands of a jenmi might be scattered in small numbers in several amshoms, while those of another might be lying in large numbers in fewer amshoms, and consequently the possession of 100 pieces of land in a given amshom cannot determine the importance of any particular jenmi as it cannot give any idea of his aggregate holdings. The acreage of the wet and dry lands which the jenmies possess would have afforded a clue to their importance.

21. The second section speaks of religious institutions. The origin and the history of the devaswams and the way in which they are administered have been already detailed in clauses *a* to *m* of paragraph 2 of the appendix A. The principal devaswams were the seats of former provincial Governments, and their property was nothing more than the public property of such Governments in which all possessed common interests and the uralers were the mere executive officers of those institutions. Here and there may be found some temples built and endowed by private individuals, but the majority of these institutions belong to the public; consequently the Commissioner's opinion that they belonged to private individuals appears to be incorrect. Further the decision of the Judicial Committee of the Privy Council in *Cherakal Rajah versus Kottayam Rajah* (I.L.R., Madras, page 235) has very properly negatived the so-called private property of the uralers in devaswams. Upon the model of our ancient Government the uralers were organized in a corporate body, and according to ancient law the consent of all the members of the corporation was necessary to disturb any existing state of things, and the eviction of their tenants was altogether unknown in former days. When other jenmies began to exercise their right of eviction, the uralers could not freely do so as the consent of all the members of the corporation could not be easily procured for the purpose. The devaswam tenant thus enjoyed an immunity for some time which his brethren did not command, but at later periods a majority of the uralers was thought by the courts to be sufficient to represent the devaswam, and upon their suits evictions were decreed against the will of the minority. Now, a single uralen is held by some courts to be competent to sue for ejecting tenants and for the recovery of devaswam property against the will of the other uralers, and this ruling virtually vests every uralen with the full powers of an ordinary jenmi, while the law intended to vest it in the body of which he is only a member. This new power is rigorously enforced by every uralen in exacting presents from the devaswam tenants

on the occasions of marriages and upanayanams in his house, and the difficulty of pleasing them all who are constantly at feud with each other is by no means small. In fact, the miseries of devaswam tenants have been lately increased in the same proportion as there are uralers in the devaswam. The practice of misappropriating devaswam funds by the uralers to their own private use has become rampant, and if the records of the courts of the district be examined it will be found that two-thirds of the litigation bears on devaswam property. It is therefore high time for the Government to place devaswams on a satisfactory footing. If they are unwilling to exercise acts of supervision over devaswams on the ground of religious non-interference they would do well at least to declare authoritatively that they did not deprive the native rajahs of their melkoima (advowson) or to institute a new authority to exercise this right on their behalf. Under any circumstance the tenants ought to be protected against summary evictions at the caprice of an uralen.

22. I have no remarks to offer upon the third section of the fifth chapter which speaks of the management of estates by their jenmies.

23. The sixth chapter deals with Government and official actions, and as they do not concern the subject of the present inquiry, I refrain from making any remarks upon them.

24. The seventh chapter adverts to the class dissensions and crimes. I do not dissent from the Commissioner's opinion expressed in this chapter. Class dissensions between Hindus and Muhammadans exist to a certain extent, and the increase in the number of eviction suits is the main cause of the increase of crimes in the country. I also agree in the Commissioner's opinion that the prime cause of the Mopla outbreaks is the oppression of jenmies. Eviction from his ancestral holding and the loss of the fruits of his industry in the shape of court costs and arrears of rent bring on despair to him which hardens his heart, and in this state of mind he readily listens to the doctrine of his religion that killing an infidel who has deprived a Musselman of his bread is a meritorious deed and ensures happiness in the next world. Life has become miserable to him in this world, and he then becomes anxious to put an end to it by committing an act which will secure happiness in the next world. Repressive measures may deter him for a time, but until the Government consent to restore the ancient rights to him he will not be satisfied and the cause of the outbreaks will not be removed.

25. I now come to the last chapter of the report in which is embodied the Commissioner's suggestions for remedying the existing evils. For the protection of small actual cultivators, he proposes first that an occupancy tenure should be created (the property of a single landlord) in respect of small holdings not exceeding twenty-five acres in case of grain crop land, and five acres in that of garden land, the rent being settled by the parties themselves and the tenant's share fixed at not less than one-third of the average annual net produce of his holding estimated in kind at the time of his entering on possession and the right of such a tenant to his holding being made permanent unless he mortgages, sub-divides or sub-lets his holding or makes any change therein with a view to cause wilful damage to the landlord, or unless the landlord for any reasonable scheme for utilizing the land for other purposes than agriculture or for improving the cultivation of his property require the land. Secondly, the tenant cannot transfer a portion thereof without obtaining the previous sanction of the landlord, although he can dispose of the entire holding on one lot. Thirdly, that the landlords should be compelled to observe the statutory conditions of making fresh arrangements with their tenants although they might resume their land and thus avoid the necessity of entering into any such arrangements with tenants.

26. For the purpose of determining the periods at which the proposed law should be made to be observed in contracts between land and tenants, the Commissioner divided the latter into nine classes. It is, however, necessary to notice their peculiarities as the period in respect to all of them cannot be the same, as the "time at which their existing engagements with the landlords come to termination." He further divides them as actual cultivators and as tenants between the proprietors and the actual cultivators.

27. With due respect to the experience of the Commissioner, I venture to observe that his proposal in this respect seems to be opposed to some of the fundamental principles of legislation, and the adoption of the proposal is likely to generate a state of things quite at variance with what is intended.

28. In the proposed legislation all classes of tenants (from virumpattom holder to a peruvartham mortgagee) are for purposes of the statutory tenure clubbed under the head of Actual cultivator. This grouping is opposed to the principles of the old law, and any analogy between the new and the old law is therefore out of the question. The proposed legislation would further run counter to the expectations of the people. A verumpattom tenant does not now expect his tenancy to be permanent any more than he expects to become the ruler of Malabar. There is even an adage in our language to the effect that no one can expect to be safe on the threshold, and on verumpattom land which pretty well interprets the expectations of the people. The Commissioner thinks that the one-third of the pattom spoken of in early records as the share of the kudian belonged to a verumpattom holder, and in support of his view he refers to the information obtained by Mr. Farmer (paragraph 225 of appendix I), to Mr. Reckard's settlement (paragraphs 225 and 226), appendix II, and Nos. 15, 16, 17, 23), to Mr. Greame's paimash (paragraphs 224, 260, *ibid*), to Mr. Warden's settlement of Wynaad (285, *ibid*), and to Mr. Conolly's settlement of Cochin (306, *ibid*). As for Mr. Farmer's information it is clear from his own account that besides his own one-third for profits, another one-third was allowed to the kanomkaran for the hire of tiyans and chermuers who were then attached to the land, and considered as part of the property of it in the same manner as cattle were the stock of the farmer. It is further to be remembered that slavery was not then abolished, and the actual cultivators of the class above alluded to were then viewed as being part of the farmers' own establishment, and were not entitled to any distinct recognition. It is clear that the kudian mentioned in Mr. Reckard's settlement was the kanomkar, and not a verumpattom holder. It is to be presumed that the term was therein used in the sense then understood by the law of the country. There can be no doubt that Kerala-Ulpathi was written before the commencement of the British rule, and in it in alluding to the enactment of kana jenma maryada (rules of kanon and jenm) the term kudian is defined as the holder of kanom (see clause 10, paragraph 2 of appendix A). Whenever a word acquires a technical meaning in connection with a science or art, besides its literal meaning, it should be presumed to have been used in the former sense whenever it refers to that science or art, and here the term had already acquired a legal significance, and it should, therefore, be presumed to have been made use of with reference to legal matters in its legal sense, and this presumption is further strengthened when we consider that all the members of the meeting which Mr. Reckard convened in 1803 with one solitary exception were the inhabitants of South Malabar, and that the word had reference to the then state of things in that part of the country where the cultivating kudian were at that time all kanomkars, and not verumpattom holders, seeing that even at the present day notwithstanding thirty years process of converting kanomkars to verumpattom holders has been carried on by eviction suits which are now twelve times as numerous as they were twenty years ago, the majority of the actual cultivators are still kanom holders (131 of the report). In paragraph 196 of the report of the Joint Commissioners of 1793, a kanomkar is mentioned as the cultivating farmer (paragraph 223 of appendix I). Moreover, the Commissioner's settlement of 969 (1793-94) on which Mr. Reckard's settlement mainly depended mentioned jenmi as proprietor and kamomkar as cultivator, and did not allude to verumpattom holders. On the above grounds I am inclined to think that the kudian referred to in Mr. Reckard's settlement as having been entitled to one-third of the produce was a kanomkar and not a verumpattom tenant. Mr. Greame's paimash admittedly proceeded upon Mr. Reckard's settlement, and he must therefore be presumed to have used the word in the same sense as it had been in the settlement, and the same remarks will apply to the use of the words in the settlement of Messrs. Warden and Conolly.

29. The different ways provided for enabling the landlord to resume the land and the restrictions placed upon the tenants' right of alienation while considerably lower-

ing his status invariably reduce the value of his property. Mortgaging, sub-dividing or even sub-letting his holding involves him in the jeopardy of losing his whole property in the land, and deprives him of the benefit of the improvements effected by him, because the landlord in such cases can at once resume the land apparently without even paying for the tenant's right and for his improvements. It is difficult to conceive the object of this restriction. If the object is to prevent the holdings from being split up, it is not possible to attain it without altering also the law of succession among Moplas, and tiyans according to which it will, under clause I, I think, devolve upon the sons and other heirs of the acquirer on his death, and they can then divide it in such shares as the law has prescribed. The sub-division is thus inevitable, and the restriction can only prevent the acquirer from making a division during his lifetime. The other restrictions are also harsh and unnecessary, and the amount of good which they are capable of producing is considerably less than the hardship which they will entail. Moreover, such vague expressions as "reasonable scheme for improving generally the cultivation of property and for non-agricultural purposes" will open a wide door to future litigation. Whenever a landlord wants to deprive his tenant of his right of permanent enjoyment he will not fail to hit upon some reasonable scheme for the general improvement of the cultivation of his land.

30. Lastly, the fatal objection to the proposed law is the uncertainty of its being acted upon. If the proposal be passed into law, as it now stands, there is not the slightest chance of its being carried into effect as its execution depends upon the will of those whose liberty it seeks to abrogate. I do not think that any jenmi in Malabar would be simple enough to come forward and self-impose an obligation upon him which could be easily avoided under the proposed law. Most of the jenmies will retain the holdings which under the new law will otherwise become permanent, and will not find the least difficulty in cultivating their lands either by means of labor or through their agents, and the supposed difficulty of cultivating tracts of land will not therefore compel them to enter into new engagements with their tenants. To defeat the object of the new law the jenmies have either to do the above expedient or to raise the extent of the holdings beyond twenty-five acres which they can easily do as it places ulu parambas (dry crop lands) on the same terms as paddy-fields. Such parambas are lying in large numbers in all the rice-growing taluks, and they are cultivated only at the intervals of 6, 8, 10 or 12 years. No consideration is bestowed upon them as objects of property that people have an implied license to cultivate them at their pleasure, without the sanction of the proprietor who only takes one-fifth of the produce whenever they are cultivated. They ought to have been entirely excluded from calculation in determining the independence of a cultivator. The proposed measure will, in my opinion, prove most disastrous to the actual cultivators whose interest it is intended to protect.

31. In these circumstances the restoration of the permanent right to the kanom tenure which it undoubtedly possessed before the commencement of the British rule appears to be the most suitable means by which the existing evil can be met. It has the merit of being consistent with the expectations of the people and conforming to the principles of utility. Even if the jenmi had originally reserved to himself the right of ouster, of which there is no evidence, it was found, as a matter of fact, that the alleged right had not been practically exercised, and that for generations the conduct of the parties absolutely and relatively had been such as to indicate the existence of a belief on both sides that the tenant would not be disturbed so long as he consented to pay the stipulated dues to his landlord. Upon this belief thousands of tenants occupied lands for generations, building houses, establishing burial-grounds on such lands, carrying out various improvements, and, in short, looking upon their tenure as being of a permanent character. In the case of Moplas and some Nayars who remained on their lands during the Mysore invasion, and who made settlements with the Mysore Government in respect of those lands, there are still greater reasons for re-establishing the permanent right of the kanom tenure. In 969 (1793-94) when the late Honorable East India Company took the country, their representatives

(the Joint Commissioners) assured these kanomkars that these lands would be secured to them and that the jennies would not be permitted to oust them from those lands (see paragraph 232 of appendix I). This assurance, though reduced into the form of an article of settlement, was subsequently lost sight of, the jennies being permitted to have free exercise of their new right of ouster in respect of those lands. When, however, the jennies made a move to redeem such kanom lands as have since been forfeited to them by rebellion, the Government, if I am rightly informed, relied upon the above article, although they did not allow its benefits to go to their subjects and refused to restore the lands. The Government was bound to maintain the distribution of property as it was then actually established, and in the discharge of that duty they made an express promise to these kanomkars to secure their lands to them, and the subsequent withdrawal of this security, I submit, amounted to a breach of that promise, and it can now be atoned for only by the re-establishment of that security.

32. I shall now consider whether there is any force in the objections urged against the re-establishment of this security. The first is the inconsistency of reversing a policy of ninety years' duration. I submit that mere antiquity is not a sufficient justification for the continuance of a practice which is admitted to be a deviation from the established law of the country. Moreover the practice of ejecting kanom tenants dates only from 1853 (see Mr. Wigram's Malabar Law and Customs, page 108), and it is not therefore of ninety years' standing. Even at the present day respectable jennies do not violate the old law of the country of according to their kanom tenants the right of permanent occupation on condition of punctual payment of purapad (net rent) and husbandlike cultivation. Moral sanction among them is still found sufficient to deter them from exercising the power of ouster. Even the self-interest-seeking class of jennies assign the infraction of one of the above conditions as a motive for their action which goes to prove that the power of eviction is an exception to the ordinary law. Further they do not generally use it for its own sake, but for some other purpose. I cannot see any force in the argument that we should perpetuate a law because we fortuitously committed it at first. The proper course, I fancy, is to get away with it as soon as the error is discovered and to give reparation for the wrong done. A breach of law, I think, cannot take the place of the law itself, especially if it is of a short duration. Thirty years' ill use of the power of ouster by a few landlords is only an attack upon the security of property which it is the duty of the Government to ward off. Its existence has not been sufficiently long and of universal character as to give rise to such expectations in the minds of the people as to form a basis of property, and its removal will not therefore cause any disappointment. Its continuation, on the other hand, will have the effect of ruining the middle class gradually, and of making a few great jennies and a multitude of verumpattom holders. The duty of the Government is to secure the greatest possible happiness to the greatest number, and in a country in which agriculture is the sole source of livelihood they cannot discharge this their important duty in a better manner than by establishing perfect security to the property of the cultivating classes. The Namburries and the higher classes of Nayars are jennies, and their interest lies in the insecurity of such property. The remaining classes of Nayars, the Moplas, with the exception of a few lower orders and some higher families of tiyans are all kanomkars, and they make up nine-tenths of the cultivators in the taluks of Ernád, Walawanád, Pálghat and Ponáni, in which seven-tenths of the rice-producing lands are situated. They constitute the great bulk of the industrious classes, and the re-establishment of the permanency of the kanom tenure will thus secure to the nine-tenths of the cultivators the fruit of their industry, besides ensuring the peace and prosperity of the country. In these circumstances there cannot be any doubt as to whose interest is to be sacrificed for the production of the greatest happiness to the greatest number, and the first objection is therefore entitled to no weight whatever.

33. The realization of about 30 lakhs of rupees by the sale of the Government's escheated jennm lands is the second objection urged to the re-establishment of permanency to the kanom tenure. This objection does not really exist, as the Government sold their lands mostly to their kanom tenants.

34. The third objection is the alleged unsatisfactory working of the scheme in the neighbouring state of Travancore. This unsatisfactory working, however, exists only in the imagination of some dissatisfied jennies. I was educated at Trivandrum, and I have many friends in Travancore, and have thus had ample means of knowing the feelings of the people of that country. They bear testimony to the beneficial working of the law. It is regarded as the greatest of the many boons which His Highness the late Maharajah conferred upon his subjects. Mr. Logan's stay at Trivandrum was but short, and his informant was most probably a discontented jennmi, as he says that it is the jennies who are the most dissatisfied at the action of the Travancore Government. There might be some agency at work to have the question again brought up for consideration. The Namburi brahmins believe that His Highness the present Maharajah is more religious than his late brother, and is therefore more impressed with the importance of the duties of a Hindu king, the foremost of which is the protection of brahmins, and they perhaps hope to regain the privilege which they lost in the last reign. It is, however, most unlikely that the Maharajah will consent to this to the detriment of the welfare of a considerable portion of his subjects. Whether the question be again brought up for consideration or not, there can be no doubt as to the satisfactory working of the measures at present, and this objection is also therefore entitled to no weight.

35. There is thus no valid objection to the re-establishment of the permanency of the kanom tenure, and I am glad to find that the district munsifs consulted are also in favor of the measure. Provision should at the same time be made for the punctual payment of the dues of the jennmi. Besides the annual purapad, he is now entitled at every twelfth year to a renewal fee at the rate of 20 per cent. on the kanom amount, and this should be allowed to him. A provision to the above effect will improve the income of respectable jennies as they do not now generally demand renewal fees at the end of every twelfth year. I do not enter into any further details of the scheme here, as I have reduced my proposals on the subject into the form of a bill which I respectfully beg to annex as appendix B to this letter.

36. The Commissioner's proposal to form a class of small gardeners by creating permanent occupation tenancy in favor of Government cowd-holders fully coincides with my views. The first option should, however, be given to the proprietor to reclaim his waste and pay Government tax, and if he is unwilling or unable to do so the land may be given to those who have a right to do so, and in this respect the proprietor has no just cause for complaint. The Government is a partner with him to the extent of half of the pattom, and they are therefore interested in bringing the land under cultivation, and as such have a right to give it out for cultivation. In the arrangement provision is also made for the payment of the jennmie's share of pattom to him, and the measure is thus calculated to benefit not only the Government and the occupation tenant but also the landlord.

37. The necessity of legislation for granting rent-receipts and for the creation of a body of quasi-attornies will be obviated if my proposals be adopted and the litigation itself will be reduced to a minimum when the law is made to accord with the expectations of the people.

38. The proposal for legislative recognition of the testamentary power of a marumakatayam person will be received with thanks by the members of our community, especially by the educated and the most intelligent portion thereof. The power of a person of marumakatayam community to regulate succession to his or her property is now placed upon an unsatisfactory footing. That we possessed the power of disposing of our property by will at the commencement of the British rule is clear from the fifth report of the Select Committee of the House of Commons on the affairs of the East India Company. At page 133 they said the "jennm lands become forfeited by acts of treason to the sovereign to whom it also becomes an escheat in the event of the proprietor or jennmkarn, as he is called, dying intestate and without heirs, but it seldom happens that land goes to the Government from the latter cause as the jennmakar has the right of adoption and of DEVISING HIS PROPERTY TO WHOM HE PLEASURES." The late Sadr Court had ruled that marumakatayam law is a branch of the Hindu law, and a

Malayali, like other Hindus, used to dispose of by will whatever property he could alienate by deed *inter vivos*, but some decisions of the District Court of North Malabar and a recent decision of the High Court, which is not yet reported, have denied the power to a marumakatayam person, and this has imbued the people with a sense of insecurity. The decision of the High Court, in criminal revision petition No. 80 of 1882, have created a similar sense of insecurity in respect of marriage rights also among our community. In disposing of an adultery case from South Canara, where a similar system prevails under the name of aliasantanum the Honorable the Judges alluded to the system of marumakatayam law, and observed that under both the systems marriage is barely a contract between man and woman to cohabit with each other, and certainly not an institution that fixes the status of persons to which alone rights can be attached; that the relation so contracted is, in truth, not a marriage, but a state of concubinage into which the woman enters of her own choice, and that she is at liberty to change when and as often as she pleases, and that it does not constitute such a marriage as is intended in those sections of the Penal Code which provides for the punishment of offences against the marriage right. In a civil case from North Malabar they, however, appear to have decided that a woman is entitled to be maintained out of the family property of her husband during the life-time of that husband. The law thus stands upon a slender ground at present, and no one can gainsay the importance of securing certainty in respect of all laws and particularly in respect of that law, which concerns a man's every day's life, and is thus most sacred to him. I therefore avail myself of this opportunity to submit a proposal for legalizing marriage among our community, which I respectfully request may be considered along with the Commissioner's proposal for recognising our testamentary powers. In this respect also I have reduced my proposals into the form of a draft bill, which I beg to attach as appendix C to this letter.

39. I am unable to support the Commissioner's proposal in respect of sites for mosques and burial-grounds, as it is opposed to the declared policy of religious neutrality maintained by Her Majesty's Government. If the permanency of the kanom tenure be established, no difficulty will, however, arise in procuring sites for mosques and burial-grounds. As a rule every Mopla enjoys a piece of paramba on a kanom of at least eleven fanoms (Rs. 2-8-0), and if the jenmi is prevented from recovering it on the tenants presuming to build a mosque thereon, the difficulty will not crop up. In this respect also it is most desirable that the ancient position of the kanomkar should be restored to him.

In conclusion, I regret the delay in replying to the Government Proceedings, and most respectfully beg that it may be overlooked.

ENCLOSURE.

APPENDIX A.

REMARKS ON APPENDICES I to XXI (Volume II) to Mr. Logan's Report on the Land Tenure of Malabar.

The first two chapters deal with the former history of Malabar, and, as the latter does not immediately concern the subject of the present inquiry, they call for no remarks.

2. The third chapter speaks of the collection of some ancient deeds and of the derivation of the words pattom, kanom and jenm. As I am unable to accept as correct the derivation and the meaning of these important words given in this chapter, I shall state in clauses 1, 10, and 20 of this paragraph what I consider to be the correct derivation and meaning of the words "pattom," "kanom" and "jenm," respectively, and, in order to show clearly what relation they bear to the other tenures, I shall give below an exhaustive list of all the tenures both ancient and modern. Instead of treating them from the highest to the lowest as Mr. Logan has done, I shall speak of them in a reverse order.

(1) Verumpattom or verumkoyu is the lowest tenure embracing leases generally given for wet lands with their currency limited to one year unless otherwise provided for. At the end of the term specified, the lessor shall be at liberty either to take back the land or assign it on a higher tenure to a third party, provided that in the latter case he does not let it upon an

equivalent title (*vide* Sadr Court's decisions for 1856, page 46), nor disturb the lessee in his enjoyment until the expiration of the stipulated period except when the lessee endeavours to set up a false title to the land or takes upon himself to commit such waste as tends to impair its value. In either of these cases an action for ejectment shall lie against the lessee before the expiration of the above period. As a rule no fee (*suchi*) is paid to the lessor at the time of the lease, but in the case of what is called pandara pattom lands (lands belonging to rajahs) a fee is paid by the lessee usually at the rate of one rupee for every para's seed area. By the payment of this fee the lessee acquires a right to hold for twelve years.

NOTE.—The etymology and meaning of the word "verumpattom" (വെറുപട്ടം) given by Mr. Logan do not appear to be correct as it is not of Dravidian origin, nor does it import an authority's share. It is a compound of two words verum (വെറു) = bare or empty and pattom (പട്ടം). The latter word is derived from the Sanscrit word bhatakam* (ഭടകം) signifying price paid for the use of anything, wages, hire, or rent. Dr. Gundert, who is cited as an authority by Mr. Logan, gives this as the first root of the word in his Malayalam Dictionary. It being a lease in which the lessee has only a bare title to cultivate without any money claim whatever to the land, and is required to go empty-handed when turned out by the lessor, the word "verum" (വെറു) is prefixed to the tenure to distinguish it from ubhaya pattom or kulikana pattom, in the former of which the tenant is entitled to ubhayam (interest), and in the latter he is authorized to hold on until the price of planting is paid off. It is not so ancient a tenure as jenm and kanom. Its first existence is due to the practice of the kanomkars letting out portions of their holdings on hire. All our deeds were written in a kind of Tamil character called vattaluthu. Its alphabet corresponds with that of Tamil, and the letter *z* (bha) finds no place in it, *z* (p) being invariably used in its stead. Thus the word bhatakam came to be written patakam which was ultimately changed into our modern patam or pattom, the letter *k* in the middle being dropped according to a rule of Grammar called *പാതകം ക്കുട്ടം*. It literally means "rented" or "hired," and we thus say the elephant was let on pattom (ആനയെപാട്ടത്തിന്നായി), or a house was given on pattom (ഏടപാട്ടത്തിന്നായി) and so on. Verumkoyu means a bare ploughshare. The old forms of deeds do not furnish one for verumpattom deed, nor are such deeds found among the old records of the country. From this it is inferred that the tenure is comparatively of modern origin. Kudians (tenants) mentioned in Mr. Reckard's settlement are kanomkars, and they do not rank among the tenants of this class.

(2) Kulikanom or kulikana pattom (the former originally applying to entirely waste land, and the latter to a piece of ground partly cultivated and partly uncultivated but now indiscriminately applying to both sorts of land) is a tenure by which the landlord lets out dry land or paramba to a tenant on condition of the latter's planting out the waste portion of the ground and paying a stipulated rent to the landlord. In former days a strict performance of these conditions secured to the tenant a permanent right of occupancy, but the tendency of the modern decisions is to regard it as a lease for twelve years. The holder under this tenure is entitled to the value of improvements he has effected on the premises demised to him, and the deed usually gives express authority to make kudiirippu (കുടിയിരിപ്പു) house-site, and kuyichuveppu (കുയിച്ചുവെപ്പു) making pits and planting therein. Even if it fail to make mention of this authority, the tenant has the inherent power to build and plant and as in the case of verumpattom the holder of an equivalent title is precluded from ejecting him. Kulikanom (കുലിക്കാനം) is composed of two words kuli (കുലി) pit, and kanom which will be explained hereafter. It is a tenure in which the cost of making pits and planting is viewed as being a kanom on the land.

(3) Koyu kanom or katta kanom is a lease exclusively of rice lands under which the lessee advances a sum of money to be deposited with the lessor. The lessee is not entitled to any interest upon the sum deposited, but is to get back the money when ousted by the landlord, or when he surrenders his possession of his own accord. This mode of leasing does not preclude the landlord from taking back the land at any time he pleases returning the deposit to the lessee. When interest is allowed on the deposit, the tenure is called either "munpattom" or "panayam" according to the circumstances of the case.

(4) Munpattom is a form of lease either of rice land or paramba (garden land) which requires the tenant to deposit with the landlord a sum of money equal to one year's rent for the said land or paramba. Under this tenure the lessee is allowed to deduct the interest upon his deposit from the rent payable to the landlord. Where no period is specified, the lease has to be considered as current for only one year.

(5) Achchu palisha (from achchu = printed or impressed and palisha = interest) or kudi-yirumpad (from kudi = house or tenant; irikam = sitting or remaining and pad = falling) is an arrangement in which the tenant is told off by his landlord to pay interest due by the latter to a third party from the rent payable by the tenant. There is, however, no privity of contract between the creditor and the tenant, and the former cannot therefore sue the latter upon non-payment, his remedy being against the landlord. By this arrangement a lien upon the landlord's interest is however created, and consequently the creditor can hold it responsible for the payment

* Bhata and ka-price = wages (Max Müller's Sanscrit English Dictionary).

of the interest and not of the principal debt in the event of the landlord becoming an insolvent. In some parts of the country, particularly in the Kottayam taluk in North Malabar, waste lands are sold outright, and the price thereof left with the purchaser who pays to the vendor a fixed sum of money as interest thereon. The land is responsible for the payment of interest, and the principal sum (viz., the purchase money) is never recoverable. Any advantage or disadvantage arising from the land entirely falls to the lot of the vendee, the vendor's right being confined to the interest fixed. The liability to pay it passes with the land. This tenure is called palisha (interest). It is evidently in this sense the word palisha is used in deed 34 in Mr. Logan's appendix I, enclosure 2. It is mistranslated by Mr. Logan as guards bearing shields. If the guards were to be known by the weapons they carry, the chief weapon (the sword) and not its concomitant one (the shield) would have been used to denote the persons carrying it. The word shield-bearer in the document is therefore obviously a mistranslation for the word palisha (പാലിശ).

(6) Panayam (പണയം pledge) or chundipanayam (ചുണ്ടിപണയം chundi = pointed out and panayam = pledge) is a hypothecation of rice land or paramba. The land is here pledged as security for the repayment with interest of certain sums advanced with reservation that the lender has no right to interfere with the management of the property. When the lender is armed with the power of taking the land into his own possession and to pay himself the interest out of the produce and to make over the balance to the borrower, the tenure is called todū panayam (തോടുപണയം) or a hypothecation with a touch or hold on the property. When a munyam (മുണയം) pledges the title-deeds of his land with another and borrows money upon their security, the transaction is called odanetti (ഓടനേറ്റി). This also creates an interest in the land because the pledge of the title-deeds of a land is deemed in substance the pledge of the land itself.

(7) Kari panayam (from kari = plough, and panayam = pledge) and koyu crakam panayam (from koyu = ploughshare, crakam = causing to descend, and panayam = pledge) is a pledge with possession. Under this tenure the borrower at once places the lender in possession of the land pledged, so that he may enjoy the interest on the money advanced out of the produce of the land. This tenure answers to the notions of an English mortgage and is redeemable at the pleasure of the mortgagor.

(8) Mel-pattom (mel = upper and pattom = lease) is a lease of the trees in a paramba exclusive of the soil on which they stand. It lasts only for one year unless otherwise stipulated, and it gives no interest in the land. When the owner of the trees makes over possession of them to his creditor and allows him to take their produce in lieu of the interest, the transaction creates a mel-anubha panayam. In this case also the debtor is at liberty to pay off the debt at any time and resume possession whenever he pleases.

(9) Undaruti (ഉണ്ടരൂട്ടി) from undu, the past tense of unnunnu (ഉണ്ണു) = to eat and uriti = end) is a mortgage to be held till the rents shall repay the sum borrowed. It corresponds to a vivum vadium or the Welsh mortgage.

(10) Kanom derived from the Malayalam word kanunnu (കാണുന്നു) = what is seen, visible or ostensible) was originally applied to that kind of holding which was visible to the world on account of its holder being in actual possession in contradistinction to another class of holding styled "jenm," the holder of which in ancient times did not cultivate his land, and was not therefore visible to the outward world. Kerala-Ulpathi, a Malayalam treatise on the origin and history of Malabar, written by Tunchet Ramanujan, who flourished in the 17th century of the Christian era and printed lately at the Basel Mission Press at Mangalore, alludes to the origin of these two important tenures in the following terms:—

"താറും സങ്കേതവും ഉറപ്പിച്ചതായതുകൊണ്ട് നായന്മാരെ കല്പിച്ചു, അവരെ കൊണ്ടു കരം കല്പനയും കല്പിച്ചു. അവകാശത്തിന്നു താഴെയും വീഴ്ചയും വരാതെ വരിവാലിയില്ല. കടിയാക്കു കീഴാശ്ശൂരും തങ്ങൾക്കു (ബ്രാഹ്മണർക്കു) മേലാശ്ശൂരും കടിയാക്കു കാണവും തങ്ങൾക്കുജന്മവും കല്പിച്ചതാണു ജന്മത്തെയും ജന്മം നടത്തി."

"Taras and sanketams were created and within the taras Nayers were established, and to them were given various offices of eye, hand, and command, and through them rights were preserved in their integrity. Kelayakur (inferior share) was decreed to kudyar (colonists), and melayakur (superior share) to themselves (brahmins), and the colonists' right was decreed to be kanom and their own (brahmins') right to be jenm, and thus the rules of kanom and jenm were enforced."

According to this work Parasu Rama, a brahmin hero, reclaimed the country, or at least was the first to discover the country newly formed out of the sea stretching from Cape Comorin to Gokarnam, and gave it to the brahmins with whom he peopled his new dominions, and for protecting the country he enrolled some of them as soldiers and gave them several privileges. These brahmin soldiers at a later period, wishing to return to their legitimate avocations, invited Nayers to the country to supply their places, and to this period the above passage refers. Tara has been so fully explained by Mr. Logan as to require no further explanation. By the side of these taras, sanketams or brahmin villages were established, and they were exclusively under brahminical rules. Sanketam is a word signifying appointed places. They somewhat answered to the English pales in Ireland. The taras were under the government of the Nayers, and in respect of them they enjoyed privileges similar to those which the brahmins had in their sanko-

tams. "Eye" in the above passage means a right to look into the affairs of the state; and "hand" a right to manage them. The Nayers were, however, men introduced into the country for the protection of the brahmins who wished to devote their whole time to the observances of their proper religious duties, and in order that both parties might be enabled to perform their appropriate functions, the ownership of the land was divided between them. The class of men born in the country retained the superior share which amounted to two-thirds of the rent, and the residue was carried out and given to the kudian, viz., a stranger, who had come to inhabit the country. The estate of the former was called jenm (birthright), because it was a right accruing from birth, and the other was styled sanom, because it imported visible or ostensible ownership as its holder alone was known to the outer world as the proprietor of the soil. The superior share was, moreover, inalienable at first, as it was the sole means for the performance of religious acts on which the prosperity of the country was believed to depend, and on this ground also the right to the superior share was called jenm, as it was to continue to its holder during the whole period of his life. The operation of this rule against the jenmi's right of alienation, like other rules of archaic societies, was found to generate inconvenience, and consequently he was at a later period permitted to borrow money from the kanomkars on the security of his two-thirds share in the land, so that the tenure happened to partake of the nature of a mortgage. Interest at a low rate was allowed on the sum advanced, and the residue still paid to the jenmi. At this time a revolution took place in the country which, to some extent, altered the character of this tenure. Brahmins could not agree between themselves as to the selection of their rakshapurushan (protector) as the executive officer of their government was then called, and after much consideration the brahmins resolved to select one from abroad, and for this purpose they proceeded to Coimbatore and fixed upon one Keya, whom they brought to the holy city of Tirunavaya, and there proclaimed the perumal of Malabar under the title of "Cheraman Keralan." According to their original engagement with the perumal he was to rule only for a term of twelve years, at the end of which he was to retire into private life or leave the country altogether. The installation of the first perumal happened in Pushya (8th lunar asterism) in the month of Magha in Karkdaka Viyalum (the period in which Jupiter was in cancer) which from the name of the kali given in the work has been ascertained to correspond with A.D. 216. This day in every cycle of Jupiter thus became important in the history of Malabar, as the reign of every perumal terminated on that day. This event was commemorated by means of a great feast, at which all the nobles and the principal inhabitants of the country were present. For twenty-eight days they were entertained, and on the last day the retiring perumal appeared before the assembly and laid down the sword of state. The assembly then declared the throne vacant, and another was elected and installed as perumal. This day was known as maha magham or mamangam, meaning the great magham. At the conclusion of these feasts all the prior alienations were thought to be at an end and fresh grants were obtained. In this respect the mamangam of Malabar resembled the Jewish jubilee, and this is the trace of the modern rule of twelve years' enjoyment in kanom demises. It was a rule originally introduced for the benefit of the jenmi, and not for the advantage of the kanomkar as is now erroneously supposed. The kanom was originally as permanent as the jenm, and upon the theory of all property reverting to its original owners, the kanom holder was obliged to take out a renewal from the jenmi on payment of a small fee which represented the amount of loss sustained by the latter in using his iron style in writing a fresh deed. This fee was therefore called suchi or the point of the iron style. With the doing away with the office of perumals, the renewals at the end of every twelfth year disappeared, but the jenmies did not altogether give up their right and insisted upon taking a renewal fee upon the death of the demisor. This was the origin of what is called purushantara polichaluthu, to which the tenure was subject when the British took the country. In many respects the tenure resembled the Roman emphyteuses, and considering that we had intercourse with European nations much earlier than any other nations in India, it is possible that we borrowed our legal ideas from Romans, whose civil organization had then attained a high degree of perfection. Our tarwad resembled their gens, and our karnavan, their paterfamilias, our bhara devatas, their tutelary gods and many other things, and it is not therefore unreasonable to suppose that our jenm and kanom were either borrowed from their dominium and emphyteuses or at least remodelled on the principles of those tenures. Kanom was then a permanent tenure in its origin importing ostensible ownership, but subjecting the holder thereof to the obligation of paying over the jenmi two-thirds of the rent and of using the land made over to him in a husbandlike manner. It gradually assumed the character of a mortgage when the jenmi resorted to the practice of obtaining money from the kanakarn either as a deposit for the due payment of two-thirds or as a loan upon the security of that share. It then became subject to renewals at the end of every twelfth year on payment of small fees, and at a later period one renewal was to take place during the life-time of the jenmi on payment of a fee, which at this time amounted to one-fifth of the sum already advanced to the jenmi. After the British had assumed the sovereignty of the country, it was for some time regarded as a simple mortgage, but at present it is viewed as a mortgage with a term of twelve years' enjoyment. The incidents attached to kanom at the present day are fully set forth by Mr. Logan in the appendix I annexed to his report, and they therefore require no further comment. There is, however, nothing in our history, literature, or tradition to justify the assumption that kanomkars were originally protectors' guild and not cultivators. His theory proceeds upon certain passages in the deeds 3 and 4. In deed

3 the word kanom does not occur. The "six hundred" therein mentioned are probably the members of a clan to which a neighbouring village belonged. In ancient times the authorities of the neighbouring villages were usually called upon to attest sales and to recognise the purchaser, and "the six hundred" appears to have been mentioned in the deed in this character as they appear among the neighbouring lords. I have seen certain documents relating to the Trikanayavu and Keyur Shastavu devaswams in the southern part of the Kásaragóð taluk in which "the 500" have been mentioned as having been consulted because the devaswams formerly belonged to a clan of 500 Nayars, and in like manner whenever a devaswam or deshom belonged to a body of persons, it was customary to mention simply the number of persons of whom the body is composed, and sometimes only such number as was sufficient to form a quorum for the transaction of business. I have seen several such documents connected with the Tali-paramba devaswam in Chirakal taluk in North Malabar, and also others relating to other corporate bodies. The document 3 therefore does not support the theory that the kanomkars were originally protectors' guild. In deed 4 also the 600 are mentioned as the body guard of the Raja of Ramalvamad (probably Ramanad) from whom the Charnad Raja appears to have obtained the Tirumannur devaswam on kanom. The document is mistranslated at least in one respect seeing that madhu (which means here, honey) is rendered as good liquor, which is never offered to Vishnu, the presiding deity at Tirumannur. If the word kolavalan or keralavalan found in this deed stands for kulambam, which signifies the kollam era, or more correctly an era of which kollam is the mother, the year of this document is 396 M.E., corresponding with 1221 A.D. In astronomical language edir means *minus* and 4 *minus* (edir) 4 means four centuries *minus* 4, which means 396. There is nothing in this document to support the idea that kanomkars were mere protectors, overseers, or superintendents. The idea is quite novel, and evidence of an unimpeachable character is necessary to establish it, whereas the evidence brought forward scarcely deserves the name. Probably Mr. Logan might have elsewhere read that a body of persons called kanomkars existed in Malabar, and that their functions were those of protectors' guild. The two words, though written alike in English, are written differently in Malayalam. The word signifying protectors is written with short (a) after (k) as കമ്മക്കാര derived from the Sanskrit word ganakar (गणक). They were a body of armed men quite distinct from the kanomkars. A short account of them is found in the fourth chapter of the above-mentioned Kerala-Ulpathi (pages 40 to 42). Dr. Gundert in his dictionary (page 196) speaks of them as an assembly of armed brahmins meeting in a brahminical temple to consult on Government affairs. To convene them was one of the four special privileges of a rekshapurushan (protector). There were also Nayar kanomkars (കമ്മക്കാര), and Mr. Logan has very probably mistaken this body of persons for kanomkars of the soil.

Melkanom is a mortgage higher in amount than that already subsisting upon the land; should the landlord desire to raise a further sum of money on a land already demised on kanom, and if the first kanomkar were unwilling to advance it, the former would be at liberty to demise it to a third party upon a mortgage of a higher amount, which is styled melkanom or a higher mortgage. The estate of mel-kanomkar will commence at the termination of the first kanomkar and last for twelve years from the date on which he obtained, or might obtain, possession from the first kanomkarn. This tenure appears to have come into use only after the British acquisition of the country as no prior melkanom deeds are found in the country.

(11) Kettiadakam kanom is a mortgage in which the interest upon the sum advanced absorbs the whole rent payable on account of the land. It does not, however, amount to an otti mortgage, which secures to the mortgagee the right of pre-emption. This mortgage also seems to be unredeemable before the lapse of twelve years from its date, but the jenmi is under no obligation to make the first offer to the kettiadakam kanomkarn when he disposes of the jenm right. In other respects this species of mortgage corresponds with a kano mortgage.

(12) Puremkadam (from purem = besides and kadam = debt) is a further loan which a kanomkar makes to a kanom mortgagor on the security of land already demised to him on kanom. It often takes place simultaneously with the kanom mortgage, in which case it is referred to in the kanom mortgage deed. Sometimes it is effected long after the kanom demise. In either case it is quite a separate transaction, and the landlord engages to pay off the debt quite independently of the kanom. The loan thus made gives the kanomkar an additional lien upon the property as security for the payment of the loan. The interest allowed upon the amount of this loan is generally higher than that allowed for the kanom, and the amount is not to be taken to account in calculating the renewal fee usually payable to the landlord at the end of every twelfth year.

(13) Otti (from covered or concealed), palishamadaka (from palisha = interest and madaka = that which is overcome), varimadaka (from vari = subscription or tax and madaka = that which is overcome), nerpalisha (from ner = right or equal and palisha = interest), or vepu (that which is placed) is a usufructuary mortgage in which the whole produce goes to the mortgagee and the landlord merely retains his jenm right. The sum advanced upon this kind of mortgage is so large that its interest is equal to the rent assessed upon the land, and in this respect it

amounts to the full value of the land. This mortgage like a kanom cannot be redeemed before the lapse of twelve years from its date. An otti in fact differs from kanom only in two respects, viz., first in the right of pre-emption which the otti holder possesses in case the jenmi wishes to sell the land, and, secondly, in the amount secured, which is generally so large as practically to absorb in the payment of interest the rent that would otherwise have been payable to the jenmi. After the grant of the otti, little or nothing is left for the jenmi, who, in token of his still possessing the jenm, is entitled to take only ten cocoanuts and one jack-fruit annually if the subject-matter of the otti be a paramba, and eleven sheaves if such subject-matter be a nilam or rice land. This is called jenmabhogam or the proprietor's share. An otti holder, like a kanomkar, forfeits his right of twelve years' enjoyment and also his right of pre-emption by denying the jenmi's title or otherwise acting against his interest. Otti also means engrafted as if it were an engrafted ownership upon jenm.

(14) Ottikkumpuram (besides the otti) is a further loan which an otti-holder makes to the jenmi upon the security of a land already demised to him on an otti mortgage. It must always co-exist with an otti mortgage and should reside in an otti mortgagee.

(15) Jenma panayam. Where a jenmi assigns to a stranger a land already demised on otti upon the otti-holder's refusal to make a further advance, the transaction is called jenma panayam or the pledge of the jenm.

(16) Peruvartham is an otti mortgage in which the sum advanced by the mortgagee to the mortgagor is, as a rule, not mentioned in the deed, and the landlord in redeeming the property, instead of repaying the sum originally advanced to him, pays the full market-value of the property, which it is capable of fetching at the time of the redemption. In other respects the same rules which govern ordinary otti mortgages are equally applicable to peruvartham mortgages.

(17) Kaividuka otti literally means an otti allowed to slip out of one's own hand. Thus the word itself is strongly expressive of the nature of the tenure. After the grant of this tenure, the jenmi is not at liberty to redeem his land. The power of redemption has slipped out of his hand, as it were, and as he still retains his jenm right, he is entitled to the first offer in case the tenant wishes to dispose of the land. The jenmi is then entitled to get back the land on repayment of the money he originally received from the tenant. In this respect the tenure might be considered as an otti mortgage. The right of redemption being however one which the jenmi cannot enforce of his own will, and solely depends upon the contingency of the tenants being obliged to part with his estate, the jenmi's chances of recovering his land back are very remote, and in this respect the holder of kaividuka otti may be considered as the proprietor. If the jenmi be unable or unwilling to repay the amount and to recover his land, the tenant is not precluded from disposing of the land to a third party in the same manner as he purchased it. The vendee stands exactly in the same relation to the jenmi as the vendor, and he is, therefore, in case of his being compelled to sell the land, liable to give up the land to the jenmi on receipt of the original sum advanced by the vendor, if the jenmi offers to pay it. In this manner the land may be transferred as often as the parties think fit, and at every transfer an opportunity of resuming the land on repayment of the original amount presents itself to the jenmi. Whenever the jenmi chooses to part with the entire jenmi he must make the first offer to the holder of kaividuka otti. To distinguish an ordinary otti from this tenure, the former is often called kaivida otti (കൈവിടാ) i.e., an otti which has not slipped out from the hand, but this prefix is generally omitted, and the word otti when used without a prefix is deemed to be an ordinary otti redeemable after twelve years from its date.

(18) Nir-muthal (from nir = water and muthal = property) is the last tenure to which the jenmi may have recourse without parting with the chance of getting back his land. After the grant of this right the jenmi retains only the property of water or more plainly the right to receive a certain fee which is generally a few fanoms for pouring water into the purchaser's hand which completes an outright sale. All the rules which regulate a kaividuka otti are equally applicable to this tenure, and in some parts of the country the tenure is known as kudime nir.

(19) There are several kinds of perpetual leases, such as karamkari (കരംകാരി), jenma koyu (ജന്മകയു), karaima jenm (കരൈമ ജന്മ) and kudima/jenm (കുടിമ ജന്മ). All these tenures are sometimes known by the general name of shashvata avakashom (ശാശ്വത അവകാശം) adima, (അദിമ), kudima (കുടിമ) and anullavam (അനൂലവം) also come under the category of permanent leases. They have however become obsolete with the exception of karam kari and jenma koyu in which the position of the tenant is not much better than that of a verumpattom tenant in respect of the produce, but his right of occupancy is permanent, and the rent is fixed once for all and cannot therefore be increased at any subsequent period. The answer to the mulageni of Canara.

(20) Jenm is a Sanskrit word which literally means birth or the time one birth is to last. When used in connection with land it denotes one's absolute freehold property in land. Mr. Logan's opinion that the word came into use only in the eighteenth century is contradicted by the ancient

deeds 1, 2, and 3, whose dates he puts so far back as the eighth century. According to our tradition and history it came into use at least when the enjoyment of land was divided between the Namburi brahmins and Nayars. The Namburis had come first and Nayars were either invited by the Namburis or introduced by Parasu Rama himself to assist the former in defending their country and to cultivate the soil and supply means for the support of the priestly class. The sum and total of the rights of the natural born inhabitants of the country was expressed by the word "jenm." To the notion of jenm was opposed that of possession which imported ostensible ownership (kanom) as explained in clause 10 *supra*. Mr. Logan thinks, however, that the Nayar preceded the Namburis, and this opinion he bases on the non-appearance of any Namburi brahmin among the attesting witnesses to the deed No. 1, while two brahmins of Panniyar and Chowram divisions have attested the later deed No. 2 with Nayar chief. It is scarcely necessary to observe that the non-appearance of brahmins as attesting witnesses in a certain deed, however important it might be, is no valid ground for presuming that they did not exist at the time in the country, and the evidence derivable from this single fact is, therefore, I think, insufficient to disprove our history and tradition. Moreover the date of the deed 2 is found to be older than that of the deed No. 1. Mr. Shaugunni Menon, the Historian of Travancore, has, at page 45 of his history, by means of astronomical calculations, fixed the date of the deed 2 at 230 A.D. This agrees with the date assigned to it by Mr. K. Kulu Nayar, late Principal Sadr Amin of Calicut (M.J.L. and S.V. No. 9). By dint of astronomical calculations we seldom fail to arrive at the correct date from a given phenomenon. The date of the deed 1 is fixed at 381 A.D. by the same calculations. If the dates given above are correct, the whole argument of Mr. Logan falls to the ground. Happily the fact has not much to do with the subject of the present inquiry. Whether the Nayars preceded or succeeded the Namburis, there was an understanding between the two classes of people as to the enjoyment of landed property, and the rights of each party were then well defined and known by distinctive names. The European tenure to which the jenm bears a close resemblance is allodium. It is a man's own land which he possesses merely in his own right without owing any rent or service to any superior. From the appearance of the words kopathavaram and putipatavaram in the deed No. 3, Mr. Logan infers that lands in Malabar were not allodial (paragraph 113 of appendix I). Clause (i) of the deed 3 in which the words occur taken together with clause (l) of the same deed shows however that the tribute was paid as a fee for protection and not as a consideration for the use of the land. The grantee could withhold the tribute if any injustice was done to his people which he could not have done if the same was assessed upon land. It was agreed to be paid more as a subsidy in case of the help promised being rendered than as rent. Putipatavaram is a village cess not necessarily fastened upon land. Pati is mistranslated by Mr. Logan as overlord in deeds 3, 12, 13, 14, and in other parts of his report. It means a town or village. The phrase "with the knowledge of ayal (അയൽ) and pati (പതി) means with the knowledge of the neighbourhood (i.e. the chief inhabitants of the neighbouring village), and the village or town (i.e., the like people of the village or town in which the document is executed). The mistranslation of the word pati appears to have greatly influenced Mr. Logan's conclusion that the jenm of Malabar bears no resemblance to the European allodium. This rendering of the word attiper into water contact birthright is also erroneous. It is derived from ati (foot) and ver = root. By a rule of grammar "t" becomes inflected and "r" changed into p and the word becomes attiper which means the tap-root. It is equivalent to the Canarese muli, and Sanserit mulam (मूलम्) which also signifies "root." Some suppose that the word is composed of atti (layer) and por (birth), viz., what is laid up by birth. It does not mean contiguity or closeness, and pouring water is a ceremony which subsequently came to be observed in sales purely to overcome a religious scruple. As already observed, jenm or attiper was originally inalienable. The title which birth vested in a man continued to reside in him during his whole life, and its alienation was thought to be highly sinful. To make a gift was, on the other hand, a virtuous act recommended by the shastras, and consequently in the hope of getting rid of the sin arising out of the sale, the seller went through the ceremony of making a gift. The leaves of the holy tulasi and consecrated raw rice were put into a givdi, and the seller poured out water therefrom repeating at the same time "all rights in me have by this been extinguished and passed to you." This is the ceremony observed in a gift, and it has been introduced into a sale simply to give the transaction the color of a gift, and thus to excuse the minds of the seller of religious scruples. It was not even in old days one of the essential ingredients of the transaction. Mr. Logan's opinion that in ancient times the perumal alone could create jenm rights and that the perumal was the emperor or chakravarti of Malabar seems to be based on a pure assumption. According to Kerala-Ulpathi jenm property was instituted in Malabar long before the creation of the office of perumal. The people organized a form of self-government, and the land was distributed among the members of these organized bodies in small lots, and the fact of every bit of land possessing a name is attested by the fact. The brahmins were divided into sixty-four villages, and for the purpose of government four villages, viz., Perinchellur, Panaiyur, Paravur, and Chengaliyur, were authorized to represent the sixty-four villages. They were designated kayakams, the members of each kayakam possessing the power of electing an officer styled avarodha nambi (അവരോധനമ്പി) to represent them separately. They jointly elected a president styled rekshapurushan (പ്രൊटेക്ടർ), with whom the nambis sat and transacted all state affairs. They continued in office

only for three years at one time. The president had no power to make laws, his authority being restricted to the execution of the law enacted by the members of the kayakams and interpreted by their representatives. At one time, as stated in clause 10, disputes having arisen at the election of their rekshapurushan, they at last determined to go abroad and choose one and appoint him as perumal (or great personage) of the country for twelve years. He was a mere executive officer. He too did not possess the power either of enacting any law or of trying any case not referred to him for the purpose of adjudication. He was more like the president of a republic than an emperor. The office was at a later period discontinued, the people reverting to the old practice of choosing one from among the natives of the country. At this time the officer elected was to continue in office for a term of twelve years like the perumals. This system of government was again found unsuitable and was given up, the brahmins on this occasion proceeding to Anagoondy (Vijayanugur), where they requested the rajah of that place to give them a perumal to rule over Malabar. He complied with their request, and the second set of perumals were thus his viceroys. The first set of perumals were the governors or presidents elected, and were the executive officers of the brahmins. It does not appear that they had much power over the Nayars who had their own mannus (അട) or mukkalvattoms of taras, where their elders (karnavans) met and transacted business. The mannu and mukkalvattoms resembled the Roman forums. The seat of a mukkalvattom was generally the temple of Bhagavati (goddess), and its jurisdiction as a rule extended over an area of three Malabar leagues, and from this circumstance it took its name (mukkal = 3 leagues and vattom = circle). The offices of rekshapurushan (protector) and perumal (great personage) were created long after the organization of the society and the institution of private property, and therefore it is that the doctrine that all the lands are held under the head of the state and that he is the paramount lord of all landed property in it does not obtain in Malabar. His revenue is well defined, and all property which does not come under those definitions belonged to private individuals. He could possess private property just as any other individual, but his rank did not carry with it any special privilege in this respect. He possessed both jenm and kanom lands, and for the latter kind of lands he paid purapad to the jenmi in the same manner as any other ordinary kanomkar. As a striking instance of this rule, the site of the palace of His Highness the Zamorin Maharaja Bahadur may be pointed out. His family house is mostly situated on a land which his family holds on kanom from the Tiruvannur devaswam mentioned in deed 4. His ancestors were the most powerful among the Malabar rajahs; if they only liked it they could have built their family house on their one jenm land or usurped the devaswam land on which their house stands, as persons of their position have done in other countries. But in Malabar a person however high in rank did not venture to violate the established customs in former days. The expression "demesne lands" used in Mr. Logan's report is misleading. It will imply the idea that more lands belonged to the rajahs, and that some were kept by them for home cultivation and the rest let out to other people. Here, however, it must be remembered that the lands did not originally belong to them. They acquired them by purchase, gift, &c., like other people, and at no time did they themselves cultivate them. The entire land were demised on kanom or other tenures. They were the lords of the people and not of the soil, and the possession of lands did not necessarily carry with it any political power. Their cherikals stood precisely on the same footing as the kalams of private individuals; neither paid any tax before the time of Hyder Ali, and both were assessed during his time and subsequently. The tians (toddy-drawers), carpenters, blacksmiths, &c., possessed no interest in the soil as supposed by Mr. Logan (paragraph 100 of appendix I). But each desom had its own toddy-drawer, carpenter, blacksmith, goldsmith, oilmonger, &c., and the villagers could not engage the services of any other toddy-drawers, &c., than their own. In the same manner each desom had its barber, washerman, &c., and the villagers could not employ any other barbers, washermen, &c.; but, notwithstanding this restriction, the latter could lay no claim to any interest in the persons to be shaved or the clothes to be washed, and in the same manner the toddy-drawer did not possess any interest in the land from the trees of which he drew toddy. Karaima (from kara = to do) no doubt imports permanency, but not a trust as supposed by Mr. Logan in paragraph 103. It is used in connection with some office as we call the karaima rights of pagoda servants when they have permanent rights such as those of sweeping and cowdunging the pagoda and of making garlands for the idol and of performing other services. It originally implied a base or subordinate service. It is in this sense that the toddy-drawer, carpenter, washerman and vallalan are mentioned in clause (c) of the deed 3. The ilawan was not the planter or cultivator of the palm-trees, but the drawer of toddy therefrom, and the foot-rope and the ladder signified the climbing up the trees for the purpose of drawing toddy rather than for planting and cultivating them. The right was permanent in him, and it was therefore termed karaima. The varakol (വാരകോൽ) of the deed 3 which is translated as "share staff" was probably vara kudil (വാരകുടീൽ), i.e., the abode of a semi-slave or servant who worked for life or for a long term of years for advances received. There is nothing in the deed to warrant the supposition that the earnings of the lower classes were put together and divided by the holder of the share staff (paragraph 101). In many instances the jenm title to many lands in a desom and desadhipatyam (presidentship or headship of the desom) resided in one and the same tarwad, and in such instances the right to the office was also sold with the lands if the vendee was not otherwise disqualified to hold the office, but there was nothing to prevent the rights from being made the subjects of two sales, while no instances are

known in which the right of desadhipatyam was made the subject of a kanom. When a desom is mentioned as being sold it means the sale of all the rights and privileges and such lands as the seller had in it, and it by no means follows that the whole lands situated in the desom belonged to the seller, and that they are sold by him by the deed. The expression means simply that such lands as he possessed in the desom with its concomitant rights are sold, and no stronger proof can be given of the oppositeness of this meaning than by referring to the earliest partition decree in Pataikava Nambudripad's case, in which the shares allotted to each branch were described by desoms in which several jennis, other than the Nambudripad, possessed jennm property. The jennm did not therefore necessarily signify any political right although it mostly resided in those who possessed such rights, and Major Walker and other earlier European authorities were therefore right in viewing the jennm as allodium and dominium, and there is nothing in the early deeds 1, 2, 3, and 4 to justify a departure from their view.

(a) Property is sometimes called after the purpose for which it exists. Lands set apart for the maintenance of the stanom (position) of a rajah or chief are thus denominated stanom property. The property is emphatically the property of the position and not of the individual who holds it. He has only a life-interest in it, and cannot therefore alienate it except in cases of the gravest necessity and for the sole benefit of the stanom. It rests with the alienee to show that some imminent pressure, arising from circumstances over which the stanom holder had no control, necessitated the alienation. Stanom lands may be jennm, kanom, or otti according to the tenure on which they are held by the stanom holder.

(b) Property set apart for the maintenance of deva (deity) is called devaswam. Devaswams are of two kinds, viz., uralente devan (the uralen's deity) and devante uralen (the deity's uralen).

(c) The first is a private institution in which both the idol and the property with which it is endowed are the private property of the uralen.

(d) The second class of devaswams is of a public character, being originally founded by Parasu Rama or subsequently by the rajahs or village communities with public funds. The right of nominating uralens to a devaswam of this description usually vested in the rajah of the nad in which it is situated and is termed melkoima. It is analogous to the English advowson. It does not entitle the holder thereof to the bodily possession of the devaswam, but is a right to give some other person a title to such possession. The practice of presentation, institution, and induction was, however, unknown to the common law of Malabar. By a mere deed of donation by the melkoima the persons to whom it was made became the uralers, and in them the freehold of the entire devaswam became vested. Melkoima is composed of two words, viz., mel = over or above and koima = an authority or power, and it literally means supervising authority. Before the acquisition of the country by the British, the rajahs, as melkoimas, exercised acts of supervision over the devaswams, and checked the unwarranted dissipation of devaswam property and compelled the uralers to apply the income of devaswams to their appropriate purposes. The courts have decided that the right of melkoima passed from the rajahs to the British Government with the sovereignty of the country, and that they have therefore no right to superintend those institutions, since they have ceased to be sovereigns. The Government have, on the other hand, declined to exercise this right and even refrained from providing an authority to supply their place in this respect. The result has been disastrous to the country to which I shall advert hereafter.

(e) Uralen (from uru = village or town and aluvan = ruler or manager) was originally the manager of a village. Each village circle had for its trysting place a temple, and in the case of Nayars, the elders or karnavans of four principal tarwads and the desadhepathi met there and transacted the affairs of the village in the same manner as the perumal and the four taliadries (the representatives or members of the four kayakams mentioned in clause 20) did. For the support of the members during the term of their meeting and for the maintenance of the temple, a village-cess was first raised, and at a later period the temples were endowed with property, and the managers of the village became the managers of the temple also. Hence the managers of temples became to be known by the name of uralers, and the same term was likewise applied to the managers of other temples. The right of an uralen is termed uraima, and his position resembles that of the parson of an English church, but uraima is invariably vested in families and is hereditary, its exercise being confined to the head of the family. The uraima of the devaswams of the second class seldom resided in a single family. For the security of the due management of its affairs the right of management was jointly settled upon several families, and they formed themselves into a corporation, sole, the act of the majority being binding upon the whole body. The entire freehold of the devaswam vests in this corporation, and in this character the uralers are regarded as proprietors.

(f) To guard against dissensions and consequent mismanagement, the uralers, as a rule, appoint a manager who is styled the samudayam (a word which signifies the whole) from the fact of his representing the whole uralers. He is entitled to demise lands on temporary leases and renew old kanoms, but he is debarred from assigning them on any permanent tenure, much more from selling them. He used to sue and to be sued on behalf of the devaswam, but the High Court have lately decided (L. R. Mad. II, page 167, and Ibid IV, Mad. page 142), that a

samudayam cannot sue on behalf of a devaswam. When the office of the samudayam is hereditary, it is called jennma or karaima samudayam.

(g) When the functions of the manager are limited to the collection of rent and to the general superintendence of the ceremonies, he is called a pattali, who, however, has no right to demise devaswam lands on kanom or to let them on temporary leases.

(h) Shanti is the ministrant priest or worshipper of the temple. His duties are to perform pujahs and make offerings to the idol. His office is purely of a religious character, and for its performance he is entitled to a percentage of the things offered in addition to a fixed salary. There are generally two of them attached to every large temple. In some cases the office is hereditary and is then styled jennma shanti, the holder whereof cannot be removed from office except for certain irreligious acts or loss of caste.

(i) Kayakakkars are the servants of the temple. The services they have to perform are generally base, such as cleaning and cowdunging the precincts of the temple, to make garlands for the idol, to watch the temple and its treasury, to carry the image in procession, and to perform similar other services. The highest of them, akapoduval, sometimes acts as ministerial servant. When the office is permanently settled upon them and made hereditary, they are styled karalers. A karalen cannot be removed from his office except for some grave offences or for loss of caste, but he may be fined by the uralers and their representatives the samudayam, but not by a pattali. A kayakakkaru, whose office is not hereditary, is called an atta (attotter) kayakakkaru. The kayakakkars, both permanent and tottering, are entitled alike to fixed salaries, and a percentage of the offerings which latter varies according to the special custom obtaining in each temple. When the office is rendered hereditary, it is usual to attach some lands to it, their produce being the salary for the karalan. The tenure then takes the name of karaima, and the right of the incumbent to enjoy the land depends upon his duly performing the services in the temple. The interests of a karalan may be alienated with the previous sanction of the uralers (III. M. H. R., page 380).

(j) Akakoima is the officer who keeps order within the temple. He is to give orders for the commencement of religious observances and festivals and for bringing them to a close. He is in fact the inner authority as the name of his office imports. But he has no right whatever to the possession of the temple or its property. In some temples the officer is known by the name of ullat manushyam, chayi nambi, &c.

(k) The tantri is the head of all shantis. In theory he is the ministrating priest of all temples in a certain nad or nads. It is his special privilege to plant fresh idols, to consecrate them, and to regulate the mode of worship in each temple. He is to examine shantis and to declare their fitness for that office, and to act on festive occasions as the ministrating priest. His duties are not confined to any particular temple, but extends to all temples of a particular nad or nads, and his office is hereditary and inalienable.

(l) Porakoima (the authority outside) is an officer of the sovereign whose duty is to keep peace outside the temple when the idol is taken in procession there. This office has become obsolete after the British took the country.

(m) Maran is a drummer or the beater of tom-tom. He is also classed among the kayakam servants. The offices of samudayam, pattali, shanti, akakoima, and porakoima are inalienable without a single exception.

3. The fourth chapter chiefly proceeds upon the old deeds 1, 2, 3, and 4. The deed 1 purports to be one executed by Baskara Ravi Vurmah (a perumal) to a Jew, selling him some lands and granting him some princely privileges. The deed 2 is a document executed by another perumal to a Syrian appointing him the sovereign merchant and giving some special privileges within a certain tract of land defined in the deed. These two deeds purport to have been attested by the chief rajahs, and the latter deed by two Namburi chiefs also. There is, however, nothing in the language of these deeds to support the idea that the executants of these deeds were emperors and the rajahs were vassals under them. On the other hand the grants, having created princely ranks, required to be recognised by the neighbouring princes, and it is therefore reasonable to suppose that the rajahs attested the deeds in their capacity of the rulers of the neighbouring countries, or as the members of a confederation in which the perumal was perhaps the leading authority. The second deed related to a tract of land lying close to the Brahma talics (the abodes of taliadries already explained in clause 20 of the preceding paragraph), and this appears to have been the reason for their representatives having appeared as attesting witnesses in deed 2. It is true that in the deed the title of chakravarthi (emperor) is arrogated by the executant, but this is simply a parade of words similar to the expression that he reigned for hundred thousands of years. I have already shown in the abovementioned clause 20 that there were two classes of perumals, the first being the elected monarchs and the second viceroys, the last of whom rose in rebellion against his sovereign and became the absolute monarch of Malabar. The deed 3 purports to be a document executed by another perumal to a Syrian with the concurrence of the rajahs of Venad (Travancore), Punnattala and Palacudi, and also with that of the 600 (clause d). The 600 (in clause e) the Jewish and the Syrian principalities, are also desired to be protectors for the grantee. In deed 4 also the 600 appears as a body of persons in subjection to whom the grant was made, and from this circumstance Mr. Logan infers that

the 600 were a corporation from whom the kanom tenure was first evolved. It is scarcely necessary to observe that this isolated circumstance, unsupported by any further evidence, is quite insufficient to sustain the novel theory, and the inference is further weakened by the admitted imperfectness of the translations themselves. The whole theory expounded in this chapter depends upon a misconception of the meaning of the words pattom, kanom and jenm and of certain expressions used in the above deeds.

4. The fifth chapter refers to three deeds of the middle age which have not been made the foundation of any new idea.

5. The sixth chapter speaks of the earlier modern deeds. They are divided into five groups according to the places from which they were obtained.

6. The deeds 6, 15, 21, 22, 26, 28, 33, 39, 40, 42, 43, 44, and 47 are classed under the first group and come from Western Cochin.

(a) The language of the deed 6 prohibits the idea of its author being a Namburi. A member of the royal family of Pálghat appears to be the executant, and in this deed the words melvaram and michavaram are mistranslated, the latter word being similarly dealt with in deed 42 also. The first word imports the net rent due from a karaima kanomkar, and the other the residue of rent payable by an ordinary kanomkar.

(b) In 15, the word "amsam" does not bear the meaning which Mr. Logan has put upon it, and in 22 karaima samudayam is mistranslated as karaima and samudayam. It is a compound word meaning a temple agent, whose office is permanent and hereditary (see clause f, paragraph 2, for the meaning of the term).

(c) The deed 47, I think, alienated only such lands as the family of the alienor possessed in the village, and not the village itself. Ambala padi is translated here as a seat of honor in a temple, whereas it means a right to get the means of support while attending a temple for business under the self-government system. Pati (പതി) here means pay or wages as masa pati (മാസപതി) monthly pay. The other deeds in this group call for no remarks.

7. The deeds 18, 19, 24, 25, 34, 36, 45, and 46 come under the second group, and were obtained from Eastern Cochin.

(a) In paragraph 143 of Appendix I, Mr. Logan attempted in vain to explain the difference between an ordinary kanom and a karaima kanom, as his theory proceeded upon a misconception of the meaning of the word "kanom." An ordinary kanom was determinable on non-payment of purapad and on the tenant's failure to keep the land demised in a state of cultivation, but in a karaima kanom the non-payment of rent and the tenant's failure to cultivate the land properly furnished no ground for ejectment, and the jenmi could only maintain an action for rent. This constituted the difference between the two kanoms, and what is stated by Mr. Logan in the 143rd paragraph of the Appendix I has no foundation in the history of our land tenure.

(b) In deed 24 the jungle land is made as much the subject-matter of the sale as the wet land and the slaves, and the mere omission to describe the jungle by its boundaries cannot justify the inference that in the jungle lands no private property existed. The circumstances of these jungle lands bearing distinctive names sufficiently prove that they had been objects of possession and separate enjoyment. They were too extensive to be described by boundaries and their names were sufficient to identify them, and the mere circumstance of disputes having arisen about their ownership cannot justify an inference that no private property existed in them.

(c) The deed 34 is a kanom document executed by Kudalur Yegiadripad, the then manager of the Trichur Vadakunnatha devaswam; several documents similarly worded and executed by him are found in Pálghat and in the southern part of Nedunganad. Changati (ചങ്ങതി) is the Malayalam word for companion, and changatam means companionship. In ancient times devaswams and other jenmis sought the friendship of some local authority or other influential person for the protection of their estate, particularly when they were the subjects of a foreign or hostile rajah, and as a fee for this alliance they used to pay a sum of money to the authority or the influential person under the denomination of changatam. The executant of this deed was a subject of the Cochin Rajah, and the devaswam to which the lands, &c., belonged was in the Cochin territory; consequently he was obliged to contract friendship with somebody for the protection of the property situated partly in the territory of the zamorin with whom the Cochin Rajah, was not on good terms, and this friendship he was obliged to purchase for a pecuniary consideration. That the word palisha used in this document is interest and not shield is clear from the context of the document, and I have already shown in what sense it is used here (see clause 5, paragraph 2).

(d) In the deed 46 the word paravum (പറവം) is evidently misspelt. Paravu is a Hindustani word lately imported into our language. It could not have therefore found a place in a deed drawn out in accordance with the old form. Consequently before I see the original I am unable to offer any remarks thereon. The other deeds in this group need no special remarks.

8. The third group comprises the deeds 9, 10, 17, 23, 27, 29, 30, and 31 obtained from Walawanád.

(a) The executant of deed 9 was a desavali and he alienated his right in the desam, the temple in which he had uraima and also his tarwad with their appertaining land. As I already

remarked the proprietary right in lands, temples, &c., does not necessarily reside in a single individual, but in this instance all the rights happening to reside in one and the same individual were alienated by him by means of a single deed; but from this instance it cannot be concluded that all jenmis possessed desadhipatyam and uraima. It is clear from this deed that desam did not import the whole lands situated in that desam, but only such of them as the seller possessed as rice lands and parambas and boundaries are distinctly mentioned in the deed. There is nothing in this deed to uphold Mr. Logan's idea of kanomkars as stated in paragraph 154 of Appendix I. The language of this deed is not in any way inconsistent with our modern notion of property.

(b) Deed 17.—The new theory of kanom seems to have so influenced Mr. Logan as to have induced the translation of the word kavalphalam (കവാൾ പലം) into protection money in this deed in the same way as paravu (പറവം) was rendered into guard in deed 46 and palisha into shield-bearers in deed 34. Kavalphalam here means nothing more than the hire of a watcher whom the kanomkar was obliged to keep, probably on account of the land being situated close to some jungly place. If the liability of the land to pay the protection money was so well established at that time as Mr. Logan supposes, there was no reason for its non-appearance in deed 23, which comes from the same part of the country and is later only by 63 years.

(c) The deeds 17, 23, 31, and 32 are all kanom deeds, and their language does not afford the slightest ground for supposing that the kanomkars were a corporate body.

9. The fourth group consists of deeds 11, 12, 13, 14, 16, and 20. In deeds 12, 13, 14, and 20 in the expression ayalum patiyum ariko (അയലും പതിയും അറികൊ) which means "with the knowledge of the neighbourhood and town," the word pati (town) is mistranslated as overlord. From the use of the word kandom (plot) in deed 12, Mr. Logan draws certain inferences in support of his theory of kanom. Even if the word conveyed an idea of allotment at certain distribution of lands, why cannot it be at the partition of family property or at the early distribution of the land as stated in Kerala-Ulpathi, and why should it refer only to the breaking up of the imaginary body of kanomkars?

(b) There is no mention whatever of kon in deed 14, and consequently the assertion in paragraph 167 of Appendix I, that the deed was attested by kon, stands wholly unsupported. The phrase അന്നുവേണ്ടു കോവിൽ മുമ്പാകെ means in the presence of the ruler of the nad in which the deed is executed. The other deeds in this group are not specially commented upon.

10. The fifth or last group consists of only two deeds, 35 and 38. These two deeds call for no special remarks except that in both the deeds the word kuti in the phrase കൂടിഅറിയുന്നവൻ is incorrectly written as കൂടി with short ku and translated "as the witness who knows the house," whereas the phrase means the witness who knows (the transaction) being present together with (the preceding witness named). This shows how necessary it is to be on our guard in founding new theories upon words whose orthography and etymological meaning are not beyond all possible doubt.

11. The arguments advanced by Mr. Logan in the sixth section of this chapter in support of his view, that no private property existed in Malabar before the advent of the British, scarcely require any refutation, as the fallacy of those arguments appears on their own face. The counter-signatures of the rajahs to deeds 1 and 2, as I already observed in paragraph 5, points more to the existence of a confederation of the Malabar princes than that of an empire, and in clause 20, paragraph 2, I have stated what our notion is of the political position the perumal held in the country. The appearance of the words "six hundred" in deeds 3 and 4 is the sole ground on which the theory of kanom is founded. It is, however, clear from deed 4 that the kanom is to be held subject to the "six-hundred" who must therefore be a body of persons quite distinct from the kanom-holders. Again, the "fetter and ladder right" mentioned in deed 3 seems to have been misunderstood by Mr. Logan. The utmost it can prove is that the exclusive privilege of drawing toddy from the trees of the land alienated had been permanently settled (karaima) on certain tiyyen families, and that in making the alienation the vendee was told to recognize this right which could come into play only when the vendee wished to draw toddy and not otherwise. He can altogether avoid it by allowing the trees to remain untapped for toddy. The karaima entitled the holder thereof to exclude other toddy-drawers from the work, but he could not of his own accord go and tap the trees against the wishes of the jenmi. He was not the planter and cultivator as Mr. Logan seems to have been erroneously led to believe. The old deeds, and more particularly Nos. 12, 21, 26, 28, 33, 39, 40, 43, and 44, completely disprove Mr. Logan's theory. In paragraph 209 of Appendix I Mr. Logan supposes that the practice of the Namburi landlords excommunicating their Hindu tenants and incarcerating their tenants in general is the remnant of the authority which they used to exercise as jenmis in former days. It is, however, a power for mischief created by the British courts. During the native rule a separate authority existed for excommunicating people, and if the Namburi landlords dared to usurp any of the functions of that authority, the consequence would have been serious. The practice is not at present peculiar to them; the landlords of other classes also abuse their power in the same manner, but the Namburis, possessing lands in more compact forms in any one place, have more tenants at one and the same place, and their power for mischief is therefore more severely felt. The power of ejectment now vested in them is the result of the

mischievous, and before this power was well developed by courts' decisions. Namburi except the vaidika ever excommunicated or even interdicted. The mentioned in No. 49 and other deeds did not mean retainers but assistants, performers of other base services whom the vendee could employ in the district.

12. The seventh or the last chapter of the Appendix I and Appendix II, as to the proportion of the produce which the Government takes as land-tax, leads to the conclusion that the share taken by Government, though excessive when the price of the product of the land is low, has not been found burdensome owing to the high prices which have prevailed since 1831, and that the growing insolvent cottierism of the great body of cultivators is not due to the immensity of land-tax.

13. The Appendix IV is the statistical register of holdings which are, however, denoted not by the names of the prevailing tenures, but are arranged under certain heads according to some new principles recommended to be introduced into the system of our law. I shall speak of these principles when I come to advert to the report itself.

14. The Appendix V deals with the rates of improvements awardable to an out-going tenant. His right to the value of improvements is as ancient as the kana jenma maryada (rules of kanom and jenma) itself, and in this respect it is truly remarked by Mr. Logan that our law surpassed the laws of several civilized nations of Europe who are only now attempting to legislate for what had been accomplished by our legislators years ago. They knew well that agriculture is the chief industry of our country, and consequently they encouraged it to such an extent as to entitle even a trespasser to the value of improvements effected by him. The following passage on the subject is found in Vavaharamala attributed to Mangalath Namburi, who lived several centuries ago:—

“ആകാശമുളളതാ യാഗ്നിന ധീരനാദാ നൊക്കുത പ്രകാശമാക്കിയൊരൊഴുത പൊക്കിട്ടു മാറ്റുന്നി യുദ്ധനൊക്കുത പൊന്നാൽ ആകാശം മലാശാസാധിതം പുറന്തുകടന്നു”

“If any one plant trees on a paramba belonging to a stranger without caring to know who is the owner thereof and the trees begin to bear fruit, the planter will be entitled to get the value of his improvements with a deduction of one-tenth in case the owner resolves to eject him from the paramba.”

Another passage in the same work, transcribed in the margin, shows that it is the market

“എഴുതിച്ചൊരു വ നഗിതാദാദാ വെച്ചു ഇവക്കി യാൽ കൊണ്ടിയാ വാഴയും മീനമുളകാ മീനയും താമരപ്പൂക്കു തെങ്ങു വിത്തുപി പിപ്പാലും തീർക്കവെന്നാദാ ഇവ എപ്പോററി നെപിന്നെ അനവധനനാ കടമു കിട്ടിപ്പുറ കഴിക്കാനാ ചെല്ലുന്നാൻ വിധിപൊക്കുകൾ”

“On a paramba demised if objects of enjoyment be raised such as betel-creepers, plantain trees, greens (*Chenopodium album*), pepper vines, bamboos, coconut and areca trees and jack trees, their market value for the time being, as fixed by mediators, should be paid to the tenant as kuyekanom (fee for pits, &c., for planting).”

He cannot claim any thing for wild trees of spontaneous growth on the land not requiring any care or labor on his part. To lay down any fixed rate for any particular kind of trees, shrubs, and vines, for all times and places, would be impolitic and would further be productive of injustice in many cases, as the price of their products would not be the same in all places and ages. In the case of fruit-bearing trees, it would be expedient to count the number of fruits on the tree at any given period, ascertain their value according to the market price, and allow the tenant the value of nine years' produce so ascertained. The tenant then recovers the value of his labor, and the landlord buys the improvements at nine years' rental value, and neither has any valid reason for complaint. In the case of pepper or coffee, two or three years' produce should be the measure of valuation, as they do not last long enough to allow the landlord to realize the amount paid by him for their value. In the case of young trees $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$, or $\frac{1}{2}$ of the value of the fruit-bearing trees should be allowed according to the stage of the growth of those trees. No value should, however, be allowed for trees past bearing, as the property in all trees growing on his land resides in the landlord, the tenant's right being confined to compensation. As for chamayam improvements, a kanom or kuyekanom tenant, who has an implied authority from his landlord to plant and build (കുടിപ്പൊട്ടും കടയിരിപ്പും), is entitled to the value of buildings he has erected on the land demised to him, and in the case of tenants below the grade of kuyekanom tenant, express authority from the landlord is necessary to entitle the tenant to the value of chamayam improvements. He has, however, a claim to the value of such buildings as are absolutely necessary for the purpose of cultivation of the land demised. The same measure of valuation, as is adopted in estimating the value of buildings in general, should be had recourse to in valuing chamayam improvements also. In vettu kanom improvements, five years' pottom of the land reclaimed would fairly represent the value of the tenant's labor, and improvements of this kind should therefore be valued at five years' rental value. The present system of valuing

improvements through an irresponsible person styled Commissioner, according to what is called custom, is much to be deprecated. The so-called custom never had any legal foundation, and its variation almost in every taluk tends to prove the truth of Mr. Logan's statement that the so-called custom is what each individual munsif has made it with reference to his own ideas regarding the fitness of things.

15. I have no remarks to make upon the Appendices VI, VII, VIII, and IX, as they are the price lists for the years between 1860 and 1880 and upon Appendix X, which is a list of places visited by the Commissioner and his assistant.

16. The Appendix XI shows the number of eviction suits and rent suits instituted during the period between 1862 and 1880. Some of the eviction suits are doubtless due to the evil practice of instituting such suits in collusion with the tenant to defraud a rival jenmi of his land. Instead of having a fair fight with his rival, a jenmi usually finds means to gain over his rival's tenant to his side and make him appear as an admitting defendant in the suit which he institutes for the land which he covets from his neighbour. The court often refuses to include the rival jenmi as a defendant, and decides in favor of the plaintiff upon the admission of the party in possession, and thus drive the real owner to the necessity of proving his title affirmatively in the position of a plaintiff. This kind of underhand business prevails to a great extent in the country, and consequently the number of eviction suits on paper does not reveal the real state of things. Even making allowance for the existence of this fraudulent practice, the number of eviction suits instituted between 1877 and 1880 is alarmingly large, and in a country where agriculture is the sole means of livelihood for the mass of the people, the practice of wholesale eviction, if unchecked, is likely to create a political danger at the end. It is a significant fact to be noted that until 1853 no eviction suits appear to have been instituted by a jenmi against his kanomkar. Notwithstanding the readiness of British courts to treat kanom as a mortgage, the jenmis seem to have labored under the old impression that a kanom is unredeemable as long as the tenant paid his purapad and renewal fee punctually and cultivated the land demised to him in a husbandlike manner. The non-payment of purapad or renewal fee or negligent dealing with the land was therefore invariably made the grounds of actions in earlier suits, and the courts then required the jenmi to establish one of the above grounds before decreeing redemption. Even now the jenmi generally urges one of the above grounds in his plaint as the cause of his suit, which shows that a practice of ninety years to the contrary has not been sufficient to disabuse the minds of the people of the deep-rooted idea of the permanent character of the kanom tenure. I have no remarks to make upon Appendices XII to XIX.

17. The Appendix XX is the abstract statement of certain cases cited to illustrate the difficulty which the tenants experience in getting the value of improvements. I have already stated my opinion in paragraph 14 that the system of estimating the value of improvements through Commissioners, according to some customary rates, has entailed much hardship upon tenants, and that the market value for the time being should be awarded to the tenant. I generally concur in Mr. Logan's remarks in this appendix.

18. The Appendix XXI is the list of suits pending in 1880 in a single munsif's court in which more than three years' purapad is sought to be set off against the kanom amount. The theory of regarding kanom as an advance made to secure the payment of rent, though vaguely stated in some of the early papers, was not put into practice until lately, and I can undertake to assert that no suit of this kind was filed in any of the courts in Malabar before 1875, and even now none would, I think, be found instituted in the courts of North Malabar.

There is nothing in our ancient law to justify the ruling which permits jenmis to deduct time-barred rent from the amount of the kanom mortgage. On the other hand a passage in the

Vavaharamala, quoted in the margin, insists on the jenmis to recover the michavaram and other jenma bhogams immediately on their becoming due.

Even if it were otherwise, customary law could not prevail against statutory law. In all kanom deeds the phrase “micharam kalam torum kotukavum kollavum” (മിചാരം കാലത്തോളം കൊടുക്കയും കൊള്ളയും) would be found invariably inserted which, rendered into English, means “so much net rent agreed to be paid and received annually.” The micharam thus becomes payable every year in pursuance of an express stipulation in the deed, and the courts have already decided, in the case of kanom demises, that an express contract would override custom. The cause of action in respect of each year's micharam would then accrue at its close, and it has only three years' limitation from the date of such accrual (Article 110, Schedule II, Act XV of 1877), and upon the expiration of that period the jenmi's right to recover it is lost, and he cannot therefore set off the micharam against the kanom amount as it is not legally recoverable (Civil Procedure Code, section 111). Neither can the provisions contained in sections 59 to 61 of the Indian Contract Act apply to this case, as they contemplate the pre-existence of the debt and a subsequent payment. The ruling, it is submitted, is therefore clearly wrong, and if the case be proceeded with and properly argued before the High Court, I am confident that it will be set aside.

APPENDIX B

To the letter of K. R. KRISHNA MENON on the Land Tenures of Malabar.

Malabar Land Tenure Bill.

Whereas it is expedient to define the relation between the jenm proprietor and certain classes of tenants in Malabar, and also re-affirm and render clear the rules of the common law of the district on the subject; it is enacted as follows.

2. This Act may be cited as the Malabar Land Tenure Act, and it shall come into force on.

3. In this Act, unless there be something repugnant in the subject or context, words in the singular include the plural, and words in the plural number include the singular.

"Malabar" shall include both the South and North Malabar districts.

"Jenmi" or "jenmakar" shall include not only the attiper jenm proprietor, but also the holders of adima, kudima anabham, and karaina jenm.

"Otti" shall include also pervartham palishamadaka, varemada, ner-palisha, veppu, jenma panayam kuividuka otti, and nir-muthal.

"Kanom" shall include also melkanom and kettiadakam kanom, but shall exclude (1) kanom-mortgage, created by an otti-holder, (2) sub-kanom called kir-kanom in South Malabar and mattotti in North Malabar, and (3) also all sorts of panayams (simple mortgages).

4. On and after the date mentioned in section 2 of this Act no jenmi shall eject a kanom-holder or an-otti-holder unless there be an express contract in writing to return the land to the jenmi duly registered under the law for the time being for the registration of assurances of immovable property.

Exception I.—The restriction contained in this section shall not extend to jenmis whose jenm property, exclusive of ulu parambas (dry land periodically cultivated) and kadu (forest land), shall not exceed 100 acres.

Exception II.—The protection contained in this section shall not extend to a kanomkar or ottikar who denies his jenmi's title.

5. The jenmi shall be entitled to recover the purapad (net-rent) reserved in the kanom deed from his kanom tenant annually, and also interest at the rate of 12 per cent. per annum upon such portion thereof as remains unpaid at the close of the month Minam in every year, and the arrears of purapad and interest thereon shall be the first charge upon the kanom right.

6. The jenmi shall further be entitled to recover as renewal fee from his kanom and otti tenants a sum of money equal to one-fifth of the kanom or otti amount at the end of every twelfth year calculated from the date of the kanom or otti demise.

Explanation.—In making the above calculation the amount of paremkadam and ottikkunpuram shall be excluded.

7. Interest, at the rate mentioned in section 5, becomes payable to the jenmi upon the amount of renewal fee from the date on which it falls due, and the fee and the interest shall also be a charge upon the kanom or otti right as the case may be, and the jenmi's dues (viz., the purapad and renewal fee) shall take precedence over all other charges and encumbrances.

8. At the end of every twelfth year the jenmi shall have the right of calling upon his kanom or otti-tenant to readjust rent, and upon his refusal to do so the jenmi may institute a regular suit in the proper court within whose jurisdiction the land is situated for readjusting the rent.

9. The court shall inquire into the justness or otherwise of the plaintiff's claim for an increase of rent by ascertaining what rent the neighbouring lands of a like quality pays, and by such other means as it deems just, and pass a decree either in increasing the rent or dismissing the suit. The court shall not increase the rent unless the court be satisfied that the increase is due to the inherent good quality of the land and not to the improvements effected by the tenant in the soil.

10. The decree passed under the above section shall be open to appeal under the ordinary rules of procedure, and the amount of rent finally fixed by the court shall become recoverable from the date on which the previous term of twelve years elapsed, or from such date as expressly mentioned in the decree.

11. In ordinary cases a kanomkar or an ottikar shall not be entitled to a readjustment of rent under section 8, but in exceptional cases in which land has become unproductive owing to circumstances over which the tenant had no control, he may call upon the jenmi for a readjustment of rent, and upon his refusal to do so the tenant may institute a suit for the recovery of the amount of the kanom or otti mortgage by the sale of the land mortgaged. He has, however, no claim upon any other but the particular land mortgaged or any right of causing the arrest of the jenmi in satisfaction of the debt. This provision does not extend to paremkadam and ottikkunpuram which the tenant may recover upon the security of jenmi's person and upon his other property.

12. Tenants below the grade of a kanomkar directly holding under a devaswam shall also have a permanent right of occupation in their holdings as long as they pay the stipulated rent to any one of the uralers (trustees) or to their samudayam (devaswam agent) if one exists in the devaswam.

13. When the uralers or their samudayam refuse to receive the rent, the tenant shall be at liberty to deposit the same in the proper court with a petition in detail setting forth the uralers' or their Samudayam's refusal. When rents are due in kind the payment to be deposited shall be the price thereof calculated at the market rate.

14. The petition accompanying the deposit shall be filed in the court, and a notice shall be issued to the uralers requiring them to receive the payment deposited and grant acquittance to the tenant.

15. If the uralers fail to appear, or on appearing refuse to receive the amount deposited by the tenant, the Judge shall pass judgment regarding the fact of their refusal. The judgment shall contain statements in reference to the particular item of rent deposited, the property in respect to which and the period for which it was due.

16. The judgment so passed shall be a bar to any action by the devaswam for ejecting the tenant on the ground of non-payment of rent from the land to which such judgment refers.

17. Devaswam tenants of every grade shall be exempted from paying renewal fee at every twelfth year, and consequently the provision contained in section 6 shall not extend to uralers of devaswams. They are also unentitled to a readjustment of rent under section 8.

18. A melkanom created by the jenmi without according to the former kanomkar the option of making the further advance required by the jenmi and of taking the higher mortgage shall be invalid as far as the land is concerned. In like manner a jenma puvayam or a sale of jenm right be made without making the first offer to the ottikar shall be void in so far as it relates to the land.

Statement of Objects and Reasons.

Before the commencement of the British rule in Malabar, land was held chiefly on two tenures, viz., jenm and kanom. The other tenures were mere modified forms of these two principal tenures. The first answered to the Roman ~~dominium~~ ^{tenure} and the second for three months. The devaswams Namburi Brahmans, the Rajas, and some high classes of Ischedule to this holders of the jenm, while the great body of Nayers and Moplas were kanom. The latter tenure was practically permanent inasmuch as the jenmi was not at liberty to eject the kanomkar as long as the latter paid the stipulated rent punctually and cultivated the land in a husbandlike manner (see Mr. Beckard's Book "India," Smith, Elder, and Co., London, 1877, Volume II, page 272; General Report of Board of Revenue, dated 31st January 1803, paragraph 178; Special Commissioner Mr. Logan's Report, paragraphs 325 and 329; Mr. Wigram's Malabar Law and Customs, paragraph 102), and the tenure appears to have retained its permanent character until 1853, as the absence of judicial decisions in suits between jenmis and kanomkars goes to establish (Mr. Wigram's Malabar Law and Customs, page 108); since that period the courts began to view kanom as a mere mortgage, and eviction suits thus began to be instituted. They steadily increased, and in some parts of the country the numbers of evictions annually decreed is now twelve times more numerous than it was twenty years ago (vide Mr. Logan's Report paragraph 150). The tenants were less disturbed as long as the devaswams, illoms, kovilagoms, and tarwads were in the management of a class of elderly gentlemen whose respect for old customs, coupled with a high sense of honor, was a sufficient security against capricious evictions. This generation has almost passed away and is succeeded by a class of men whose dealings with their tenants are guided chiefly by motives of pecuniary gains. There is a combination among them to reduce all kanom holdings to verumpattom (tenancy from year to year) and rack-rent the tenants, and a sense of insecurity is thus created among the kanomkars who still form nine-tenths of the cultivators in Malabar. The tenants do not now-a-days improve the lands for fear of being ousted, and within the last twenty or thirty years cultivation has greatly deteriorated, and industry has been brought to a dead lock. In a country in which the people entirely depend upon agriculture for their support, the monopoly of the whole available land by a few persons cannot but produce a grave political danger. It is the prime cause of the Mopla outbreaks, and the steady increase of grave offences in the district (see Special Commissioner's report, paragraphs 311 to 315, and Major Hole's letter quoted in the 316th paragraph of the same report, and if no appropriate remedy be soon applied, the peace of the country shall be threatened. At the commencement of the British rule in 1793 the Government had, moreover, promised to secure to some of the kanomkars at least the peaceable possession of their kanom lands and to prevent the jenmis from ejecting them (vide 1st article of the Joint Commissioners' Settlement in M.E. 969, A.D. 1793-4) quoted in paragraph 232 of Appendix I to Mr. Logan's report). This promise still remains unfulfilled. It is, therefore, necessary to re-establish security to the kanom tenure. Section 4 of

the Bill will meet this object. The provision contained in this section may perhaps work prejudicially upon small jenmis, several of whom are found in North Malabar. Their condition is not better than ordinary kanomkars. For their protection, Exception I is introduced. According to the established custom of the country a tenant who denies his landlord's title forfeits his right to hold any longer. Exception II is introduced to re-enact this rule of the customary law. If it be thought that section 4 will work unfairly in respect of new jenmis who made their purchases upon the belief and understanding that they would be permitted to redeem the existing kanoms, a third exception to section 4 may be introduced in their favor. Sections 5 to 7 secure to the jenmi all his existing legal dues and something more, inasmuch as the dues are not now charges on the tenant's rights. The tenant will not complain of this little sacrifice, as the amount of pain arising therefrom is nothing in comparison with the pleasure he will feel in securing a permanent title to the land. Sections 8, 9, and 10 further secure to the jenmi the right of increasing the rent, whenever it is possible to do so, without violating the principles of justice and equity. Section 11 denies to the tenants the right of readjusting rent in ordinary cases, lest he should neglect to improve the land and thereby impair its productive power. In exceptional cases, however, the right is allowed to him. According to the old custom the kanomkar had no right to hold jenmi's person and his other property responsible for the repayment of the kanom amount (see Mr. Graeme's report quoted by Mr. Wigram at page 107 of his Malabar Law and Customs), and the latter part of section 11 simply give effect to that custom; paremkadoim (further loan) and ottikkumpuram debts are now recoverable not only by the sale of the property mortgaged, but also by the sale of the property of the mortgagor and by the arrest of his person. This is provided for in section 11.

Devaswam lands are not the property of any private person. It is the swam (property) of deva (god), and as such the common property of the community. The principal devaswams were the seats of former provincial governments, and their property was nothing more than the public property of such governments in which all possessed a common interest, and the uralers are the mere executive officers of those institutions. A list of incumbrances forwarded by Mr. Reid, the District Judge of North Malabar, to the President of the Hindu Religious Endowment Law Committee, and printed at page 63 of the official papers "Native Religious Endowments," will show that in a single devaswam the uralers raised loans to the extent of not less than Rs. 1,03,022 on the security of devaswam lands during the short period of three or four years. It is a notorious fact that the devaswam funds are frightfully misappropriated, and the eviction suits are brought to raise the rent. The devaswams cannot themselves cultivate, and the ordinary income of devaswams is generally sufficient for the ceremonies and the worship of the pagodas, and money ~~is required from tenants~~ not for devaswam purposes, but to meet the private purposes ~~of the uralers~~ thereof as remains unpaid for the disestablishment of these pagodas, the ~~uralers~~ ~~shall~~ ~~be~~ ~~intended~~ ~~to~~ ~~attain~~ ~~this~~ ~~desirable~~ ~~object~~. If the time has not yet ~~arrived~~ ~~for~~ ~~the~~ ~~uralers~~ ~~to~~ ~~attain~~ ~~this~~ ~~desirable~~ ~~object~~, the caprice of the uralers (trustees). Section 12 ~~wherein~~ the uralers refuse to receive rent. Sections 13 to 16 provide a summary remedy in cases ~~where~~ the tenant's right of perpetual enjoyment for the purpose of creating a ground for defeating ~~it~~ ~~or~~ ~~to~~ ~~throw~~ ~~the~~ ~~burden~~ ~~upon~~ ~~the~~ ~~uralers~~. If no such remedy be provided for, the courts will invariably ~~be~~ ~~intended~~ ~~to~~ ~~attain~~ ~~this~~ ~~desirable~~ ~~object~~, the tenant of proving the payment of rent, as it is a matter peculiarly ~~to~~ ~~be~~ ~~known~~ ~~by~~ ~~the~~ ~~tenant~~, and in many cases it will be difficult for him to establish the payment, and eviction as a necessity will then follow, and the permanent character of the tenure will be gradually lost, as it has been the case in the kanom tenure.

The proposals simply amount to a prayer to reduce to the written law what is now observed as a custom, which from want of clearness is often violated, not only by the people, but also by the courts. By passing these proposals into law the prosperity of 99 per cent. of the cultivators of Malabar will be secured. Few of the actual cultivators in North Malabar, who do not come under the head of kanomkars, will come under the head of devasvam tenants, and these proposals will thus afford protection to almost all the actual cultivators for whom alone the Commissioner proposed legislation. They are further in accordance with the existing custom and consequently with the expectations of the people, and if they became law it is certain to be executed.

MANGALORE,
6th October 1883.

(Signed) K. R. KRISHNA MENON.

APPENDIX C

To K. R. KRISHNA MENON'S letter of 6th October 1883 on the Land Tenure of Malabar.

Malabar Marriage and Wills Bill.

Whereas it is expedient to provide a form of marriage and to prescribe rules for its celebration and dissolution among the marumakatayam followers of Malabar, and also to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of their wills; it is hereby enacted as follows:—

1. This Act may be cited as the Malabar Marriage and Wills Act of 1883.

2. In this Act, unless there be something repugnant in the subject or context, words in the singular include the plural and words in the plural number include the singular."

"Marriage" means a marriage contracted under this Act, and "husband" and "wife" respectively mean the husband or wife who contracted his or her marriage under this Act.

"Malabar" includes not only the Collectorate of Malabar, but also the southern five maganes of the Collectorate of South Canara situated to the south of the Chandragiri river.

"Marumakattayam follower" means such classes of Hindus as follow the marumakattayam system of inheritance, and exclude the Moplas who follow the same system.

"Caste" means the subdivisions according to the institutes of Malabar, of the Brahmana, Kshetria, and Sudra classes of the Hindus.

"Enangan" means the reconciled member of one's own clan.

3. It is lawful for marumakatayam persons to contract marriage upon the following conditions:—

- (1) The woman at the time of the marriage must be without a husband.
 - (2) The man must have completed his age of eighteen years and the woman her age of twelve years.
 - (3) The man, if he has ^{been} completed the age of twenty-one years, and the woman, if she has not completed about sixteen years, must have obtained the consent of his father, mother, or her father, mother, or guardian to the marriage.
- Explanation.*—To entitle himself to give the consent contemplated in this clause, the father should be of the same caste with the man or woman to whose marriage the consent is given.
- (4) The parties must not be related to each other in any degree of consanguinity or affinity which would, according to the Hindu law as observed in Southern India, render a marriage between them illegal.
 - (5) The parties must be such as might cohabit as husband and wife under the existing custom of their caste.

4. The subordinate judges and the several district munsifs of Malabar shall ex-officio be the registrars of marriage under this Act within their respective local jurisdictions.

5. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the registrar before whom it is to be solemnized.

The registrar to whom such notice is given must be the registrar of a district within whose jurisdiction one at least of the parties to the marriage has permanently resided for three months before such notice is given. Such notice may be in the form given in the first schedule to this Act.

6. The registrar shall file all such notices and keep them with the record of his office, and also forthwith enter a true copy of every such notice in a book to be kept for that purpose furnished to him by the Government to be called the marriage notice book under the Malabar Marriage Act of 1883, and such book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

7. Fourteen days after notice of an intended marriage has been given under section 5, such marriage may be solemnized, unless it has been previously objected to in the manner herein-after mentioned.

Any member of the tarwad of either party or his or her father, if he be of the same caste with him or her, may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3), (4) or (5) of section 3. The nature of the objections made shall be recorded in writing by the registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

8. On receipt of such notice of objection the registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection if the subordinate court of the district be open at the time, or if there be no such court open until the lapse of fourteen days from the opening of such court.

9. The person objecting to the intended marriage may file a suit in the subordinate court aving local jurisdiction, and if the subordinate judge be the registrar with whom the notice of bjection had been lodged, the suit shall be instituted in the district court to whom he is subject or a decree, declaring that such marriage would contravene some one or more of the conditions rescribed in clause (1), (2), (3), (4) or (5) of section 3.

10. The court, before whom such suit is filed, shall thereupon give the person presenting it certificate to the effect that such suit has been filed. It will be heard and disposed of irrespective of its order on the file, and in other respects it will be treated as an ordinary suit, and decrees shall be subject to the same appeals as an ordinary decree. If such certificate be lodged with the registrar within fourteen days from the receipt of notice of objection if there be a court of competent jurisdiction open at the time or if there be no such court open at the time within

fourteen days from the opening of such court, the marriage shall not be solemnized till the decision of such court has been given and the period allowed by law for appeals from such decision has elapsed, or if there be an appeal from such decision till the decision of the appellate court has been given.

11. If such certificate be not lodged in the manner or within the period prescribed in the last preceding section, or if the decision of the court be that such marriage would not contravene any one or more of the conditions (1), (2), (3), (4) or 5 of section 3, such marriage may be solemnized in the following manner. The parties and the witnesses shall, in the presence of the registrar, sign a declaration in the form contained in the second schedule to this Act. If the man has not completed the age of twenty-one years, or if the woman has not completed the age of sixteen years, the declaration shall also be signed by his or her mother, karnavan or father if he be of the same caste with him or her, and in every case it shall be countersigned by the registrar. Two out of three witnesses must be the fellow-castemen of the woman, and one of them at least must be the enangan of her family if it possesses enangans, and one witness must be either an enangan of the man's family or his fellow-casteman.

12. The marriage shall be solemnized in the presence of the registrar and the three witnesses who signed the declaration. It may be solemnized in any form provided that each party say to the other in the presence and in the hearing of the registrar and the witnesses, I (A) take thee (B) to my lawful wife (or husband).

13. Before requiring the parties and the witnesses to sign the declaration, the registrar shall ascertain to his satisfaction—

- (1) The identity of the parties;
- (2) Their real and full names and places of residence;
- (3) That they are of sufficient age to be capable of contracting marriage under this Act;
- (4) The name and place of residence of witnesses, that two of them at least are the fellow-castemen of the woman, that of these two witnesses one is her enangan, and that one witness at least is a fellow-casteman of the man; and
- (5) That the marriage would not contravene any one or more of the conditions (1), (2), (3), (4) and (5) of section 3.

14. The marriage may be celebrated either at the office of the registrar or other such place as the parties desire; the registrar shall proceed to the place fixed by the parties on payment of such fees as the Government may prescribe.

15. When the marriage has been solemnized the registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the marriage certificate book under the Malabar Marriage Act of 1883.

This book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

16. The certificate shall specify—

- (1) The personal and family names and places of residence of the parties married;
- (2) That they were known to him or were satisfactorily proved by the testimony of the persons or persons known to him to be the persons described in the certificate;
- (3) That he has ascertained that they were of sufficient age to contract the marriage;
- (4) The personal and family names and place of residence of the attesting witnesses;
- (5) That two of them were known to him or satisfactorily proved by the testimony of a person known to him to be the fellow-castemen of the woman, that one of them is known to him or proved in a similar manner to be an enangan of her family (if it possess enangan), and that one of the witnesses is known to him or proved in a like manner to be a fellow-casteman of the man;
- (6) That after due inquiry made the marriage appeared to contravene none of the conditions (1), (2), (3), (4) or (5) of section 3; and
- (7) The time and place of such marriage.

Explanation.—The clause (6) is unnecessary if the marriage is solemnized after a decree under section 10.

The certificate shall be signed by the parties to the marriage, the three witnesses and the father, mother or karnavan of the man or woman if he or she happen to be below the twenty-first or sixteenth year of his or her age respectively, and also be countersigned by the registrar.

17. The registrar shall furnish to either party on request an authenticated copy of the above certificate which will import *prima facie* evidence of the factum and the validity of the marriage.

18. Parties cohabiting as husband and wife according to the custom of their caste before the passing of this Act may legalize their marriage under this Act in the following manner.

19. If the parties have been already cohabiting as husband and wife for a period exceeding one year, the notice and the declaration required by sections 5 and 10 respectively, and the

inquiry into the existence of the conditions (1), (2), (3), (4) and (5) of section 3 are unnecessary, and no one shall be permitted to object to the legalisation of the marriage under section 7.

20. The husband and wife desirous of legalizing their marriage under the last preceding section shall make separate affidavits before the registrar within whose jurisdiction they permanently reside to the effect that they are desirous of having their marriage legalized under this Act. If they are desirous of legitimatising their children (if any) under this Act, the names and the age of the children to be legitimatised must be given in the affidavits. The registrar should ascertain to his satisfaction (1) the identity of the parties, and (2) the fact of their having, according to the custom of their caste, cohabited as husband and wife for a period of one year.

21. If the registrar be satisfied of the identity of the parties and the fact of their having cohabited as husband and wife according to the custom of their caste for more than one year, he shall enter in the marriage certificate book their personal and family names, the place of their residence, and other particulars sufficient to identify them, and also the names and ages and other particulars of the children whom they wish to legitimatise under the Act, and state that they were personally known to him, or were satisfactorily proved by the testimony of the persons known to him, to be the persons they represent themselves to be; that the fact of their cohabitation as husband and wife for a period of more than one year has been satisfactorily proved; and that the child or children mentioned in the affidavits are acknowledged by both the parents to be the issue of such connection. This entry shall be signed by the parties and also by the witnesses who identified them in cases in which they are not personally known to the registrar. He shall also countersign the entry.

22. The registrar shall furnish to either party on request an authenticated copy of the above entry, which will serve as presumptive evidence of the marriage and the parentage of the children.

23. The husband must support his wife out of his property or by his labor; but, if she leave him without any lawful excuse, against his wishes, he is not bound to support her.

24. Except as mentioned in the last preceding section, neither the husband nor the wife has any interest in the property of the other. Either the husband or the wife may enter into an engagement or transaction with the other or with any other person respecting property which either might do if unmarried.

25. Section 497 of the Indian Penal Code will apply to the case in which a man commits adultery with a woman who is married or whose marriage is legalized under this Act during the continuance of such marriage.

26. Marriage is dissolved, first, by the death or sentence to imprisonment for life of either of the parties; secondly, by the judgment of a competent tribunal; or, thirdly, by the mutual agreement of the husband and wife in writing.

Explanation I.—When the husband is sentenced to imprisonment for life, the wife must not remarry until the lapse of such period as is required to know whether the Government would pardon the imprisonment for life.

Explanation II.—The agreement in the above section must be one registered by the district registrar within whose district the parties permanently reside according to the law for the time being for the registration of assurances of immovable property.

27. For the purpose of hearing suits contemplated in the last preceding section a special court shall be constituted in each of the districts of Calicut and Tellicherry.

28. The court so constituted in each of the above districts shall be entitled the Matrimonial Court of Calicut or Tellicherry as the case may be.

The local limits of the jurisdiction of the Matrimonial Court of Calicut shall be coterminous with the local limits of the ordinary original civil jurisdiction of the District Court of South Malabar, but the jurisdiction of the Matrimonial Court of Tellicherry shall extend, not only to the local limits of the ordinary original civil jurisdiction of the District Court of North Malabar, but also to the five southern maganes of the South Canara district lying to the south of the Chandragiri river. The Judge of the District Court for the time being shall be the Judge of the Matrimonial Court, and in the trial of cases under this Act he shall be aided by a jury which shall consist of an odd number not less than five and not more than eleven persons.

29. The jurors shall be members of the caste to which either of the parties belongs and must be chosen by them.

30. The following are the only suits which a Matrimonial Court constituted under section 28 has jurisdiction to try under this Act:—

- (a) Suit by either party to declare null and void a marriage on the ground that the husband or wife was a lunatic or of habitually unsound mind at the time of the marriage, and such lunacy or habitual unsoundness of mind was not known to the plaintiff at the time of the marriage;
- (b) Suit by either party to declare invalid a marriage on the ground that from natural causes the consummation of marriage is impossible;

- (c) Suit by the husband to dissolve the marriage on the ground of the wife's adultery after the marriage; and
 (d) Suit by the wife to dissolve the marriage on the ground of such cruelty or personal violence on the part of the husband so as to render it impossible for her to remain with him any longer.

31. If any of the grounds mentioned in the last preceding section be established, the court shall decree a divorce.

32. The provisions of the Civil Procedure Code shall, so far as it may be applicable, apply to suits instituted under this Act.

33. In suits under section 30 all questions of law and procedure shall be determined by the presiding judge, but decision on facts shall be the decision of the majority of the jurors before whom the case is tried.

34. An appeal shall lie to the High Court at Madras from the decision of the Matrimonial Court on the ground of the decision being contrary to law or usage having the force of law or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits and on no other ground.

35. When the time limited by law for appealing to the High Court shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed or withdrawn in the result of any appeal any marriage shall be declared dissolved, but not sooner, it shall be lawful for the woman to marry again as if the prior marriage had been dissolved under section 31.

36. In the case of intestate property the issue of the marriage contracted and children legitimated under this Act are entitled to inherit from their father his self-acquired property and also such other property as he could have disposed of *inter vivos*, notwithstanding any rule of the Marumakatayam law to the contrary.

37. The children are entitled to divide the property of their parents in equal shares, irrespective of sex, and when they proceed to make a division of their father's property, sufficient provision shall be made for the maintenance of the mother if she be living.

Explanation—Mother will include the step-mother also.

38. No division shall be enforced during the life-time of the father or mother against his or her wishes, of his or her self-acquired or ancestral property. If any will or codicil be left by him or her the succession to his or her property shall be regulated by such will or codicil, subject to the following section.

39. The provisions of the Hindu Wills Act, XXI of 1870, shall apply to all wills and codicils made by any Marumakatayam follower or by a person who has contracted marriage or whose marriage has been legalized under this Act or by his or her descendants.

Statement of Objects and Reasons.

1. Under both the systems of Marumakatayam and Aliyasantana law, marriage is a civil institution. In theory it is a contract based on a mutual consent and dissoluble at will, but in practice the moral sanction has been found sufficiently strong to prevent dissolution. Marriage has thus become practically indissoluble, except for the adultery of the wife and for some other similar causes. The marriage is not a mere contract between man and woman to cohabit each other. During the continuance of the marriage the woman is bound to be faithful to her husband, and in return she is entitled to be maintained not only from the separate property of her husband, but also from the property of the tarwad to which he belongs. This right of the wife to maintenance has been recognised by the High Court also in a recent case under the Marumakatayam law. In S.A.S., No. 238 of 1868 (IV, M. H. R., page 203) the High Court, while considering the nature of plaintiff's absence from her family house for the purpose of determining a question of limitation, made the following remarks: "The relation in truth is not a marriage but a state of concubinage into which the woman enters of her own choice, and is at liberty to change when and as often as she pleases. From its very nature then it might be inferred as probable that the woman remained with her family and was visited by the man of her choice, but the case in this respect is not left to mere probability. 'Such as undoubtedly been the invariable habit under the Marumakatayam law.' The above remarks being extra judicial and further opposed to the present state of the society were not acted upon by the lower courts. In an appeal from the decision of the sub-magistrate of Mangalore in an adultery case under the Aliyasantana law, Mr. H. S. Thomas, the late District Magistrate of Mangalore, recorded the following judgment in which he placed no stress upon the remarks of the High Court:—

"The ground of this appeal is the legal one that a wife under the Aliyasantana law is not such a wife as is contemplated in section 498, Indian Penal Code, and High Court Special Appeal, No. 238 of 1868, is relied on to show that she is a concubine. It is further argued that an Aliyasantana wife can take a fresh husband at will, and is not under the control of, or bound to, her first husband a day longer than she likes, and that consequently the man who takes her away

Declaration to be made by the bride.

I, Mangat Parvathi Ammah, hereby declare as follows:—

1. I am at present time unmarried.
2. I have completed my age of twelve years.
3. I am not related to Padijarepat Ramon Menon in any degree of consanguinity or affinity which would, according to the Hindu law as observed in Southern India, render marriage between us illegal.
4. I belong to the charna caste and he belongs to the kiriya caste, and a marriage between us is sanctioned by the existing custom of our caste.

I am, &c.,

Signed by PARVATHI AMMAH.

" LAXUMI AMMAH, her mother.

" PURAKKEL SANKARA MENON, } Both belong to

" KALKAT RAMA PANIKAR, } charna caste.

MANGALORE, 6th October 1883.

(Signed) K. KRISHNA MENON.

G.O., dated 18th January 1883, No. 146, Judicial.

READ—Report (printed separately) by W. LOGAN, Esq., on the Land Tenures of Malabar, submitted under date the 16th June 1882.

ORDER—dated 18th January 1883, No. 146, Judicial.

The Right Honorable the Governor in Council has perused the Special Commissioner's Report on the Land Tenures of Malabar, and has attentively considered the petitions which form one of the appendices to the report. The matters brought to notice therein are both numerous and important, and will require for some time longer the earnest attention which the Government is devoting to the subject. The Special Commissioner has, however, brought to notice that all classes of the people are in an expectant attitude, and the Right Honorable the Governor in Council therefore thinks it necessary to point out that the questions at issue are not such as can be disposed of in a hurry. He relies with confidence on the loyalty and good sense of all classes to disturb as little as possible, while the pending questions are under consideration, the existing state of the relations between all parties interested in the soil, and in particular he feels sure that he can rely on those who have the largest interests at stake not to attempt blindly to thwart by precipitate measures the action which Government may eventually adopt. The Special Commissioner's report is of a confidential character and cannot be immediately made public, but no time will be lost in maturing the views of Government, and ample time will be afforded to all to discuss the measures proposed before any final action is taken in the matter.

2. The Collector and Magistrate will be directed to publish the above resolution in the District Gazette, and to take such further action as he may consider necessary to make it widely known throughout the district.

(True Extract.)

(Signed) C. G. MASTER,

Chief Secretary.

to the Collector and Magistrate, Malabar.

" Revenue department.

" Board of Revenue.

Copy to W. Logan, Esq.

G.O., 29th January 1884, No. 53, Political.

ORDER—dated 29th January 1884, No. 53, Political.

The Government have, for some time past, had under their consideration Mr. Logan's elaborate report on the land tenures of Malabar. In view of the intricacy of the subject, and the great importance of the interests involved, the Right Honorable the Governor in Council resolves to appoint a special commission consisting of the gentlemen noted in the margin, who, after considering the whole

question, will advise Government as to the lines on which legislative action should proceed.

2. The commissioners, who will have power to add to their number, will assemble at Madras as soon as practicable.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To Raja Sir T. Madhavráo, K.C.S.I.
" W. Logan, Esq.
" H. Wigram, Esq.
" M.R.Ry. C. Sankara Nayar Avargal.
" P. Karunagara Menon Avargal.
" the Accountant-General.
" the Revenue department.
" the Board of Revenue.
" the Collector of Malabar.

G.O., dated 27th March 1884, Nos. 214, 215, Political.

READ—again the following papers:—

G.O., dated 18th March 1884, Mis. No. 183, Political.

Read—the following papers:—

From Raja Sir T. MADAVA RAO, K.C.S.I., President, Malabar Commission, to the Chief Secretary to Government, dated Mylapore, 11th March 1884.

I have the honor to forward a draft bill, together with a statement of objects and reasons, which has been discussed and settled at two meetings held by the commission appointed by G.O., dated 29th January 1884, No. 53, Political.

2. Three of the commissioners, viz., Messrs. Wigram, Sankara Nair, and myself, are satisfied of the policy of the proposed enactment. Mr. Logan, whilst concurring in the draft now submitted, would prefer to consult Mr. Karunakara Menon, who has not yet arrived, before committing himself to any final opinion as to the policy of such preliminary legislation.

ENCLOSURES.

Draft Bill.

Whereas a special commission has been appointed to consider the subject of land tenures in Malabar, and to advise Government as to any legislation that may be necessary; and whereas it is expedient that, pending such legislation, the eviction of tenants by janmis should temporarily stayed;

It is hereby enacted,

1. This Act shall be called "The Malabar stay of Execution Act."

2. It shall extend to the collectorate of Malabar, and shall come into force on the first day of June 1884.

3. "Tenant" means any person who has contractual relations, regarding the use and occupation of land, directly with the janmi thereof.

"Janmi" includes any person to whom the janmi has assigned his right to recover possession of immoveable property from tenants who have contractual relations, regarding the use and occupation of land, directly with the janmi thereof.

4. Where a janmi applies to any court for delivery of possession of immoveable property in execution of a decree heretofore obtained or hereafter obtained by him against his tenant or those holding under him, notice thereof shall be given to all the defendants requiring them to pay into court, within such time as shall be fixed by the court, all arrears of rent that may be due under the decree and to give security for the future payment of rent, if the decree provides for such payment. Until the time so fixed has expired, the decree shall not be executed. On such payment being made, and security given within the time so fixed, the court shall order execution to be stayed, so long as this Act is in force.

5. When in execution of a decree for delivery of possession of immoveable property obtained by a janmi against his tenant or those holding under him, the tenant or any person holding under him is entitled to apply for execution in respect of monies payable under the decree, and does so apply, execution shall proceed in the ordinary course, provided that execution shall not issue, except on condition of the applicant delivering possession of the property to the janmi.

Statement of Objects and Reasons.

Nearly two years have elapsed since Mr. Logan's report on Malabar tenures was received, and probably another year will elapse before any legislative measure can be passed. Meanwhile, the result of the uncertainty is that janmis may seek to evict tenants who have hitherto held on customary rather than competition rents.

2. In order to maintain existing relations between parties interested in the land until such time as those relations may be defined by legislation, it seems necessary to pass a short Act for the purpose of temporarily staying evictions.

3. Execution of decrees of eviction, obtained by a janmi against his tenant, will be stayed on certain conditions which will ensure the janmi against any substantial loss.

From Raja Sir T. MADAVA RAO, K.C.S.I., President, Malabar Commission, to the Chief Secretary to Government, dated Mylapore, 14th March 1884.

In continuation of my letter, dated the 11th instant, I have the honor to report that the draft bill for stay of execution has been further considered at our meetings, at which Mr. Karunakara Menon is now present, and we are unanimously of opinion that the bill may be passed.

Demi-official from Raja Sir T. MADAVA RAO, K.C.S.I., dated 16th March 1884.

ABSTRACT.—Forwarding a memorandum by Mr. Wigram, C.S.

ENCLOSURE.

MEMORANDUM BY MR. WIGRAM, C.S.

In drafting the "Malabar stay of Execution Act," the first point we had to consider was whether those persons who had entered into a single contract of mortgage (commonly called "panayam") with the janmi should be excluded. As at present advised, we do not think that their case will eventually call for any legislative interference, and we fully recognise the danger of inspiring expectations which are not likely to be fulfilled. At the same time we could not see our way to excluding those who hold on "panayam," and including those who hold on "kanam" and similar tenures. The courts have for so long a period treated the "kanam" holders as mortgagees, that there was danger of the Act proving a dead letter in the case of those persons who, in our opinion, require the greatest protection. Then, again, we wished to reserve to ourselves the right to confer some fixity of tenure, should it be hereafter considered advisable, on tenants holding under the rajas and devassams on simple lease ("verumpatam"). On the whole we came to the conclusion that it was better to define "tenant" too broadly than too narrowly; and that no real hardship would result from an Act which is essentially of a temporary nature.

Another point that claimed our consideration was to take care that no class of tenants should be allowed to raise the cry of "No rent." We have made it a condition, precedent to the right of being maintained in possession, that all arrears of rent should be paid. It was suggested that

pending suits of eviction and suits that may be brought hereafter should be stayed; but here we could not see our way to insisting on payment of rent, as the right to receive the rent is frequently a question that is in issue between the parties. Notwithstanding, therefore, that the parties may unnecessarily be put to the expense of a trial, we have thought it best to confine the Act to stay of executions.

The third point we considered was whether in the case of rack-rents it was not somewhat hard on the tenant to compel him to pay all arrears of rent before he could claim the benefit of the Act. But we came to the conclusion that it would be impossible, at present at all events, to give the courts any power to discriminate between fair and unfair rents, and that the tenant would probably be able to raise the money on the expectation of his tenure being made more secure.

Order—dated 18th March 1884, Mis. No. 183, Political.

These papers, together with the previous memorandum and bill of Sir Madava Rao's, will be forwarded to the Advocate-General for favor of his remarks.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Government Solicitor, with papers
and copy of Mr. Logan's report. All to be returned.

G.O., dated 29th January 1884, No. 53, Political.

READ—also the following paper:—

From the Government Solicitor, Madras, dated 20th March 1884, No. 156.

ABSTRACT.—Forwarding the following opinion of the Honorable the Advocate-General, dated 19th March 1884:—

OPINION.

I think a temporary Act is advisable, but it must be passed by the Governor-General's Council, the Civil Procedure Code being at present the governing law.

(Signed) P. O'SULLIVAN,
Advocate-General.

ORDER—dated 27th March 1884, No. 214, Political.

Ordered that the Government of India be addressed.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

LETTER—to the Secretary to the Government of India, Foreign Department, dated Fort St. George, 27th March 1884, No. 215, Political.

I am directed to forward a draft bill, with annexures, which has for its object the temporary suspension of eviction of tenants by janmis within the district of Malabar, and to request that the papers may, with the approval of the Governor-General in Council, be transferred to the Legislative department for the necessary action.

2. It is the unanimous opinion of a commission, presided over by Raja Sir T. Madava Rao, now assembled at Madras under the marginally-noted orders of this Government, that, pending the final disposal of the whole subject of land tenures in

Malabar, a temporary Act is required to prevent the janmis from evicting present tenants and substituting yearly tenants or tenants-at-will.

3. As the Civil Procedure Code is in force throughout the district affected, it is not within the power of the local Legislative Council to pass the proposed Act.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

G.O., 17th April 1884, No. 250, Political.

READ—the following paper:—

From W. LOGAN, Esq., Member, Malabar Commission, to the Chief Secretary to Government, dated Mylapore, Madras, 1st April 1884.

Referring to official memorandum, Judicial department, No. 458, dated 29th February 1884, placing at my disposal 500 copies of the translation of certain portions of my report on the Malabar land tenures, I have the honor to inform you that the members of the present Malabar Commission are unanimously of opinion that the translation may now be published, but are also unanimously of opinion that chapter VIII, that is, paragraphs 318 to 511, of the report should, for the present, be withheld. This cutting out of chapter VIII can be easily accomplished, as chapter VII ends at the bottom of a page (p. 104).

2. I have the honor, therefore, to request that the 500 copies may be rebound after cutting out chapter VIII, and that they may then be despatched to the Collector of Malabar, to be sold at cost price to the people at all the taluk stations. The Collector should, we think, exercise particular care that a sufficient number of copies, without payment if necessary, reach the hands of the poorer class of tenants in the Ernád and Walawanád taluks and in North Ponáni.

ORDER—dated 17th April 1884, No. 250, Political.

The Superintendent, Government Press, will arrange for the excision of chapter VIII from the Malayalam translation of Mr. Logan's report on Malabar land tenures, and despatch the copies rebound to the Collector of Malabar.

2. The Government desire that the suggestions of the Commission at the conclusion of the foregoing letter may receive due attention.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To W. Logan, Esq.
" the Superintendent of the Government Press.
" the Collector of Malabar.

G.O., dated 26th June 1884, Mis. No. 417, Political.

READ—the following paper:—

Telegram from the Secretary to the Government of India, Legislative department, to the Chief Secretary to Government, dated Simla, 13th June 1884.

Your 215, dated 27th March, and subsequent telegrams. Government of India is prepared to undertake Janmi Bill, but before moving, desired to have opinions of High Court Judges and any other authorities you may wish to consult.

Transferred to the Political department.

OOTACAMUND,
17th June 1884.

(Signed) M. HAMMICK,
Ag. Under Secretary.

ORDER—dated 26th June 1884, Mis. No. 417, Political.

Ordered that copy of G.O., No. 214, dated 27th March 1884, be forwarded to the Honorable the Judges of the High Court for favor of remarks.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Judges of the High Court, with C. L.

G.O., dated 28th July 1884, No. 492, Political.

ORDER—dated 28th July 1884, No. 492, Political.

The Special Commission appointed in G.O., 29th January 1884, No. 53, to report on the land tenures of the district of Malabar, having completed their labors, His Excellency the Governor in Council, in dissolving the Commission, desires to take this opportunity to thank Rajah Sir T. Madhava Rao and the several members of the Commission for the valuable report which they have submitted on a subject requiring very careful consideration and involving much laborious research.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To Rajah Sir T. Madhava Rao, K.C.S.I.

„ W Logan, Esq.
„ H. Wigram, Esq.
„ M.R.Ry. C. Sankara Nayar Avargal.
„ P. Karunagara Menon Avargal.
„ the Accountant-General.
„ the Revenue department.
„ the Board of Revenue.
„ the Collector of Malabar.

G.O., dated 29th July 1884, Mis. No. 500, Political.

MADRAS, 17th July 1884.

To

THE CHIEF SECRETARY TO GOVERNMENT,
FORT ST. GEORGE,

SIR,

We, the members of the committee appointed by G.O., dated 29th January 1884, No. 53, to consider Mr. Logan's report on the land tenures of Malabar having attentively considered that report and the papers noted in the schedule A hereto annexed, have now the honor to submit our report together with a draft Act, which, we recommend, should form the basis of legislation.

2. We commenced our sittings on 7th March and sat continuously from 8 to 11 A.M. every day (Sundays and Wednesdays excepted) until 14th April, when we

separated in order to have our draft Act printed and to prepare a report. Mr. Karunakara Menon, who was returning to Malabar, undertook to ascertain by private inquiries the probable effects of some of our proposals.

We recommenced our sittings on 9th June, and sat continuously from 7 to 10 A.M. every day (Sundays excepted) until 10th July, and again on 14th, 15th, and 16th July. Having subjected our first draft to the most searching revision, having again and again discussed each section and each clause, and having, we may almost say, recast the Act, we finally adopted this report on 17th July.

We have grudged neither time nor labor to the work entrusted to us. The work has been one of exceptional difficulty, and the many hours we have spent in discussion do not adequately represent the time devoted to it. Preparation of matter for discussion, consulting the old authorities, examining the course of legislation on the same subject in other provinces, are all matters which from day to day have required much attention.

3. Our preliminary meetings were occupied with framing a draft Act for staying execution of decrees of eviction obtained by *janmis* against their tenants.

We deemed it of the utmost importance that whatever reforms were finally determined on should, if possible, operate on present as well as future tenancies, and that the *janmi* should not have it in his power to defeat our object. We do no injustice to the *janmi* in thus staying his hand, for we provide that all arrears of rent must be paid and security given for future payment of rent before execution is stayed. We submitted our Stay of Execution Act to you on 11th March 1884, and on 21st March 1884 reiterated our opinion that no time should be lost in passing it into law.

We have now only to add that until some such enactment is passed, our present draft Act and report should not be made public. We have every reason to believe that if the *janmis* become aware that their power of ouster is to be limited by law, they will not only refuse to renew existing leases as they fall in, but will seize every opportunity of subjecting their tenantry to various forms of tyranny and of reducing them to the position of tenants-at-will. Without some such safeguard as we have suggested, the result of our labors would be rather to excite than to allay discontent.

4. Our report divides itself into three parts—

Part I.—(paragraphs 1 to 23) after some preliminary observations indicates the necessity for legislation, and explains the lines on which we think legislation should proceed.

Part II.—(paragraphs 24 to 56) contains a popular commentary on our draft Act.

Part III.—(paragraphs 57 to 66) sums up the result of our proposals, and contains some concluding remarks.

5. It will, perhaps, be objected to the constitution of our committee that the *janmi* class has not been adequately represented. This is to a certain extent true, and for many reasons it is better that it should be so.

The *janmi* does not desire legislation, and would probably be averse to any compromise. We, of course, admit that it is essential that an opportunity should be afforded to the *janmis* to express their views fully, and that those views should receive most careful consideration, before any action is taken in the Legislative department. But needless discussion and consequent irritation are to be avoided, it is believed that the proposed reforms should be formulated, and that the *janmis* should be invited. The subject is a complicated one, and no single member of our committee who had not, to some extent, been conversant with the subject before he joined the committee. Mutual discussion would tend to elucidate doubtful points; and whatever our first impressions may be, we are ourselves individually and collectively that we should be able to do justice to every class, and have endeavoured to do so, and to define and adjust their rights in accordance with the common interests of both and to the benefit of the country.

6. We fully recognise that, before we interfere with the *janmi's* rights as declared by the Courts, it is incumbent on us to show some political necessity for interference. That political necessity we believe to exist in the grave discontent prevailing among the agricultural classes regarding the growing insecurity of their tenures, in the fact that, among one class of the community, agrarian discontent, fanned by fanaticism, is ready to develop at any moment into agrarian outrage, and in the existence of a system of tyrannies practised by some *janmis* and apprehended from others.

Something then we think ought to be done to limit the *janmi's* power over his tenant,—to check capricious evictions, to restrict the demand of exorbitant rents and renewal fees, and to secure to the tenant adequate compensation for improvements. Here the tenant has substantial grievances which it is in the power of the Legislature to mitigate, if it cannot cure. The other evils brought to notice by Mr. Logan, which may be briefly summed up as the indifference of the *janmis* to the condition of the lower agricultural classes and the growing indebtedness, impoverishment, want of independence of those classes, are no less real evils; but it is very doubtful whether they can be removed by legislation. In Malabar, as elsewhere, they have their origin in over-population and the pressure of population on the soil. Wars have happily ceased; pestilence and famine have been brought under control; and the only remedies left for over-population are emigration and artificial checks,—remedies the expediency of which it lies beyond the scope of our commission to discuss.

What we may fairly endeavour to do is so to regulate the relations of the agricultural classes that the just expectations, of the landlord on the one side and of the tenant on the other, shall not be disappointed. Though we cannot revive ancient customs, which have fallen into disuse, we may regulate our proposals with reference to such customs. Whilst we are bound to respect rights of property, we may limit the exercise of such rights where ancient custom has been lost sight of, or the introduction of the principle of competition has enabled the stronger to encroach on the weaker. We must at the same time bear in mind that in proposing to legislate, after the lapse of nearly a century of British rule, for the welfare and protection of the tenants, we cannot avoid the duty of considering the rights and interests which have grown up in the interval.

7. The courts have always acted on the theory that the *janmam* was a proprietary interest in the soil, that the *kanam* was a usufructuary mortgage of that right, and that the *verum-pattam* was a simple lease. The theory, no doubt, finds considerable support in the early official records which we have set out in an appendix to this report. It may appear presumptuous on our part to question the conclusions arrived at by such able and impartial investigators. But we believe that it was an entire fallacy to apply English terms to Indian tenures; and we shall now, as briefly as possible, state our reasons for dissenting from that theory.

8. The primary meaning of the terms *janmam*, *kanam* and *pattam* is involved in much obscurity, and, whilst we are not prepared to adopt any particular theory that has been advanced, we may propound for what it is worth, a theory which appears to be at all events reasonable.

The theory that *janmam* signifies the absolute property in the soil rests mainly on the basis that a Brahminical Government or theocracy existed in Malabar, that the Brahmins claimed to be absolute owners of the land, and that the later *janmis* arrogated to themselves the same position as the Brahmins. The evidence, however, of the existence of a Brahminical Government, holding all other classes in subordination, rests entirely on Brahminical writings, which, so far as they exalt the Brahmin at the expense of the Nayar, the earlier inhabitant of Malabar, must, we think, be received with the utmost caution.

If it could be shown that the *janmi* having first acquired a title by occupation, let the *kudian* into possession, it would, of course, follow that the *kudian's* tenure depended on the terms of his contract with the *janmi*. But if the contrary was the case, and it was the *kudian* who first acquired a title by occupation, and all that the *janmi* claimed was a right to a customary share; then it is clearly erroneous to say that the *janmi* was the absolute owner of the land. When waste land was brought under garden cultivation, it may have been the practice for the

kudian to obtain a *kuli-kanam* lease from the *janmi*, before entering on the land, and the *janmi* may have been at liberty to resume the land on payment of the value of improvements. But if, as was usually done, the value of the improvements was converted into a *kanam* and became a fixed charge secured on the land, then the tenant had as good a right to remain on the land as if he had originally acquired a title by occupation.

9. We are not disposed to admit the truth of Mr. Ellis's assertion (Meerasi Papers, page 179) that community of rights in the ownership of land was unknown in Malabar, and that all land was individual property. There can be no reasonable doubt that Brahmin and Sudra communities,—the Gramam and the Tara,—did originally hold lands in common and, in some few instances, do so to this day.

The law of necessity in Malabar, as elsewhere, disintegrated the Gramams and Taras into Illams, Manas, and Tarwads. Corporate ownership passed from the larger unit of the village to the smaller unit of the family. But it must be remembered that these families are in themselves communities. Even the *Stanam* property of a Raja cannot be properly said to be individual property, as it is merely a portion of the communal property, set apart to support the dignity of his position, and is inalienable.

10. Both the *pattam* and the *kanam* were, we believe, originally revenue and not rent,—revenue paid to the public purse by the hereditary raiyat or *kudian*. In the political history of Malabar, one fact at least is supported by a considerable amount of evidence, viz., that lands were originally held free of rent and taxes, and that in times of public exigency the Rajas levied a tax of one-fifth of the produce on all lands, except those appertaining to the temples. (Cf. Mr. Jonathan Duncan's Article on Malabar-Asiatic Researches, Volume V., Section 28). This, then, was the *pattam* or share of the *pād*, i.e., the paramount authority. It may perhaps be said that the lands were held free of rent or taxes on condition of performing military service; but, so far as the evidence goes, this liability to military service was purely a personal liability, and had nothing to do with the land.

The *kanam* (money secured on the land) may not improbably have originally been the contribution levied on extraordinary occasions by the Rajas, which was treated not as a land-tax but as a loan.

This would satisfactorily account for the difference between the *kanams* in North and South Malabar. In North Malabar, which was frequently subject to foreign invasion, the *kanam* is invariably a substantial sum. In South Malabar, where for centuries the Zamorin exercised undisputed sway, free from foreign aggression, the *kanam* is almost invariably a nominal sum.

11. The practice of levying a periodical fine for the renewal of a *kanam* was really in the nature of a succession duty. (Cf. Græme's Glossary *Purushanturam*).

The fine was payable at the death of the *janmi* and at the death of the *kanumbar*, or once in twelve years at the feast of Mahamagam at Tirunavayi, when the parties having met together, the old document was torn up and a new document substituted (*policheluthu*). That the *janmi* had, however, the power to refuse the renewal at his own caprice, is a proposition to which we are unable to assent. If the *janmi* wished to get rid of a refractory *kanumbar*, he might bring his case before the *kuttam* of the *tara*, and if the *kuttam* was proved to have acted in contravention of the laws of the community, could be expelled, but the *janmi* was not powerful enough to expel him except in this recognised manner.

Non-payment of the *janmi's* customary share, non-payment of renewal fees, neglect to cultivate, and perhaps the inability of the *kudian* to advance further sums of money to his *janmi* may have been considered adequate grounds of forfeiture, but a simple decree on the part of the *janmi* was not sufficient.

As he behaved himself and acted as a *janmi*, whether he held on *kanam-pattam* or otherwise, he was entitled to his share of the land, having as much right to the produce, as the *janmi* had to his.

12. The difference between us and the other writers is one of degree rather than of principle. They admit that it was rarely exercised, though they admit that it was rarely exercised.

analogy to the English land system that they feel justified in speaking of landlord and tenant,—mortgagor and mortgagee. We, on the other hand, assert that the *kudian* could not be expelled except by a decree of his compereers, and that to apply English terms to Indian tenures is only misleading.

It is possible that the relations of the two classes were slowly but steadily tending towards the independence of the *janmi* and the dependence of the *kudian*. The *janmi* may have had full *dominium* over some lands, either because there was no settled *kudian*, and he cultivated them by means of his slaves, or because as *kudian* he had purchased the *janmam*, and the two rights became merged into one. All that we maintain is that at no period had the relations of the *janmi* and *kudian* reached that stage of development that it was proper to apply to them literally the terms,—landlord and tenant,—and that, at all events as regards the bulk of the old Nayar *kudians*, the ancient custom had never been lost sight of.

13. In support of the view that the right of the *janmi* was originally nothing more than a right to share in the produce, we have only to refer to the passage in the *Keralolpatti* quoted by Mr. Sankaran Nayar, a translation of which runs thus:

"Parasa Raman having sent for Sudras from various countries, made them settle and prescribed various rules of conduct for them. He created *adima* and *kudima* in the *desam*, protected *adigams* and *kudians*, established *taras* and *sanketams*, separated the Nayars into *taras* and ordered that to them was to belong the duties of supervising (lit: the eye), executing (lit: the hand) and giving orders, in such a manner that rights should not be curtailed or suffered to fall into disuse. To the *kudians* the *kilkur* (inferior share), to the Brahmins the *mélkur* (superior share); to the former the *kanam*, and to the latter *janmam*; and so the law of *kanam* and *janmam* and the rules of conduct for the Brahmins and custom for the Sudras were ordained."

In one sense the *kanam*, *ottu* and other kindred tenures may be regarded as mortgages, but as mortgages not of the land but of the *janmi's* interest in the land. The only effect of redemption would then be to convert the *kanam-pattamkar* into a *verum-pattamkar*, but would not interfere with the continuity of his possession as occupancy tenant.

14. The circumstantial evidence in favor of our view seems to have been overlooked by the early inquirers. Their information was probably derived from interested *janmis*, from Tippoo Sultan's revenue officers, and from the Nambutiri, who was attached to each Court as expounder of the Hindu law. The *kanamkars* were not adequately represented. With the exception of the Mappillas examined by Mr. Duncan, who could not understand why they should pay a *mélkur* to the *janmi* and another *mélkur* to the Circar, we cannot find that the *kanamkars* had an opportunity of being heard.

The circumstantial evidence to which we attach great importance is as follows:—If the *kanam* tenant was not, to all intents and purposes, a hereditary occupant, how are we to account for private family temples and houses belonging to *kudians* being built on lands held by them on *kanam* tenure?

If there was not a general belief in the absolute security of the tenure, how, again, are we to account for the practice of Nayars purchasing land in the name of some Nambutiri and taking a *kanam* demise from him?

How are we to account for the fact that a *kanam* deed specifies no time for redemption and contains no covenant to surrender, while these details are almost invariably found in the *panayam* deed, which is the word in common use in Malabar whenever a real mortgage of the land is intended?

How are we to account for old *kanam* interests being sold at the market for prices far in excess of any sum which the purchaser would get from the *janmi* if evicted?

How are we to account for the practice, which continues to this day, of praying for redemption on the ground that the term has expired, on-payment of rent or renewal of the lease?

15. The argument in support of the view that the *janmi* has an absolute property in the soil. There is no paragraph appearing in the language of the sale-deeds (*attipet-ola*) which asserts that the *janmi* has an absolute property in the soil. There

is, we admit, some force in this objection, but it can be explained in the following manner:—The sale-deed was the last of a series of documents executed by the *janmi*. So far as regards the extraordinary rights which the vendor conveyed, e.g., the right to levy tolls, the authority in the *Desam*, &c., these were exclusively his own property, which by a fiction were supposed to have been conveyed to him by king Parasa Raman by pouring out of water, and which he in like manner now conveyed to the purchaser. So far as regards the description of the property and its appurtenances, the vendor was well aware that he was contracting with reference to the customary law, as expressed in the passage from the *Keralolpatti* quoted in paragraph 13, and that he could not dispose of the *kudian's* rights. In some cases he did in fact only convey the *pattam*.

In the second place, it may be said that, when a *janmi* intended to confer permanent rights of occupancy, he was at no loss for appropriate terms in which to express his intention, e.g., *Sasvatham*, *karayma*, &c. Our answer to this is that the language of such deeds differs far less than would be supposed from the language of a simple *kanam* deed, and that the intention to confer fixity of tenure by the one, does not exclude the hypothesis that a limited fixity of tenure was intended to be conferred by the other.

Lastly, it may be said that the use of the words *janmam*, *kanam*, and *pattam*, as applied to slaves, indicates the idea of selling, mortgaging, and letting. To this we would reply that the slaves were, as a rule, attached to the soil and were resumable only if the land was resumable.

16. If we are asked to account for the early inquirers being misled, our answer is that their inquiry was mainly directed rather to the best mode of collecting a land-revenue for the Company than to ascertaining accurately the rights of the people *inter se*. They approached the latter subject from a wholly English point of view. They were unable to conceive what was practically a co-proprietorship in the land between the *janmi* and the *kudian*.

Finally, it may be urged that assuming that the views of the early inquirers were wrong, they have been acted on for so long, that it would be clearly impolitic and unjust to disturb existing relations. We readily concede that if the *janmi* had been exercising the right of ouster and the right of redemption since 1792, it would be impossible now to interfere with him. But, as a matter of fact, we believe that scarcely a single *janmi* brought a suit of eviction against his *kudian* in the courts until about 1852. Prior to that date the procedure appears to have been for the *janmi* to get a decree for rent and then sell up his *kudian's* interest.

17. If any lingering hope existed in the mind of the *kudian* that the courts would in time recognise his ancient privileges, that hope must have been abandoned when, on 5th August 1856, the Sadr Court, under the auspices of Mr. Strange, defined a *kanam* as a mortgage for twelve years, and distinctly declared that though "*kanam* mortgages are generally renewed at the end of the period fixed, there is no obligation on either side to renew them, unless the landlord and mortgagee should be mutually desirous of doing so."

When the general rise in prices took place in or about 1852, the *janmi* was not slow to avail himself of a law which placed no restriction on his right of eviction, and no limit to the rent and renewal fees which he might demand.

Thenceforward up to the present time evictions have become more and more frequent, and though every decree of eviction does not necessarily mean eviction, it does mean that a powerful weapon is placed in the hands of the *janmi*, enabling him to enforce what terms he pleases.

18. We shall now briefly state what we believe to have been the relations of the agricultural classes in Malabar at the time of Hyder Ali's invasion in 1765. The Muhammadan Government was not, we think, of sufficiently long duration to alter those relations or to accustom the people to any new theories as to rights of property. As the easiest mode of levying a land revenue, the Muhammadans decided to ignore the *janmi* and to exact as much as they could from the *kudian*. The result of this policy would have been to extinguish the *janmis*, or perhaps to convert them into zemindars.

There were then two classes interested in the land,—the *janmi* and the *kudian*; the former, as a rule, an aristocratic non-cultivating class, the latter the class which found the capital and labor necessary for cultivation.

The arrangement entered into between the *janmi* and the *kudian* was either for *kanam-pattam* or *verum-pattam*. In the former case, the *kudian* was entitled to have deducted from his *pattam* the interest on his *kanam*, i.e., the money advanced by him.

His tenure was regarded as one of greater permanence than that of the *kudian* who held on *verum-pattam*, though we doubt whether there was originally any material difference between the two tenures. To this day we find *kudians* who have held on *verum-pattam* from generation to generation under the Zamorin and the Devasams, and who have apparently the same fixity of tenure as any *kudian* who holds on *kanam-pattam*. That they have not developed into *kanam-pattam* tenants, is simply due to the fact that neither Zamorin nor Devasams had any occasion to borrow money from their tenants.

In what proportion the shares of the produce were distributed between the *janmi* and the *kudian* was not, we think, the subject of uniform rule. Before the Muhammadan Government, one-third of the estimated produce appears to have been the share of the *janmi*, whilst two-thirds were reserved for the *kudian*, and out of this he had to pay the *vittu-valli* or expenses of cultivation to the Tiers and Cherumars who tilled the soil. Mr. Graeme estimates the *vittu-valli* at one-third of the produce, or half the *kudian's* share (see Glossary).

Under the British land-revenue settlement, in accordance with a custom which was found to exist, the *vittu-valli*, at a fair estimate, was first deducted from the gross produce of paddy lands, and one-third share was then set apart for the *kudian*. The remaining two-thirds were then divided between the Circar and the *janmi* in the proportion of six-tenths and four-tenths.

It is not, however, to be supposed that the parties regulated their own agreements in this way. If the *janmi* had to pay the land-revenue, he took two-thirds of the produce from the *kudian* as *pattam*. If the *kudian* had to pay the land-revenue, he deducted four-fifths of this two-thirds for the purpose, and only paid one-fifth to the *janmi* as *pattam*. This was called *pattinna-randu* or the two-tenths payable to the *janmi*, which, according to Mr. Graeme, were being enforced by the courts in his day (1822).

In the case of garden lands (*parambas*) the estimated gross produce was divided into three equal shares, of which one went to the *kudiar*, one to the *janmi*, and one to the Circar.

Further, we may observe that there was no uniform rule observed in estimating the gross produce for the purpose of fixing the *pattam*. In the case of *kanam-pattam* it was estimated much more favorably to the *kudian* than in the case of *verum-pattam*.

19. As a rule, the *kudian* was also the actual cultivator, cultivating by means of slaves or hired labor. But he did not necessarily lose his rights as *kudian* if he temporarily sublet to another for cultivation. Such actual cultivator's profit would depend on his agreement with the *kudian*. He would have no customary right to any particular share.

The *kudian* was, in fact, the settled raiyat and to all intents and purposes occupied a position equal and in no way inferior to, that of the ordinary settled raiyat in the zemindari and ryotwari districts of this Presidency.

The *janmi* class, it must be remembered, was originally a limited class.

There is a tradition that none but Brahmins could hold *janmam*. Originally the right was certainly confined to three classes of the community, viz. :—

- (a) Religious and charitable institutions;
- (b) Brahmins;
- (c) Rajas, Nadvalis and Deshavalis, i.e., local chieftains.

New families were, however, constantly becoming powerful enough to style themselves *janmis*, and it is this class which now forms the bulk of the *janmis* in Malabar, the old *janmis* having remained stationary, if they have not declined in numbers. It seems obvious, however, that the new *janmis* cannot claim to be on a different footing from the old *janmis*.

20. With reference to the position of the *kudian*, it will not be out of place to refer to Mr. Ellis's description of the *kaniyatchi* or *meerasi* tenant of Southern India. (Meerasi Papers, page 339.)

The *kanistatantram* was neither more or less than the *kanam*, whilst the *sawmis vatantram* represented the *janmabhogam* of Malabar. Mr. Warden's view that *meerasi* right very nearly resembled the *janmam* right itself (paragraph 86) admits that had the With strange inconsistency, Mr. Warden himself (paragraph 86) admits that had the *kanam* tenure been in use in Tanjore, the greater proportion of the *meerasidars* would, in all probability, have been *kanamkars*. (Of Appendix I., Meerasi Papers.)

21. We may also refer to Mr. Field's account of the *khudkasht* raiyat of Bengal:

"Hereditary rights," he says, "have been claimed for *khudkasht* raiyats; while, on the other hand, it has been contended that they had no rights whatever, and could be ousted at the will of those whose lands they cultivated. The true state of things seem to have been this. Where there was plenty of unoccupied land, and population was sparse, the competition was not amongst tenants for land but amongst zamindars for raiyats. Tenants once induced to settle in the villages were fostered, and where the son was able to step into the father's place, the arrangements suited the parties too well for any doubt to be raised as to the course which would be pursued upon the death of a tenant. Non-fulfilment of the conditions on which the land was cultivated, non-discharge of the Government dues or non-delivery of the proper share of the produce was the only ground which rendered it necessary to remove a tenant. Some landholders, indeed, conceived themselves to possess the power of ousting these tenants in favor of other persons who were willing to give a higher rent; but in a state of society in which rent was regulated by custom, not by competition, and so the practical exercise of the power was such new tenants did not often present themselves, instances of ouster, it gradually became usual, not frequent. Thus notwithstanding occasional not to evict *khudkasht* raiyats so long as they in the language of a later stage of development, Relation of Landlord and Tenant, page 424). tend that the *kudian* of Malabar was in at paid their rent." (Field's Landholding and the Landholder, p. 100.)

We quote this passage, because we consider it describes, and that he may, with equal least as favorable a position as the raiyat he respected.

22. The representative of the ancient *kudians* must be looked for among those who lands on *kanam-pattam* or *verum-pattam*, for at least a generation have held the same benefit.

In so doing, we confidently submit that we are but restoring customary interests. Whether such customary privileges without unduly disturbing vested rights, as we have suggested, or merely as privileges were originally enjoyed as of right, as we have suggested, or merely as matter of grace, there can, we think, be no doubt that they came to be regarded as rights by the parties and ought to have been so recognised by the courts.

Where long possession will not justify our interference, we are of opinion that it will take its course, but that for the for the past freedom of contract must be left to take its course, but that for the future we shall be justified in regulating contracts of tenancy and by insisting that he who takes the land for agricultural purposes shall, as a rule, himself cultivate the land.

23. The remaining class are those who are actual cultivators of the land, but who do not hold direct from the *janmi*.

It may be that they are, as a class, worse off than the tenants, who hold direct from the *janmis*, though we observe that in the register of petitions few, if any, complaints emanated from them. They are not, we believe, as a class, worse off in position in any other district of the Presidency of the cultivating tenant-at-will Malabar than persons holding a similar position. Isolated action for Malabar would, we think, rather embarrass the Government in dealing with the general question, when- ever it becomes necessary to deal with it.

The only principle on which it appears to us that we can interfere in favor of the sub-tenant is that the law will step in to protect those who require to be protected against their own imprudence and against those who are ready to take an unfair advantage of them.

It is a well-known principle of equity that bargains will not be upheld if one party to the contract was manifestly in such a position that he could not freely exercise his will. That principle, however, is one which requires to be applied most cautiously, and will not justify us in conferring greater benefits than the persons so placed at a disadvantage might reasonably expect.

Rack-rented sub-tenants will find substantial relief in our proposals to limit the rent which can be demanded from them. To grant them even a limited fixity of

tenure would, we think, be giving them what they have never had reason to expect, and never have expected.

24. We have endeavoured to explain the past history of the landlord and tenant question, which may be briefly summed up as custom superseded by contract. The commentary which follows will explain the remedies we propose to apply. Our draft Act is divided into six chapters, as follows—

- Chapter I.—Introductory.
- Chapter II.—Definitions.
- Chapter III.—Rights and liabilities of tenants.
- Chapter IV.—Rent.
- Chapter V.—Improvements.
- Chapter VI.—Miscellaneous.

It contains forty-four sections, and we have done our best to make it concise and intelligible.

25. Of Chapter I, there is little to be said. We give a retrospective effect to the Act so far as regards unexecuted decrees of eviction which would not have been made if this Act had been in force (section 2). Our justification must be found in the fact that, whilst advocating the disappointment-preventing principle as the basis of all legislation, Bentham recognises an exception to this rule, when by a different disposition happiness in greater quantity will be produced. We disappoint the *janmis* of reaping the full benefit of their decrees; but we confer on a large body of tenants benefits which, since Mr. Logan's commission commenced, they have had some reason to expect.

26. We exclude from the Act special contracts regarding land held on permanent or service tenures. Some of these contracts are in the nature of permanent alienations with the reservation of certain seigniorial rights. Others again are grants of land held by inferior temple servants so long as they continue to perform the services appurtenant to their office.

In the former case, it might be justifiable to treat the alienees as *janmis*; but, in the latter case, it would clearly be a hardship to the grantees to turn their lessees into occupancy tenants. These, as a class, ought rather to be treated as tenants than as landlords. Neither class require any greater security of tenure than they already possess, whilst it is extremely difficult to differentiate the one class from the other; and we have, therefore, decided that all such tenure-holders shall remain unaffected by the Act. At the same time, it seems to us that it is necessary to secure to the tenants of such tenure-holders the same privileges as will be enjoyed by sub-tenants. We have, therefore, included them in our definition of sub-tenant (section 3).

27. There is another class of cases which we were originally of opinion that it would be advisable to exclude from the Act, viz., contracts in the form of English conveyances, which may have been entered into by planters in the Wynaad without reference to the indigenous tenures of the district.

We are not in a position to say whether such contracts exist to any extent. But we think that an opportunity should be afforded to the Planters' Associations to consider whether the Act is in any way likely to affect their interests prejudicially; that their case should be carefully considered; and that, if necessary, coffee plantations should be exempted from the operation of the Act.

28. We reserve to the *janmi*, the right to minerals which he has hitherto enjoyed virtue of his right of proprietorship as recognised by the courts (section 4).

29. In Chapter II, some of our definitions require explanation, and we will take them in order:

(1) We have not attempted to define *janmi*. We believe that those who have to administer the law will find no difficulty in deciding who is, and who is not, a *janmi*.

It would be difficult to formulate a proposition on the subject.

We include in the term '*janmi*' any undivided member of the *janmi's* family. We are clearly of opinion that no individual member of a *janmi's* family, who happens to hold a lease from the head of the family, ought to have occupancy rights in respect

of such holding. Further, we wish to prevent members of the *janmi's* family intervening between the *janmi* and the hereditary tenant, and thereby intercepting the benefits intended for the latter.

Cases have actually come to our knowledge in which, when the period for renewal of the *kanam* deed came round, the *janmi* insisted on the tenants surrendering their ancient tenure in favor of a member of his (the *janmi's*) family, and accepting sub-tenures from him at an enhanced rent. The old tenants' possession has not been disturbed. They remain on but have to pay a higher rent. The intervenor is really nothing but a rent charger, and as such, we think, he ought to be treated.

To prevent any mistake as to our intention, we have further provided that a member of the *janmi's* family is not to be regarded as a tenant within our definition of 'tenant.' It might have been argued that, though both the *janmi* and the undivided member of his family were *janmis*, the latter was also a tenant in relation to the former. A conflict would thus have arisen between two tenants as to the money right.

(2) The usual definition of 'tenant' as one who is liable to pay rent, seems to us unsatisfactory, and we believe that our present definition better expresses the idea which we wish to convey.

The question arose whether we should treat usufructuary mortgagees as tenants; but we came to the conclusion that in such cases the *janmi* ought to retain the equity of redemption according to the intention of the parties.

We have, therefore, excluded mortgagees from the definition of tenant.

(3) We have adopted the definition of 'mortgagee,' from Acts XXVII and XXVIII of 1866. It is hardly necessary to observe that one who holds on *kanam* or *otti* tenure does not fall within the definition, whilst one who holds on *panayam* tenure does.

(4) Under the term 'customary tenant,' we include those who hold on certain well-defined tenures.

By ancient custom, the holder of a *kulikanam* or improving lease had a right to hold for twelve years, and at the end of that period, his tenure was usually converted into a *kanam*.

The right to hold for twelve years is now recognised as the distinguishing feature of the *kanam*, and *a fortiori* of higher tenures which almost invariably follow after a *kanam*.

We anticipate some objection to our proposal to treat the holders of *otti* and other superior tenures of the same nature which fall short of an outright sale, as customary tenants and not as mortgagees.

Otti is a Dravidian word signifying 'pledge,' and, as understood on the East Coast, implies an ordinary mortgage of the land. In Malabar, however, it is not used as a synonym of *panayam* or mortgage, but is invariably, so far as we are aware, used to signify a *kanam* and something more. The difference between an *otti* and a *kanam* is that, in the former case, the interest on the money advanced is equal to the full *pattam*, and therefore no *pattam* is payable as in the case of a *kanam*. Both tenures may, in one sense, be regarded as mortgages, but as mortgages, not of the land, but of the *janmi's* right to a share of the produce of the land. (See *otti*, *panayam* in Graeme's Glossary). There was never, in our opinion, any confusion between *kanam*, *otti*, and *panayam*. The *panayam*, as a rule, specified the time for redemption, and contained a covenant for surrender. The *kanam* and *otti* did not.

(5) (6) Tenants, who are not customary tenants, are ordinary tenants under the Act. Either may be occupancy tenants, if they fulfil the conditions of section 3 of the Act.

(7) Persons who hold from a tenant, or in any other way indirectly from a *janmi*, fall within our definition of "sub-tenant."

(8) Our definition of 'holding' requires no explanation.

(9) Our definition of 'to hold' includes mortgaging and subletting. The transferee of a holding by gift or sale is exactly in the same position as the transferee of a holding by inheritance or succession.

(10) (11) In our definition of gross and net produce, we are desirous of retaining, as far as possible, the ancient customary mode of assessment, which in the case of grain lands was as follows:—

The quantity of seed necessary to sow a given field multiplied by the number of fold that that seed ought on an average to yield, represented the average gross produce of that field. The seed and the fold were estimated by experienced assessors acquainted with the locality.

The fold, of course, varied according to the fertility of the soil.

The system, though it may appear intricate, is well understood by the people, and was adopted by Mr. Rickards as the basis of the land-revenue settlement.

To ascertain the net produce, the quantity of seed sown and an equal quantity for expenses of cultivation, were deducted from the gross produce, and in many of the old documents the quantity of seed sown was specified. This system is self-adjusting, for, in a bad soil, which requires more seed and more labor to produce a fair crop, the cultivator gets a higher allowance for cultivation expenses.

We have no hesitation in retaining this ancient custom for paddy la regards other grain lands, we are doubtful whether it will, in all cases, be sufficient favorable to the cultivator. It is a recognised rule in Malabar that the cultivator of precarious and intermittent crops ought to have a larger share of the produce than the cultivator of paddy crops.

We have, therefore, provided that, in grain-producing lands other than paddy lands, three-fifths of the gross produce shall represent the net produce, if that is less than the net produce of paddy lands. Where the land yields fivefold, the result on both methods of calculation is the same; where the land yields more than fivefold, the cultivator will benefit.

In cocoanut and other gardens we have provided that three-fourths of the gross produce shall represent the net produce. We believe that this will not be found too favorable to the cultivator, as gardens require much care and attention to make them productive and to keep them so.

The mode of fixing the net produce, as above described, is only an approximation to the actual net produce; but, taking one year with another, it is as close an approximation as is necessary for the purpose to which we apply it, viz., the fixing of a fair rent.

The remaining definitions do not require explanation.

30. We now come to Chapter III of the Bill, which separates tenants into occupancy and non-occupancy tenants. Although we have no sufficient data to go upon, we estimate that about one-third of the tenants will become occupancy tenants.

Our great difficulty was to know where to draw the line of separation, and we only arrived at our final conclusion after much discussion. We propose to confer occupancy rights (section 6) on—

- (a) any tenant who has held the same land for thirty years;
- (b) any tenant who has reclaimed land and held it for fifteen years;
- (c) any customary tenant who holds land which has for thirty years been held on customary tenure;
- (d) any tenant who purchases the occupancy right from the *janmi*.

Occupancy rights under clauses (a), (b), and (c) will accrue to those entitled to them on the day on which this Act comes into force. After that date, none can be acquired except by purchase. We believe that in this way we prevent much uncertainty and fraud. If the process of acquiring occupancy rights were made a long process, that is to say, if occupancy rights were made to accrue in any manner in which a tenant might complete thirty or fifteen years' occupation (as the case might be), mutual jealousy would spring up between the *janmi* and the tenant, the latter constantly attempting to acquire the occupancy right, the former constantly attempting to defeat that object. Mutual confidence between the parties would be impaired, if not destroyed.

Another advantage of our plan is that the number of persons who become occupancy tenants can be ascertained once and for all. By section 42 we provide

for the appointment of a Settlement officer to frame a record of such rights and to grant certificates.

31. We will now explain the principles on which our three first classes obtain occupancy rights.

Class A are the representatives of the ancient *kudian*, of whom we have spoken before. Thirty years ago every tenant who held on *kanam-pattam* and many of those who held on *verum-pattam* had reasonable grounds for believing that they would not be disturbed. The law, it was true, was not in their favor, but it had not been invoked against them. We purposely draw no distinction between customary and ordinary tenants. The recent tendency to convert *kanam-pattam* tenants into *verum-pattam* tenants, noticed by Mr. Logan in paragraphs 132 and 133 of his report, is certainly not diminishing, and, though the *janmi* has not exceeded his legal rights, we cannot but regard such action on his part as a wanton abuse of power. We cannot restore tenants who have been so treated to their former position as regards the rent payable by them, but continuity of possession will, we are glad to think, give them the same fixity of tenure that they would have obtained, if there had been no alteration in their tenure. The same result will follow if, without adequate consideration, a *kanam* has, since 1st January 1881, been converted into a *panayam* (Explanation I). Recent instances of this have actually occurred. We have fixed upon this date as it is the date of Mr. Logan's commission when *janmis* began to anticipate changes prejudicial to their interests.

Class B are the tenants who have recently spent their money and labor in reclaiming waste land, and deserve special protection. At the end of twelve years, the *janmi* had the option of recovering the land on payment of the tenant's improvements and elected not to do so. The law will now step in and say that he shall continue his forbearance. Lands so reclaimed within the last thirty years are, for the most part, in feverish localities. They are of no personal use to the *janmi* beyond furnishing him with an income, and security from eviction will be highly valued by the tenant.

Class C are the tenants of lands which have always been held on *kanam-pattam* or some higher tenure. We think that we may fairly say to the *janmi*, "In a series of years, extending to a generation, you have shown your intention not to cultivate the land yourself; your tenants entered on the land in the hope that they would remain there undisturbed; we regard the transfer of possession that has taken place in the light of a transfer from your old to your new tenant, and we say that you shall not evict your present tenant so long as he behaves himself and fulfils his obligations towards you."

This class will probably include tenants who have been evicted from their old holdings and admitted into new holdings from which others have been evicted. The class of tenants who have sufficient capital to take up substantial holdings being necessarily limited, the interchanges of possession are mostly confined to that class.

It may perhaps be thought that we have hardly gone far enough in conferring occupancy rights, and that we might have treated every tenant who had held for twelve years, as a settled raiyat, as was done in the Bengal Presidency, and have conferred permanency of tenure on him. It must, however, be borne in mind that for more than thirty years the courts have enforced the *janmi's* right of ouster, and that the *janmi's* position is certainly far more ancient than, and, in many ways superior to, that of a Bengal zemindar. We believe that we have gone far as justice and policy permit.

32. We felt bound to provide for cases in which tenants might obtain occupancy rights in a portion, but not in the whole, of their holding.

It would obviously be extremely inconvenient that a tenant should have different interests in one and the same holding, i.e., in lands held under one instrument and one set of conditions. It would necessitate a re-adjustment of the *kanam* or money secured on the land, and of the rent, proportionately on those parcels which the tenant held as an occupancy and on those which he held as a non-occupancy tenant. Such cases are probably not numerous, but would certainly give rise to litigation.

We have adopted the rule that if a tenant can claim occupancy rights in the greater portion of his holding, he shall be able to claim occupancy rights in the whole (section 7).

33. We next define the future relations of the *janmi* and occupancy tenant (sections 8 to 14).

The occupancy tenant must not deny his *janmi's* title so as to prejudice the *janmi's* interest. He must not wilfully insult or annoy his *janmi*. He must not persistently neglect or refuse to pay rent and renewal fees, as they fall due. If he does any of those things, he forfeits his tenure, but, on eviction, is entitled to compensation for improvements (section 8).

This section was the subject of much discussion, and we necessarily leave much to the discretion of the courts as to the acts of grave insult or annoyance. To select a few illustrations.

If a Mappilla tenant under a Nambutiri *janmi* were to slaughter a cow in front of his *janmi's* gate, or if a Hindu tenant under a Mappilla *janmi* were to kill a pig under similar circumstances, we think that public opinion would justly hold that those men ought to be summarily evicted.

These are, of course, extreme instances. A tenant might, in numerous ways, so annoy his *janmi* by invading his privacy that it would be only fair that the *janmi* should have the right to resume the land.

On the other hand, riding in a muncheel and the instances referred to in paragraphs 99 and 100 of Mr. Logan's report are certainly not grounds which justify the *janmi* in fining the tenant, still less in evicting him.

We have not included wilful waste as one of the grounds of forfeiture of an occupancy tenant's holding, partly because we think that it will be altogether against the tenant's interest to commit waste, and partly because the *janmi* will still retain his ordinary right of action for damages, if the waste prejudices his interest.

34. The occupancy tenant must, on the expiry of the term of his current contract, and thenceforward at the end of every twelve years, pay renewal fees to the *janmi*.

The renewal fees are not to exceed one year's net produce less the land-revenue, and the tenant is entitled to a registered receipt when he pays them (sections 9 and 10).

In effect, renewal fees thus limited will add $8\frac{1}{2}$ per cent. to the rent; but the tenant is, as before, obliged to pay this portion of the rent in advance. The question of renewal fees is a difficult one. At present, the *kanam-pattam* tenant has to pay not only whatever the *janmi* demands, but also whatever the *janmi's* agent and hangers-on demand. Theoretically the demand is limited to 20 or 25 per cent. of the *kanam* or money secured on the land, or to one year's rental, but practically it is simply in most cases arbitrary. It is, we think, an unsound principle that the fees should depend on the amount which the tenant has actually advanced on the security of the land (*kanam*). The liability of a tenant who has advanced nearly the full value of the property is in this way higher than the liability of a tenant who has only a small stake in his holding. The two questions of rent and renewal fees cannot be separated. The tenant under our Act is still entitled to deduct from the rent any interest due to him under his contract, and we think that the proper principle is to let the amount of the renewal fee depend on the value of the land. This can be ascertained, and though one year's net produce, after deducting the land-revenue, may amount to a considerable sum in some cases, we have taken this into consideration in fixing the maximum of rent which an occupancy tenant can be called on to pay.

On the whole, we think that the rule we have adopted ought not to be objected to by either party. The liability to pay renewal fees will be a new liability in the case of most *verum-pattam* tenants who acquire the rights of occupancy tenants, but it is a liability which may fairly be imposed on them in return for the benefit which they obtain; and we take it into consideration in fixing the maximum of their rent.

It was suggested that, if the *janmi* exacted higher renewal fees than were authorised by law, the tenant might be empowered to recover as a penalty double the

amount so exacted. But we rejected the suggestion because we thought that, in many cases, the payment would be voluntary, and that the tenant, after agreeing to pay, ought not to be allowed to turn round on the payee.

A tenant from whom money is illegally exacted will have his ordinary remedy in the Courts.

35. The *janmi* is to be at liberty to resume from the tenant any particular portion of the holding not built upon which he (the *janmi*) may require for the erection of a family house or temple, or for any improvement to the estate, whether in the hands of the *janmi* or his tenants, as for instance, a road or irrigation channel. In such cases, the *janmi* must give notice to the tenant through the Civil Court, and the Court is by itself or with the aid of assessors to fix the market price to be paid to the tenant and may award 20 per cent. beyond the market price in consideration of the compulsory nature of the acquisition (section 11).

36. The occupancy tenant's interest in his holding is to be heritable and transferable; but a transfer is to have no legal force or effect, unless assented to by the *janmi* (section 12). The principle upon which we have introduced this somewhat stringent restriction on alienation is this. We think that the *janmi* ought to have a right of veto on an objectionable tenant, in lieu of the right of ouster, which he now enjoys. We were at first disposed to recommend that the *janmi* should have a right to claim a fee on the occasion of every transfer, and double the said fee if the transaction was kept secret from him. But we eventually adopted the present section, which leaves the *janmi* and tenant to arrange the matter among themselves.

In prohibiting mortgaging and subletting, except with the consent of the *janmi*, we merely carry out to its logical conclusion the principle that the agriculturist ought to follow agriculture as a pursuit; and we think that, as matter of expediency, it is desirable to discourage subletting as much as possible.

On the same principle that a *janmi* ought to have a right of veto on an objectionable tenant, we provide that the *janmi* is to have a right of pre-emption whenever the occupancy tenant's right on the whole or a portion of his holding, is sold at a Court sale; that is to say, he may take over the holding from the purchaser at the Court sale at the price he paid for it, plus interest at twelve per cent. from date of sale, provided that he elects to do so within one month from the date of the confirmation of the sale, or from the date when the next instalment of rent falls due (section 13). Indirectly by this provision we put a stop to the pernicious practice of speculators picking up cheap bargains at Court sales. The *janmi* is, above all others, the person who is entitled to the benefit of such bargains, and if he keeps his eyes open, he can avail himself of his right of pre-emption.

Incidentally, the *janmi* will also have it in his power to extinguish occupancy rights whenever his occupancy tenants' holdings are brought to public sale; but we do not know that there is any disadvantage in this result.

37. The *janmi* is to have new facilities for recovering his rent and renewal fees. They are to form a charge on the holding and to take priority over all other charges except land-revenue. Where the occupancy tenant's right has been attached and sold in execution of a decree, the *janmi* is entitled to be paid out of the sale-proceeds whatever is due to him for rent or renewal fees (section 14).

38. We next proceed to define the future relations of the *janmi* and the non-occupancy tenant. These non-occupancy tenants may be customary or ordinary tenants. If ordinary tenants, they may be tenants for a term, tenants from year to year, tenants-at-will. We do not propose to interfere in any way with the terms of existing contracts.

When, however, these contracts come to an end, we insist that the *janmi* shall, if he grants the land to a tenant, grant it to him for at least ten years (section 16). We do not prohibit the *janmi* from keeping the land in his own hands and cultivating it himself by hired labor; but, if he parts with the land, he must conform to our rule. We do not prescribe any particular form of contract. The *janmi* may grant a *kanam* or an ordinary *verum-pattam* lease. Our object in fixing the term is that the incoming tenant may have not only security, but direct inducement to make improvements.

39. The in-coming tenant will be liable to be turned out of his holding if he denies his *janmi's* title, if he fails to pay his rent, if he commits waste and when his tenancy comes to an end. He will also be liable to be turned out if he transfers his holding contrary to the provisions of the Act (section 15). His power of alienation is strictly limited. He may sell, but he must give the *janmi* the option of resuming the land and paying the value of the improvements, if any. In no case can he mortgage or sublet. He is, in fact, bound down in such a way that he must take all the risks of the cultivation for the full term of his contract, unless he absolutely parts with his interest in the holding (section 17). We believe that the principle is sound that the agriculturist should confine his attention to agriculture, and that speculators and intermediaries ought, as far as possible, to be eliminated from the land.

40. These are the future tenant's obligations. We will now enumerate his rights. He cannot be turned out of his holding until he has received compensation for improvements as hereinafter provided (section 18).

If he is a tenant from year to year, he is entitled to a notice to quit, and such notice can require him to surrender only at the particular time of the year when the crops are off the ground (section 19).

If he is a customary tenant, he cannot be called on to pay more than one year's net produce less the land-revenue as renewal fees, and this is taken into account in fixing the *maximum* rent which he can be called on to pay.

If he is an ordinary tenant, he cannot be called on to pay anything in excess of his rent (section 20).

Lastly, the non-occupancy tenant may, by purchase from his *janmi*, acquire occupancy rights in the whole or any portion of his holding (section 21).

We attach great importance to this provision. Such occupancy rights will probably have a fancy value in the market. Just as formerly every *verum-pattam* tenant was ambitious to get his tenure converted into *kanam*, so now every non-occupancy tenant will be ambitious to obtain occupancy rights. In times of necessity, the *janmi* will, without difficulty, be able to raise money from his tenants, without entirely parting with his interest in the land.

41. The number of sub-tenants under our Act will necessarily be small, but for those now in possession and for those who may hereafter get into possession under the occupancy tenants, we provide that they shall have full compensation for their improvements before they are evicted, and that when compensation is payable to the tenant through whom they hold, they shall be entitled to claim their share of such compensation (section 18).

We also provide that they shall not be required to pay anything in excess of their rent (section 20).

We leave untouched any right of alienation which they now possess.

42. It has been pressed upon us that it is useless to enact that the tenant and sub-tenant are not to be called on to pay anything in excess of their rent, unless we impose some penalty on the person who exacts the extra fee. We have already, in paragraph 34, stated our objection to attaching a penalty where payments are voluntary. We do not believe that it is possible altogether to prevent payment of extra fees any more than it is possible to prevent fees to railway servants which a traveller pays for his personal advantage. We do, however, think that a tenant or sub-tenant, who is entitled to compensation for improvements, will meet his landlord on fairly equal terms, and if in any case he is able to show that he is the victim of due influence or fraud, he will have his remedy in the Courts.

43. As regards the compensation section, we may point out that it confers on tenants and sub-tenants a very substantial benefit which they have not hitherto enjoyed. Nominally, the Courts have decreed compensation for improvements, but at most unequal rates, and generally at rates far below the market value. We do not consider that the change which we propose needs any apology. The question was thus dealt with by Lord Ripon in the debate on the Bengal Tenancy Bill:

"If a tenant makes *bona fide* improvements which add to the letting value of the land, and, before, enables the landlord to obtain more money for that land, then I say here, as I have always held at home in regard to my own tenants, that it is only common honesty that that man should be compensated for those improvements."

That is the principle which we adopt, and expediency points in the same direction; for no one will make improvements, unless he has some security that he will enjoy the benefit of them, or receive compensation if deprived of the enjoyment.

We have advisedly refrained from drawing any distinction between a customary tenant's and an ordinary tenant's right to make improvements.

Under the law, as now administered, a customary tenant and his sub-tenants may make improvements without special permission, whilst an ordinary tenant and his sub-tenants ought to obtain special permission. The law, however, is not very strictly enforced, for, in the case of waste lands converted into gardens, even a trespasser is held to be entitled to the value of his improvements before eviction.

The general rule ought, we think, to be that every tenant and sub-tenant may make reasonable improvements. Those who come in under our statutory term of ten years ought certainly to have the power.

44. We pass now to Chapter IV which contains our proposals regarding rent.

It seems hardly necessary to point out that we deal with agricultural rents only. Rents for dwelling houses and shops will remain entirely unaffected by our Act, and be governed by the contracts of letting.

In all future contracts we require certain particulars to be entered. The net produce of the holding, the land-revenue and the rent agreed on are, as far as possible, to be specified.

We enforce this provision by requiring the registering officer to refuse to register any instrument which does not contain these particulars (section 22).

We do not think that the parties will have any difficulty in estimating the net produce of any land in accordance with the Act. Section 5, clauses (10) and (11), will soon become a household word.

To insure uniformity we require the District Collector, with the previous sanction of the Local Government, to prescribe standard weights and measures (section 23).

The rent may be a grain-rent, or a money-rent, or a fractional share of the actual net produce. As a rule, rents on paddy lands are payable in kind, and rents on garden lands in money. We put a stop to the practice which now prevails of requiring a tenant to pay, in addition to his rent, bunches of plantains, measures of oil, bundles of straw, &c. These are relics of the old feudal system, which has disappeared, and are very burdensome to the tenant. If a *janmi* wants plantains for his table, oil for his lamps, or straw for his cattle, he can buy them in the market. After considerable discussion, we decided not to fix the instalments in which rent should be paid, but to leave the parties to make their own arrangements. All that we insist upon is, that the rent shall be paid at some place within the *amsam* where the holding is situated (section 24).

45. After the passing of this Act, every contract for rent is to be enforced only so far as the rent payable under the contract does not exceed the *maximum* of a fair rent as hereinafter defined (section 25). We prefer to fix a *maximum* rather than to leave it to the discretion of any special Court to determine a judicial rent, when disputes arise. We have already provided rules for ascertaining the net produce of any given land. From the net produce we deduct the land-revenue, and the balance is what we term the rent fund. It is fair to all parties that the land-revenue should be deducted before any distribution is made, and one great advantage of our scheme is, that in case the land-revenue should vary hereafter, our scheme of distribution will not require re-arrangement.

In commuting land-revenue and rent payable in money into produce, we take, as our commutation rate, the average market price prevailing on the first day of Makaram in the ten years preceding the date of the contract; and, if that is not ascertainable, the average of the first series of ten years for which price lists are framed under section 44. We have selected the first day of Makaram, partly because it is the date on which it is customary in Malabar to grant new leases, but chiefly because the prices of produce at that date are a fair average of the year's prices. After the Kanni harvest, the prices are abnormally low, whilst a month or so before the harvest, they are abnormally high.

From the rent is to be deducted whatever interest is due to the tenant under the contract on sums advanced by him (*kanam*), and no rent is to be charged on a tenant's improvements until he has received compensation for the same. On the other hand, no person can claim a reduction of rent, if from his own act or omission, the rent fund has been diminished.

46. Tenants are divided into occupancy and non-occupancy, and again into customary and ordinary tenants—

- (1) The rent payable by a customary occupancy tenant is not to exceed 25 per cent. of the rent fund. When to this is added $8\frac{1}{2}$ per cent. on account of renewal fees, i.e., one-twelfth of the rent fund for each year of the tenancy, the rent amounts to $33\frac{1}{2}$ per cent. of the rent fund.
- (2) The rent payable by an ordinary occupancy tenant is not to exceed $33\frac{1}{2}$ per cent. of the rent fund. When to this is added $8\frac{1}{2}$ per cent. on account of renewal fees, the rent amounts to $41\frac{2}{3}$ per cent. of the rent fund.
- (3) The rent payable by a customary non-occupancy tenant is not to exceed 50 per cent. of the rent fund. When to this is added $8\frac{1}{2}$ per cent. on account of renewal fees, the rent amounts to $58\frac{1}{2}$ per cent. of the rent fund.
- (4) The ordinary non-occupancy tenant and sub-tenant are placed on the same footing. The rent payable by them is not to exceed $66\frac{2}{3}$ per cent. of the rent fund.

These proportions will, of course, be open to further consideration when the views of the parties interested are before the Government.

Before any land-revenue was imposed in Malabar, the *janmi's* rent varied from one-third to two-thirds of the produce. Probably in the case of customary tenants it rarely exceeded one-third.

After a land-revenue was imposed the *janmi* had frequently to be content with a very small share of the produce.

Subsequently when prices rose, and there was a margin of profit to be fought for, rents were doubled or trebled. In some cases the cultivator's subsistence fund was encroached on.

It is an open question whether it is better to fix a fair *maximum*, as we have attempted to do, or whether it would not be preferable to lay down three simple rules, viz.:—

- (1) No rent shall exceed two-thirds of the rent fund;
- (2) Where the rent hitherto paid does not exceed one-half of the rent fund, it shall not in future exceed that limit;
- (3) Where the rent hitherto paid does not exceed one-third of the rent fund, it shall not in future exceed that limit.

At the time of Mr. Rickards's land settlement the *janmis* acquiesced in the principle that one-third of the net produce should be deducted for the *kudiam* before the balance was divided between the *janmi* and the Government.

47. It will be observed that by equalising the *maximum* rent payable by an ordinary non-occupancy tenant and a sub-tenant, we virtually make the former elect whether he will resume those portions of his holding which he has sublet, or transfer his interest to the sub-lessee. Few will care to act as mere rent collectors for their *janmis*, unless they have some prospect of being able to resume the alienated portions of their holdings.

It has been pressed upon us that fair rent without fixity of tenure is an imaginary boon, as we cannot prevent evasions of the law. We can only say that, though it may be evaded in individual cases, public opinion will always be against its evasion, and the new generation that is growing up will, we believe, accept the law as it is and regulate its conduct accordingly.

Persons paying rent are entitled to a receipt in a prescribed form (section 26).

48. We have thought it better not to provide a special tribunal for enhancing or reducing existing rents in accordance with our *maximum*. It would probably throw too much work on the Civil Courts, or the Revenue officers if the work was entrusted to them. Moreover, it would afford a direct inducement to every landlord and tenant in the district to stand upon his strictly legal rights. If a man refuses to pay his rent and is sued for it, he may defend himself by pleading that the rent is beyond the *maximum* allowed by law. It may be urged that in this way we offer encouragement to tenants to withhold payment of rent; but the Courts have the remedy in their own hands, as they can award interest on whatever sum they find to be due from the day on which it is due, together with the costs of the suit. A tenant or sub-tenant will soon learn that to withhold the whole rent, because a part is not due, will lead to disastrous consequences.

49. We now come to the provisions for depositing rent in a Civil Court, if the person tendering the rent cannot obtain a rent-receipt or entertains a *bond fide* doubt as to who is entitled to the rent (section 27).

We have reason to believe that this provision will be much appreciated by tenants of Devasams, when, as so frequently happens, there are long-standing disputes between the *Udalar* as to the right of management. The Court, if satisfied that the circumstances justify the application, is to issue a notice to the persons who appear to be entitled to receive the rent, calling upon them to show cause why a rent receipt should not be granted by the Court.

If no sufficient cause is shown, and if the rent or its value is deposited in Court, the Court is to grant a receipt under its own hand.

The Court's receipt will operate as a full acquittance for the rent, and the Court may, if it thinks fit, deduct the depositor's expenses of the application from the deposit.

50. We pass now to our Chapter on improvements. We have no hesitation in saying that the new procedure is certainly preferable to the old. We note the changes introduced.

We no longer leave it doubtful as to what are, and what are not, to be considered improvements. We define an improvement to be any work which adds to the letting value of the holding, which is suitable to the holding, and which is consistent with the purpose for which it is let. We have framed an exhaustive list of the improvements for which compensation can be claimed (section 28).

Following the usual procedure adopted in a suit for an account, we require the parties to put in detailed statements showing the items for which compensation is payable and the amount claimed or admitted to be due in respect thereof (section 30).

At present, it not unfrequently happens that the *janmi* offers 10 rupees, whilst the tenant claims 1,000 rupees for the improvements. This throws the whole burden of ascertaining the number and age of the trees or the condition of the buildings on the Court, before it can appraise their value.

If the dispute is not as to the items but only as to the amount claimed, we provide that the matter may be referred to arbitration, as if the parties had applied for an order of reference under section 506 of the Civil Procedure Code (section 31).

If the dispute is also as to the items, we provide for the appointment of a commissioner according to the present practice.

In the selection of a commissioner, we limit the discretion of the Courts by requiring them to select either a public servant or a *vakil* practising in the Court or an official commissioner appointed as such by the District Judge (section 32). The present practice, in some instances, of appointing as commissioners persons who have no reputation to lose is much to be deprecated.

We also insist upon ten days being allowed for objections to a commissioner's report. We have reason to believe that in some cases the report of the commissioner is too readily accepted, especially when the case has been pending for some time.

We provide that the High Court shall, from time to time, fix the fees payable to any arbitrator or commissioner appointed under this Chapter. The fees are to form part of the costs of the proceeding, and if either party grossly understates or overstates the facts, he will be made to pay his adversary's costs (section 33).

Lastly, we provide that there shall be one appeal, and one appeal, only, from the decision of the Court of First Instance based on a commissioner's report (section 34). Whether a second appeal to the High Court should be allowed is a matter for the Government, in consultation with the High Court, to decide. We incline to the opinion that there should be no second appeal.

51. Lastly, we have endeavoured to lay down certain principles for the guidance of arbitrators and commissioners in ascertaining the market value (section 35).

In the case of buildings and other permanent structures, it is not unusual to value the materials only. We would add a percentage for labor and deduct a percentage for depreciation if the structure is old or out of repair.

In the case of reclamations, the rates vary according to the nature of the soil, and we propose to leave the present system of valuation untouched. The current rates for rock-blasting will, of course, be higher than the current rates for mere earth-work.

In the case of trees, the customary rates prevailing in one part of the district are wholly different from the customary rates prevailing in another.

In North Malabar they are low. In the southern part of South Malabar they are unduly high. Uniformity of principle ought, we think, to govern the valuation.

Under the Bengal Tenancy Bill in estimating compensation regard is to be had—

- (a) to the amount by which the letting value or the produce of the holding is increased by the improvement;
- (b) to the condition of the improvement and the probable duration of its effects;
- (c) to the labor and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvements; and
- (e) in the case of reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

We do not deny the soundness of these principles, but we think that they leave too much to the discretion of the Court commissioners, and that a simpler, though perhaps somewhat more arbitrary, rule is preferable.

To a majority of us it seems that the *janmi* ought not to be compelled to pay, as the value of his tenant's improvements, as much as he would be called upon to pay, if he purchased from a stranger, and on the following grounds:—

The main factors which have led to the formation or improvement of the garden are the labor and capital expended by the tenant, and the inherent qualities of the soil, which last, to some extent at all events, must be regarded as the property of the *janmi*, for which he is entitled to some return. The labor and capital should probably form the first charge, and, unless the tenant has already received a fair return for his outlay in the shape of produce, he is entitled to charge interest on the cost of the labor and the capital expended. If these aggregate sums are less than the market value of the trees, if sold to a stranger, the *janmi* is entitled to participate in the difference.

An opposite view is that the *janmi* must be taken to have made his own arrangements for the use and occupation of the land, that he now receives a garden which has cost him nothing, and that before he receives it, he is bound to pay the full value of the improvements, whether the actual cost of those improvements is less or more than their market value, if sold to a stranger.

In some parts of the district, it would appear that a custom exists of valuing the trees in classes and deducting one-half or one-third as the *janmi's* share; but we cannot vouch for the antiquity of this custom. We are all agreed on the principle expressed in section 25, clause (d) of our Act, that no rent ought to be charged for a tenant's improvements until he has received compensation for the same. We are also agreed that deduction ought to be made for the land-revenue which has been, or which may be, imposed on the garden.

On the whole, we think that the fairest way of computing the value of the compensation due to the tenant, in the case of fruit-bearing trees, is to take three-fourths of the estimated net produce of the garden, commute it into money at

market rates, and capitalise that sum at not less than five and not more than ten years' purchase. It is necessary that the rule should be elastic, as some plantations may produce for many years to come, whilst others are already beginning to decay. In the case of trees which are not yet in bearing, we think that the proper plan is to estimate the labor and capital expended and to add reasonable interest to such sum.

We believe that a garden of three years old may be roughly estimated to be worth from 1½ to 2 rupees per tree, but if it is necessary to go into detail, the following items could be separately valued:—

- (a) Original cost of seedlings;
- (b) Cost of preparing and enclosing the ground;
- (c) Cost of watering and manuring;
- (d) Wages of supervision;

and the aggregate amount with interest thereon will form the compensation payable.

In the case of timber trees, such as teak, jack, &c., the number of cubic feet of serviceable timber valued at the current rates is to be the market value. In all other cases the court is to ascertain the market value in such manner as appears equitable.

The principles we have laid down will, we believe, be found useful; but much must be necessarily left to the discretion of arbitrators and commissioners. If hereafter it is found to be possible to frame tables of rates for valuing improvements, the duty will devolve on the Settlement officer in consultation with the local officers (section 43).

52. We now come to our last chapter, which we have headed Miscellaneous, as it treats of various subsidiary matters, viz.:—

- (1) Matters that ought to be placed beyond the reach of contract;
- (2) Responsibility for the land-revenue;
- (3) Acquisition of land on cowle;
- (4) Acquisition of small sites for homesteads;
- (5) Duties of Settlement officer;
- (6) Preparation of price-lists.

53. No man is to be allowed to contract himself out of his right to become an occupancy tenant with all the incidents attached thereto; no non-occupancy tenant is in future to contract for a shorter term than ten years, except in the case of temporary cultivation; no tenant or sub-tenant can surrender his right to receive full compensation for improvements; no contract to pay more in the shape of renewal fees or rent than the *maximum* prescribed by the Act will be valid (section 36).

The occupancy tenant, where there is an occupancy tenant, and the *janmi*, where there is no occupancy tenant, will respectively be held liable for the land-revenue.

The person who pays the land-revenue will be entitled to the share of the net produce set apart for that purpose under section 25, clauses (a) and (b).

It is not intended that he should be either a gainer or loser (section 37).

54. Our next four sections relate to the acquisition of titles for waste land obtained on *cowle* and for small blocks of unassessed land for forming garden homesteads.

It has been the custom for the Government to grant cowles for unassessed lands to the first applicant. The applicant has to make his own arrangements with the *janmi*. If he enters on the land without having made arrangements with the *janmi*, he is liable to be evicted, but only on payment of compensation for his improvements. If he has squatted for twelve years, he acquires a prescriptive title as against the *janmi*.

We now propose that any waste land may be granted on permanent puttah, provided that the *janmi* or occupancy tenant claiming an interest in the land has no reasonable objection to offer, and is not himself prepared to pay a fixed annual assessment for the land (section 38). Similarly with regard to sites for garden homesteads, the only difference being that any land not permanently assessed may be applied for, and that the area to be applied for is limited to two acres (section 40).

The peculiarities of this statutory tenure will be that the grantee will acquire the same fixity of tenure as an occupancy tenant (section 41), that he will not be liable to pay renewal fees, and will hold at a more favorable rent than any other class of tenant. His rent is never to exceed the land-revenue fixed by Government (section 39). The present rate of land-revenue imposed on such lands is only six annas per acre.

Until such time as land-revenue is payable, the *janmi* or occupancy tenant will be allowed to levy a nominal rent, so as to prevent an adverse title being acquired by prescription.

55. It is, in our opinion, both necessary and expedient that our scheme for the formation of garden homesteads should be allowed a fair trial. In Malabar there are no villages and no village-sites on which a man can build a house free of rent. He who wants to build a house must obtain the land on lease, and is liable to eviction at the caprice of his landlord.

While the main object of our scheme is to enable members of the laboring classes to build houses on sites of their own, it will also enable them to become peasant proprietors on a small scale.

We have already alluded, in paragraph 30 of this report, to the provision for the appointment of a Settlement officer. We recommend that, as soon as survey operations are completed in any given area, the Settlement officer should immediately follow the survey party, and should frame a complete record of rights of *janmis*, tenants, and sub-tenants. Under the Act his inquiries are to be judicial, and he is empowered to grant certificates which will be *prima facie* evidence of the facts contained therein (section 42).

Even if the record of rights is not subsequently kept up, it will be a most valuable record for reference in civil suits and revenue proceedings.

The Settlement officer is further to be empowered to frame tables of rates for valuing improvements (section 43). Although we doubt whether it is possible to classify productive trees according to their age, and arrange fixed rates for each class, we think that tables of rates suitable to different parts of the district may certainly be framed for valuing buildings, excavations, embankments, &c.

The less the discretion left to the arbitrators and commissioners appointed under the Act, the better will it be in our opinion.

56. In paragraph 45 of this report, we have already alluded to the price-lists of staple produce for the last twenty years, which the District Collector is to frame, and which are to be conclusive evidence of the facts stated therein (section 44).

It will, of course, be necessary that these should be framed as carefully as available information will permit; for they will be the standard of reference in all disputes regarding rent.

57. Having concluded our commentary on the draft Act, it only remains to sum up the effect of the changes we propose on the various classes of land-holders, and to offer some concluding remarks.

And first as regards the *janmi*.

We have limited his right of ouster, but we have taken care to protect him against objectionable tenants.

We have limited the rent and the renewal fees which he can claim, but we do not think that this will really affect him prejudicially.

The *maximum* rent to be paid by the different classes will, we believe, meet with the approval of the better class of *janmis* and be considered a fair rent. It may often be in excess of the existing rent, more especially where money-rents are paid, for the customary commutation rate is usually less than our market rate. Where rents have been raised to the *maximum*, the *janmi's* power of borrowing on mortgage is necessarily curtailed; but he has now a new mode of raising money.

Last but not least, the *janmi* obtains largely increased facilities for recovering his rent and renewal fees.

58. The occupancy tenant will practically obtain permanence of tenure, defeasible only by misconduct.

He will no longer be at the mercy of a grasping *janmi* as regards rent and renewal fees.

The only disability he incurs is that his power of alienation will be restricted.

The non-occupancy tenant now in possession may continue in possession as tenant from year to year, if his *janmi* consents, or he may obtain a ten years' lease.

The limitation of his rent and renewal fees is not a mere shadowy advantage. In the case of garden lands his right to compensation before eviction will enable him to meet his *janmi* on terms of equality. In the case of paddy lands, the *janmi* labors under the disadvantage, that if he ousts the present tenant, the statutory term of ten years will come into immediate operation.

The non-occupancy tenant is subject to one disability. He may sell his holding, but he cannot, under any circumstances, mortgage or sublet it.

59. Under the operation of our Act, sub-tenants will gradually diminish. Those who are now in possession or may hereafter be let into possession will have their right to compensation for improvements before eviction.

Their rent, too, will be limited, so as to ensure them a fair share of the profits derived from the land. If of thrifty habits, the sub-tenant will have an opportunity of becoming a peasant proprietor on a small scale, with the same permanence of tenure as an occupancy tenant.

60. With regard to the policy of placing restrictions on subletting, the objections are forcibly put by Mr. Gibbon in his minute of dissent to the report of the Select Committee on the Bengal Tenancy Bill:—

"The power to sublet is a necessity to the raiyat, possibly of even greater importance to him than the power to transfer. It enables the raiyat to tide over his temporary embarrassments. It enables the laboring classes, who might not otherwise succeed in securing land, to assist in the support of their families, to acquire it. It is legal and the practice has hitherto been under no sort of restriction, and under no sort of restriction will it ever be abandoned. As long as there exists a class of people craving for the possession of land, and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides a usufructuary mortgage from a sub-lease remains undefined, subletting will be practised."

We have recognised the fact that, unless we prohibit mortgaging, we cannot prohibit subletting. Both, we believe, are unfavorable to material progress. Both lead to rack-renting and absentee proprietorship with all the concomitant evils. The balance of advantage seems to us to consist in checking both, even though the result be to increase the number of agricultural day-laborers.

61. So far as our Act goes, we are unanimously of opinion that it will introduce beneficial reforms in favor of the general body of tenants and sub-tenants in Malabar, without causing any extensive disturbance of existing relations. Believing, as we do, that conflict between landlord and tenant must inevitably imperil the peace and prosperity of an agricultural district, our object has been to minimise this evil, to interfere as little as possible with existing contracts, and above all not to sow dissension and discord by introducing new forms of actions (*e.g.*, for enhancement or reduction of rents), and creating new Courts (*e.g.*, Revenue Courts) to decide such actions.

Whether the Act goes sufficiently far in the direction of conferring occupancy rights is a point on which we are not agreed.

62. Mr. Logan has himself drafted an alternative scheme to chapter III of our Act, the main principles of which are, that occupancy rights should be conferred not only on the classes on whom we confer them, but also on all occupants of land permanently brought under cultivation and that occupancy rights should be attached to and pass with such lands. The settled cultivator is thus secured in his holding, whilst the temporary cultivator is left to freedom of contract.

In one portion of Mr. Logan's scheme Mr. Sankaran Nair and Mr. Karunakara Menon are ready to concur, whilst the other two members of the commission are not prepared to acquiesce in any extension of the privileges conferred by the Act.

In these circumstances it has seemed to us desirable that the principles and details of Mr. Logan's scheme should be fully explained by him in the shape of a note supplementary to this report, and that individual members of the committee

should then have an opportunity of stating their reasons for agreeing or disagreeing with Mr. Logan's scheme. This supplement to our Report we hope to be able to submit within a very short period.

63. Whether the mass of the people of Malabar will be satisfied with our proposals can only be proved by time and experience.

Those who acquire occupancy rights under our Act will, if we mistake not, appreciate the gift. Of the others, the typical *janmi* will complain that he has hitherto been treated as a proprietor, and is now reduced to the position of an annuitant on his own estate.

The non-occupancy tenant will complain that we have drawn an arbitrary line, which excludes him from fixity of tenure, and that we ought at least to have included all customary tenants in our privileged class.

The sub-tenant will complain that we have listened too readily to the historical pretensions of the *kudian*; that the wages set apart for the actual cultivator ought to have been treated, as Mr. Logan was willing to treat them, as a customary share of the produce; and that it is the actual cultivator who needs protection more than the capitalist farmer.

There will not be wanting independent critics who will say that we have protected persons who have suffered least; that we have created a class of *quasi-janmis* who will oppress their sub-tenants more than the worst *janmis* have hitherto done. We shall be told in homely language that "what is sauce for the goose is sauce for the gander;" and that, if we interfere with freedom of contract in some cases, there is no reason why we should not do it in others.

We shall be told that we have missed the main point of Mr. Logan's report, and that we leave agrarian discontent, ever ripening into agrarian outrage, exactly where we found it.

Every objection that may be raised will, of course, receive from the Government the fullest consideration. We have not thought it advisable to delay the submission of this report until we could ascertain the attitude of the parties interested towards our proposals. We could not have done so without disclosing the gist of those proposals and thereby exciting hopes and fears never perhaps to be realised.

64. We do not profess to have found a *panacea* for all the ills to which the agriculturist is exposed. We do not claim to have settled permanently what has been aptly termed the eternal question of landlord and tenant. We have done our best to apply a remedy, incomplete though it may be, to some patent evils, without effecting a revolution of existing land tenures, and here, for the present, we think the matter ought to rest. Future generations may have to grapple with the same problem, complicated may be by the reforms which we now advocate. More stringent remedies may then be found necessary, but we cannot foresee the future any more than we can recall the past.

65. We shall look forward with interest to the criticism which our Act will receive from the people of Malabar, not so much from individuals as from representative bodies.

The District Judge of South Malabar has a monthly conference of his Sub-Judges and Munsifs. A communication from such a conference after mutual discussion would be entitled to much consideration. There is a Vakils' Association at Calicut. There is a *Janmis' Sabha* and a *Kerala Sabha* at Calicut. There are Planters' Associations in the Wynaad. We recommend that these and other representative bodies should be asked to express their views on our proposals in their representative capacities. The Government will then be in a position to say whether legislation should or should not proceed on the lines we have suggested.

66. In concluding this report, we wish to add a few words regarding the impending introduction of a new survey and settlement in Malabar. The subject, though not strictly within the scope of our commission, is very closely akin to it, for as the revenue is raised, the rent fund is proportionately diminished. As matter of contract, the Government are probably bound by Mr. Rickard's proclamation not to demand more than six-tenths of two-thirds of the net produce as land-revenue; but, as matter of policy, we believe that they ought not to approach that limit. The old

commutation rates will be found to vary in different parts of the district very considerably. If the new commutation rates are to be based on the average market prices of the last twenty years, the land-revenue will probably be doubled, but the prosperity of the district will receive a severe check. Malabar has always enjoyed a light assessment under the British Government, and a feeling has been allowed to grow up that the assessment is immutable. The new assessment should, in our opinion, nowhere exceed 20 per cent. of the present assessment, and should not be enhanced to this extent, except where it is now notoriously low. We believe that this principle has been already recognised by the Secretary of State. We do not advocate any change in the system of assessing parambas, by tale of trees, which we think is most suited to Malabar. But we think that, if the Government directly benefit by the number and size of the plantations, that is an additional reason why the tax on grain lands should be an easy tax.

It cannot, in any sense, be argued that the Government is in the position of a large landed proprietor in Malabar. Nature supplies the irrigation. Private property in land has always been acknowledged, and the combined shares of the State and the *janmi* ought not, in strict justice, to exceed the share which the State demands in ryotwary districts.

We have the honor to be,

Sir,

Your most obedient servants,

(Signed)	T. MADHAVA ROW.
(")	W. LOGAN.
(")	H. WIGRAM.
(")	C. SANKARAN NAIR.
(")	P. KARUNAKARA MENON.

SCHEDULE A.

- (1) Letter from A. Macgregor, Esq. (no date).
- (2) Letter from H. Wigram, Esq., dated 19th December 1882.
- (3) Letter from W. Logan, Esq., dated 12th February 1883.
- (4) Letter from H. Wigram, Esq., dated 26th February 1883.
- (5) Letter from W. Logan, Esq., dated 7th March 1883.
- (6) Letter from W. Logan, Esq., dated 21st April 1883.
- (7) Letter from P. P. Hutchins, Esq., dated 28th April 1883.
- (8) Memorandum by G. A. Ballard, Esq., dated—June 1883.
- (9) Letter from W. Hudleston, Esq., dated 28th June 1883.
- (10) Letter from W. Hudleston, Esq., dated 12th July 1883.
- (11) Note by Sir William Robinson (no date).
- (12) Letter from M.R.Ry. T. Kunchi Ramen Nair Avergal, 7th August 1883.
- (13) Letter from M.R.Ry. C. Sankaran Nair Avergal, dated 26th September 1883.
- (14) Letter from M.R.Ry. K. Krishna Menon Avergal, dated 6th October 1883.

NOTE BY RAJAH SIR T. MADHAVA ROW, K.C.S.I.

It is only right and proper that I should state here that I am unable to follow or endorse the historical matter comprised in paragraphs 8 to 13 inclusive of the foregoing report.

2. My belief is that the *janmi* was, originally, the full proprietor of the land.

3. He could not himself reclaim or cultivate his lands, and yet he would not sell them. He, therefore, let his lands to others (*kudians*) on several tenures.

4. No doubt, originally, the lands thus let were resumable by the *janmi*. But the *janmi* seldom found it necessary or desirable to exercise the right of resumption. The right gradually fell into desuetude. Thereupon, customs and usages grew up which transmuted the theoretically resumable tenures into practically non-resumable

ones. The process was very analogous to that described in paragraph 21 of the foregoing report, in regard to the Khudkast Ryot of Bengal. It was a process by which the principle of prescription took effect.

5. Agrarian customs and usages thus evolved, and operating beneficially to all or the majority concerned, have an inherent vitality which ensures their durability unless some great disturbing cause supervenes. This cause in the district of Malabar was the Mysore conquest, and subsequently, the accession of the British rule.

6. But the difference of view, which I have thus briefly expressed, does not affect the substantial conclusions embodied in the foregoing report. In short, the identical conclusions are reached though by two different processes of reasoning.

CHAPTER I.

1. (1) This Act shall be called the 'Malabar Tenancy Act, 1881.'

(2) It shall come into force on such date as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local gazette, appoint in this behalf.

(3) It extends to the Collectorate of Malabar.

2. The enactment called the 'Malabar Stay of Execution Act' is hereby repealed; but no decree of eviction shall hereafter be executed, unless the same could have been made if this Act had been in force.

3. Nothing in this Act shall apply to any contract regarding land which is held on permanent or service tenure, *e.g.*, Sasvatham, Anubhavam, Adima, Karayma, &c.

Provided that persons, who hold lands from such special tenure-holders, shall nevertheless have the full benefit conferred on sub-tenants by this Act.

4. Nothing in this Act shall affect the right of a janmi to minerals lying below the surface of the soil, and his right of access for the purpose of extracting the same.

CHAPTER II.

DEFINITIONS.

5. In this Act, unless there is something repugnant in the subject or context,—

(1) 'Janmi' includes any undivided member of the janmi's family; and, in the case of a public institution, religious or charitable, an undivided member of the family of any trustee thereof.

(2) 'Tenant' means any person who has entered into a contract for the use and occupation of land, directly with the janmi thereof, but does not include a mortgagee.

Exception.—An undivided member of the janmi's family shall not be deemed a tenant under this section.

(3) 'Mortgagee' means any person to whom immovable property is in any manner conveyed, pledged, or charged, merely as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt.

(4) 'Customary tenant' means a tenant who holds land on Kulikanam, Kanam or Otti, or any superior tenure of the same nature, which falls short of an outright sale (attipêr), or any tenure which by the custom of the country confers a right to hold for twelve years.

(5) A tenant who is not a customary tenant is an 'ordinary tenant.'

(6) 'Occupancy tenant' means one who has acquired the status of an occupancy tenant under Chapter III.

(7) 'Sub-tenant' means any person who holds land from a tenant or from any other person who has derived a right of possession directly or indirectly from the janmi.

(8) 'Holding' means of parcel or parcels of land held under one instrument and one set of conditions.

(9) A person is said 'to hold' land whether he retains it himself or whether he mortgages or sublets it.

Explanation.—A person shall be deemed to have held land if it has been held by himself, or by a predecessor in interest, or by a predecessor in title by whom he claims.

(10) 'Gross produce' means the estimated annual yield of any land, calculated in kind in accordance with local usage.

(11) 'Net produce' of paddy land means the gross produce, less the usual quantity of seed sown and an equal quantity for expenses of cultivation.

'Net produce' of other grain lands means three-fifths of the gross produce or the gross produce less the usual quantity of seed sown and an equal quantity for expenses of cultivation, whichever is less.

'Net produce' of parambas (garden lands) means three-fourths of the gross produce.

(12) 'Rent' means whatever is payable or deliverable annually, either in money or in kind, or partly in money and partly in kind for the use and occupation of land.

(13) 'Land-revenue' includes all public cesses leviable on the land.

(14) 'Collector' means the chief Revenue officer, above the rank of a Tahsildar in charge of a taluk.

(15) 'District Collector' means the chief executive officer of the district.

(16) 'Civil Court' means the Court to which the parties would have resort in a suit of ejectment.

CHAPTER III.

OF THE RIGHTS AND LIABILITIES OF TENANTS.

Of Occupancy Tenants.

The following tenants shall be occupancy tenants in respect of the following tenures:—

(a) A tenant who has held the same land on any tenure or tenures to verum-pattam continuously for not less than thirty years or day on which this Act comes into force.

(b) A tenant who has held the same land on any tenure or tenure to verum-pattam continuously for not less than fifteen years ending on the day on which this Act comes into force, provided that he has reclaimed within the thirty years ending on the day on which this Act comes into force, and that it is not by the express terms of the contract made resumable.

(c) A customary tenant who holds land which has been held by himself or another on customary tenure continuously for not less than thirty years ending on the day on which this Act comes into force.

(d) A tenant who may hereafter acquire the rights of an occupancy tenant under section 21.

Explanation I.—A mortgagee shall be deemed to be a tenant within the meaning of clause (a), if he was a tenant up to 1st January 1881, and has since, without adequate consideration, been converted into a mortgagee.

Explanation II.—Land shall be deemed to have been held 'continuously,' unless there has been an interruption in the tenancy for at least one year.

7. A tenant who, on the day on which this Act comes into force, becomes an occupancy tenant in the greater portion of his holding, shall be the occupancy tenant of the entire holding.

8. No occupancy tenant shall be evicted from his holding or any portion of his holding except for—

(a) Wilful denial of his janmi's title, so as to prejudice the janmi's interest;

(b) Acts of grave insult or annoyance to the janmi;

(c) Persistent neglect or refusal to pay rent or renewal fees claimable by the janmi.

In case of eviction, the occupancy tenant shall be entitled to compensation for improvements, under Chapter V of this Act.

9. The occupancy tenant shall be liable to pay renewal fees to the janmi on the expiry of the term of the contract in existence on the day on which this Act comes into force, and thenceforward at the end of every twelve years. Renewal fees shall in no case exceed the value of one year's produce, less the land-revenue.

10. On payment of such fees, the occupancy tenant shall be entitled to a receipt specifying—

- (a) the date of payment;
- (b) the amount paid;
- (c) the period for which it is paid;
- (d) the holding in respect of which it is paid;
- (e) such other particulars as may be prescribed from time to time by the Local Government.

This receipt shall be registered, and the cost of registration shall be borne by the tenant.

11. If the janmi *bonâ fide* requires any portion of an occupancy tenant's holding (not being the site of a permanent building) for the purpose of building a dwelling house for himself or any member of his family, of erecting a temple or charitable institution, or for any improvement to his estate whether in his own or in his tenants' occupation, it shall be lawful for him to resume the same, provided that he give notice to the tenant, through the Civil Court, of the purpose for which he requires the land and the price which he proposes to pay. The Court, after hearing the parties, shall, if it is satisfied that the application is made in good faith, and that the purpose for which the land is required is reasonable, fix the price, and may for this purpose take the evidence of the parties.

The price to be paid shall include the full market value of the interest in the land to be resumed, and additional compensation not exceeding 10 per cent. of such market value, in consideration of the compulsory nature of the resumption.

The price shall be paid into Court within such time (not exceeding six months) as the Court may direct, and thereupon the Court shall order delivery of the land to the janmi.

12. The occupancy tenant's right in his holding shall be heritable, and every transfer shall be in writing, and no instrument of transfer shall be valid unless the janmi has given his previous consent to, or has subsequently ratified, the transfer in writing.

13. The transfer includes sale, gift, mortgage, or lease.

13. If an occupancy tenant's right in a holding or part of a holding is transferred at a sale in execution of a decree, the janmi shall have the right of pre-emption. The price paid by the purchaser plus interest at 12 per cent. shall be paid to the janmi, provided that he elects to exercise such right of pre-emption within one month from the date of the confirmation of the sale, or from the date when the next instalment of rent falls due.

14. The holding of an occupancy tenant shall be deemed to be hypothecated for the rent and renewal fees as they fall due, and these shall take priority over all other charges except land revenue.

If the occupancy tenant's right is sold in execution of a decree, the janmi shall be entitled to be paid out of the sale-proceeds any rent or renewal fees which may be due to him by the tenant.

Of Non-Occupancy Tenants and Sub-tenants.

15. No non-occupancy tenant shall be evicted from his holding, or any portion of his holding, except on one or more of the following grounds:—

- (a) Denial of the janmi's title;
- (b) Transfer of the whole or a portion of his holding in contravention of section 17;

- (c) Non-payment of rent;
- (d) Waste or unhusbandlike cultivation;
- (e) Determination of the tenancy.

16. Every future contract of tenancy entered into between a janmi and a non-occupancy tenant shall be for a term of not less than ten years. Where a shorter term than ten years is expressed or implied, the term of the contract shall be deemed to be ten years.

Exception.—Nothing in this section shall apply to land let for *modan*, *ponam*, or other temporary cultivation.

17. The interest of a non-occupancy tenant shall be heritable and transferable by sale or gift; but no such transfer shall be valid, unless the janmi has had the option of taking back the land on payment of the value of the crops on the ground and the value of the improvements (if any). Transfer by lease or mortgage shall be null and void.

18. Every non-occupancy tenant or sub-tenant shall, before he is dispossessed of his holding, be entitled to compensation for improvements under Chapter V. of this Act. When compensation is payable by a janmi, the sub-tenant in possession of any part of a holding shall be entitled to receive, out of any sum payable by the janmi, whatever share of the compensation he can claim in respect of such part.

19. A non-occupancy tenant who, when this Act comes into force, is, or may hereafter, by operation of law, become a tenant from year to year, shall be entitled to a notice to quit. Such notice shall require him to surrender on the first day of Makaram in a specified year, and shall be served on him through the Civil Court, at least six clear months before that date.

20. No non-occupancy customary tenant shall in future be required to pay as renewal fees more than can be demanded from an occupancy tenant under section 9.

No ordinary tenant or sub-tenant shall in future be required to pay anything in excess of the rent lawfully payable by him.

21. A janmi shall be at liberty to sell to any non-occupancy tenant the occupancy right in the whole or any portion of his holding: provided that the contract shall be in writing and that the document shall be registered.

CHAPTER IV.

OF RENT.

22. In every contract for payment of rent made after this Act comes into force, the net produce of the land, the land-revenue, and the rent agreed on shall, as far as possible, be specified.

The Registering officer shall refuse to register any such instrument which does not contain these particulars.

23. The net produce shall be specified according to any standard measure of weight or capacity, or in such other way as may, from time to time, be prescribed by the District Collector, with the sanction of the Local Government.

24. The rent may consist of a definite quantity of the staple produce of the holding, or of its value commuted into money at the rate fixed by the parties, or of a fractional share of the staple produce to be ascertained at harvest time; but, except as provided, no claim for straw, leaves, oil, plantains, and other such commodities shall be enforced by the Courts.

The rent shall be payable at some place agreed upon by the parties and within the am in which the holding is situated.

25. All contracts for rent entered into before or after this Act comes into force shall be subject to the following conditions :—

- (a) Rent falling due, after this Act comes into force, shall not exceed the under-mentioned proportions of the rent fund. The rent fund shall be taken to be the net produce of the holding less the land revenue :—

Class.	Proportion of rent fund claimable as rent.
Occupancy tenants .. { Customary	One-fourth.
.. { Ordinary	One-third.
Non-occupancy tenants .. { Customary	One-half.
.. { Ordinary	Two-thirds.
Sub-tenants	Do.

- (b) For the purposes of this section, land-revenue and rent payable in money shall be commuted into the staple produce of the holding, at the average market rate prevailing at the head-quarters of the taluk on the first day of Makaram in the ten years preceding the date of the contract, or the date of the last renewal, as the case may be; or, if that is not ascertainable, at the average market rate of the first series of ten years for which price-lists are framed by the District Collector under section 44.
- (c) Rent payable by a customary tenant shall be subject to deduction, on account of such interest as is due to the tenant under the contract.
- (d) Rent shall not be charged on a tenant's or sub-tenant's improvements, until he has received compensation for the same.
- (e) No tenant or sub-tenant shall be entitled to a reduction of rent, if from any act or omission on his part the rent fund has been diminished.

26. Any tenant or sub-tenant shall, on paying rent to the person from whom he holds, be entitled at the same time to a receipt specifying—

- (a) the date of payment ;
 (b) the amount paid ;
 (c) the period for which it is paid ;
 (d) the holding in respect of which it is paid ;
 (e) such other particulars as may, from time to time, be prescribed by the Local Government.

27. (1) If the person, to whom rent is tendered by any tenant or sub-tenant, is not ready and willing to grant such written receipt, or, if any tenant or sub-tenant entertain a *bona fide* doubt as to who is entitled to receive the rent, then, in either such case, the tenant or sub-tenant may, if the rent is payable in money, pay the amount due into the Civil Court, or, if the rent is payable in kind, furnish such security for the payment of the value thereof, as the Court may think necessary, and may thereupon apply to the Court by petition for the grant of a written receipt.

(2) The petition shall state the circumstances under which the application is made, and shall be verified by the applicant. On being satisfied that the applicant is entitled to make the application, the Court shall issue a notice to the person or persons who are, or who may claim to be, entitled to receive the rent, calling upon them to show cause why a rent receipt should not be granted by the Court.

(3) On the day fixed for the appearance of the parties, unless sufficient cause is shown, the Court shall itself grant a rent receipt in the form prescribed by section 26. Rent payable in kind shall not be brought into Court, but the market value thereof shall be deposited by the applicant, before the receipt is granted.

(4) A receipt granted under clause (3) shall operate as a full acquittance of rent in the same manner, as if the person entitled to receive it had received it.

(5) Where the Court grants a receipt, the applicant's costs of the proceeding may be paid out of the rent deposited.

CHAPTER V.

OF IMPROVEMENTS.

28. For the purposes of this Act, the term 'improvement' means any work, which adds to the letting value of the holding, which is suitable to the holding, and which is consistent with the purpose for which it was let. The improvements for which compensation shall be given are—

- (a) Dwelling houses, buildings appurtenant thereto, and farm buildings ;
 (b) Tanks, wells, channels, dams, &c., constructed for the storage or supply of water for agricultural or domestic purposes ;
 (c) Protective or drainage works ;
 (d) Reclaiming, clearing, or enclosing land for agricultural purposes ;
 (e) Fruit trees, timber trees, and other useful trees or plants.

29. When a difference of opinion arises as to the value of improvements, the janmi or tenant or sub-tenant may apply to the Civil Court by petition to value the improvements.

30. The petition shall state in detail the items for which compensation is due and the amount claimed in respect thereof.

A copy of the petition shall be served on the opposite party, who in his turn shall be required to put in a similar detailed statement.

31. If there is no material difference as to the items, but only as to the amount claimed in respect thereof, the matter may be referred to arbitration in accordance with the provisions of Chapter XXXVII of the Civil Procedure Code, as if the parties had applied for an order of reference under section 506.

32. If there is a material difference not only as to the amount claimed, but also as to the items, the Court shall appoint a commissioner to hold a local inquiry, in accordance with the provisions of sections 392 and 393 of the Civil Procedure Code. The commissioner shall be either a public servant, or a vakil practising in the Court, or an official commissioner appointed as such by the District Judge. On receipt of the commissioner's report, a reasonable time, not less than ten days, shall be allowed to the parties to put in written objections to the report, and written objections only shall be investigated.

33. The High Court shall, from time to time, fix the fees payable to any arbitrator or commissioner appointed under this chapter.

The fees payable shall form part of the costs of the proceeding, and if either party has grossly understated or overstated the facts, he shall be ordered to pay his adversary's costs.

34. An appeal shall lie from the decision passed by the Court on a commissioner's report to the Court to which appeals from decrees lie, but the Appellate Court's decision shall be final.

35. The value of improvements shall be estimated in accordance with the following rules :—

- (a) In the case of buildings, tanks, &c., the value of materials used *plus* a percentage for labor, and *minus* a percentage for depreciation according to the age and condition of the structure, shall be deemed to be the market value.
 (b) In the case of reclamations, the number of cubic yards of work, valued at current rates, shall be deemed to be the market value.
 (c) In the case of fruit-trees and plants in bearing, three-fourths of the estimated net produce, capitalised at not less than five, and not more than ten, years' purchase; and in the case of fruit-trees and plants not yet in bearing, the estimated cost of the labor and capital expended with interest thereon; shall be deemed to be the market value.
 (d) In the case of timber-trees, the number of cubic feet of serviceable timber, valued at current rates, shall be deemed to be the market value.
 (e) In all other cases the market value shall be ascertained as to the Court seems equitable.

CHAPTER VI.

MISCELLANEOUS.

36. The provisions of this Act in respect of the following matters shall take effect, notwithstanding any contract to the contrary:—

- (a) The acquisition of the status of an occupancy tenant (sections 6 and 7), and the incidents attached thereto (sections 8 and 12).
- (b) The protection afforded by the Act to a non-occupancy tenant (sections 14 and 16).
- (c) The right of a tenant or sub-tenant to receive compensation for improvements (sections 8 and 18).
- (d) The limitations placed on the janmi's power to demand renewal fees (sections 9 and 20).
- (e) The limitation in respect of rent (section 25).

37. In the absence of a written contract to the contrary between the occupancy tenant and his janmi, the former shall be responsible for the land-revenue.

In the absence of a written contract to the contrary between the non-occupancy tenant and his janmi, the latter shall be responsible for the land-revenue.

Whoever pays the land-revenue shall be entitled to the quantity of the produce set apart for payment of the land-revenue under section 25, clauses (a) and (b).

38. On any application being made to the Collector for the grant of waste land for reclamation, the Collector shall, as far as possible, give notice to all persons interested in the land, and shall hear any objection that may be offered; and, if he considers such objection reasonable, shall refuse to grant the land applied for.

The following among others shall be deemed to be reasonable objections:—

- (a) Personal or social inconvenience to any person interested in the land;
- (b) The existence of valuable timber trees or firewood reserves on the land;
- (c) Offer on the part of any person interested in the land to pay a fixed annual assessment for it.

39. If the Collector grants the land, he shall cause it to be permanently demarcated at the expense of the applicant, and shall grant him a permanent puttah for the same. The land-revenue payable shall be at such rate as may, from time to time, be fixed by the Local Government, and an equal amount shall be payable as rent to the occupancy tenant, or if there is no occupancy tenant, to the janmi. Provided that, if no land-revenue is payable, the occupancy tenant or the janmi shall be entitled to recover a nominal rent not exceeding two annas per acre.

40. If any person requires a site for a dwelling house, *paramba*, he may apply to the Collector for the grant of any land not exceeding two acres in extent and not bearing a fixed annual assessment. On such application being made, the provisions of sections 38 and 39 shall, so far as may be, become applicable.

41. Grantees of permanent puttahs under sections 39 and 40 shall be in the same position as occupancy tenants under this Act, except that they shall not be required to pay renewal fees, or any higher rent than is provided in section 39.

42. The Local Government shall, as soon as possible after the passing of this Act, appoint a Settlement officer to frame a record of rights of janmis, tenants, and sub-tenants in Malabar. The Settlement officer shall hold a judicial inquiry after giving notice, as far as possible, to all persons interested in the land. When the record of rights in any *amsam* or *desam* is completed, any person may apply for a certificate, that he is a customary tenant, or an ordinary tenant, or a sub-tenant, in respect of his holding, and that the rent thereof cannot exceed a certain proportion of the rent fund. Such certificate, when granted, shall be *prima facie* evidence of the facts stated therein.

The Local Government may issue rules for the guidance of the Settlement officer and prescribe fees for the certificates granted.

43. The Settlement officer may, in consultation with the District Collector and District Judge, fix tables of rates not being inconsistent with this Act for valuing

improvements in different parts of the district, and such tables of rates, if sanctioned by the Local Government, shall be followed by all arbitrators and commissioners appointed under this Act.

44. On the passing of this Act, the District Collector shall frame price-lists, showing the wholesale market prices of staple produce at the head-quarters of each taluk on the first day of Makaram during the preceding twenty years, and shall, as soon as possible, after the first day of Makaram in each year, publish a similar price-list for the ensuing agricultural year.

The said price-lists shall be published in the District Gazette, and shall be conclusive evidence of the facts stated therein.

APPENDIX I.

1. Voucher No. 39 in the Report of the Joint Commissioners, dated 11th October 1793.
2. Extracts from Dr. Buchanan's Journal, dated December 1800.
3. Extract from Mr. Warden's Report, dated 19th March 1801.
4. Précis of Major Walker's Report, dated 20th July 1801.
5. Extract from Board of Revenue Report, dated 31st January 1803.
6. Mr. Thackeray's Report, dated 4th August 1807 (not printed).
7. Mr. Warden's Report, dated 11th September 1815 (not printed).
8. Extract from Mr. Ellis' paper on Meerasi, dated 30th May 1816.
9. Mr. Graeme's Report, dated 14th January 1822 (not printed).

1. VOUCHER No. 39.—*Mr. Farmer's Report on the nature of the ancient Malabar Tenures and of Rent and Revenue in Malabar.*

To

WILLIAM GAMUL FARMER, Esq.,
JONATHAN DUNCAN, Esq.,
WILLIAM PAGE, Esq.,
CHARLES BODDAM, Esq., and
MAJOR ALEXANDER DOW.

Commissioners for inspecting the Countries ceded by
Tippoo Sultan, and subordinate to the Presidency of
Bombay.

GENTLEMEN,

In the course of my enquiries in the Dewan Cutcherry, I have obtained some information relative to the ancient and present state of landed property in this country which, appearing to me to involve certain points of very serious consideration, I think it necessary particularly to state to you.

By my proceedings under the 26th ultimo it will appear that the possessors of land were said to be of two descriptions:—

1st.—Jelm-kars or Free-holders, who hold their lands either by purchase or by hereditary descent.

2nd.—Kanamkars or Mortgagees, to whom an actual delivery of the land appeared to be made, although the money taken up on it was not at all proportioned to the value of the land.

Having generally observed that all the lands were mortgaged, and rather at a loss to account for it amongst a people so saving and economical as both the Nairs and Namburis appeared to be, the circumstance attracted my particular attention, and expressing my surprise to some intelligent persons, they gave me the following explanation.

That many of the Raja's principal Nairs and Namburis holding estates at a distance from their residence, or holding more land than they chose to attend to the cultivation of necessitated to farm them out to others, at a certain fixed rent settled between the parties for the security of the landlord, or Jelm-kar, the following regulation seems generally been observed in the Malleam.

The farmer, called Kanamkar, deposited with the landlord a certain sum to remain him as a pledge for the due payment of the stipulated rent; on this sum an interest was to be paid to the Kanamkar or farmer, who might perhaps frequently be obliged to borrow the money on other pledges; after deducting the amount of this interest from the Pattom or rent, the difference was paid to the Jelm-kar or landlord.

The landlord therefore not taking the money as a loan for any particular purpose, merely as a security for rent, it was his interest that the deposit should be made in such a manner and therefore, I find that it was in general a rule to take the year's rent which being payable at different instalments, without giving a satisfactory reason, the owner would en-

fresh Kanamkar. The Kanamkar or farmer was put into possession by a writing given to him by the Jelm-kar or landlord, describing, as I understand, the situation and boundary of the estate, and the Kanamkar or landlord gave a similar descriptive writing to the Jelm-kar, defining also exactly the property of the estate, and the tenor and condition by which it was held by him, the Kanamkar.

The mode of estimating lands was as follows:—

The extent of a field was judged by the quantity of Nelly seed required to sow it. Lands produced from five to tenfold and according to the known quality of the land the quantity of its produce was estimated. Of this produce one-third was allowed to the farmer for his maintenance, profit, &c., one-third for the expense of the Tiers, Chermars or other cultivators attached to the soil, one-third went as rent to the Jelm-kar or landlord.

Garden lands were let two ways.

They were delivered over to the care of a servant or retainer of the landlord, and the trees settled by inspection of one on each side and a mutual arbitrator in the following proportions:—

Cocoanut trees.—2 to 3 Gold fanams according to their goodness.*

Betelnut.—6 to 8 Gold fanams.

Pepper.—1 Gold fanam per bearing vine.

Except the pepper, this is about the assessment of Tippoo. In the latter the pepper vine is rated at 3. I was told that the gardener chiefly looked to his profit and subsistence from the pepper vines, therefore, they were rated low. These circumstances and the entire freedom of trade may perhaps fully account for the very great quantities of pepper annually produced in the Malleams.

Gardens were also let to Kanamkar or farmer, but in a different manner,—a survey was taken and the produce estimated. Half of this produce was the rent reserved without any allowance for expenses.

The Tiers and Chermars, who were the general cultivators, were annexed to the land and considered as part of the property of it in the same manner as cattle would be the stock of the farm if they were left. Some allowance was made for them to the landlord; the Kanamkar had the option of taking them or not; he might apply his own labor or hire others.

Under the circumstances of the gardens being let on inspection, the leases were in general short from three to five years. It sometimes, however, happened that when the owner of the land wanted to borrow a sum of money for a real expense, longer leases were granted to from 20 to 25 years or for life. The reason I believe of this was, that the interest of the money borrowed was less in this manner than if borrowed of common money-lenders. The interest of the deposit made by the Kanamkar was about $7\frac{1}{2}$ per cent.; the common rate of interest was 12.

The fact then appears to me to be that the Kanamkars were not mortgagees but farmers who deposited a certain sum of money as security for the payment of the rent to the Jelm-kars, many of whom being poor Nairs or Numbiars, or Brahmins, and having nothing but the rents of their estates to subsist on, would have been much distressed in case of the failure of payment without some immediate resource. If a bad season prevented the payment of the whole of a grain rent, the deficiency I find was carried to the future account of the Kanamkar, and in the meantime the Jelm-kar had some assured subsistence.

This seems to have been the general state in the Malleam at the time of the conquest of Hyder. In what situation he really left the Jelm-kars or landholders, I do not know, because the inquiries I made being chiefly from landholders who seemed much interested in my inquiries, they differed very much, and I believe few told the truth. Some said that Tippoo left them one-fifth of the ancient Pattom or rent, others said that he found a new revenue which he levied from effects and not from persons, that is from the land and from gardens by whomsoever held, that of this new, an increased rent he allowed the ancient Jelm-kar one-fifth, this we shall know more truly from Oodhoot Row and the other officers of Tippoo, whom we may shortly expect; but be it as it may, after the general expulsion of the ancient Jelm-kars the Rajas, Numbiars, Namburis, Nairs and Brahmins by Tippoo, their landed estates fell to the ancient Kanamkars or farmers, most of whom were Mapillas or circumcised Nairs from whom the Government immediately drew the full revenue it had fixed, which it seems they easily and gladly paid freed from all demands of the ancient Jelm-kar. This was the state of the revenue from the Malabar year 962 to 966, when the troops of Tippoo were expelled by the Nair Chiefs English.

At this expulsion, the first object with the Jelm-kars would naturally be to obtain possession of their ancient landed estates, and with this intent, I believe, they left the Travancore soon as they safely thought they could. I fancy they must have made early claims to also to an exemption from all taxes on the ancient footing, and that by the same means on which the Samoori and the other Princes seized their several countries. In bar of these pretensions of the ancient Jelm-kars or landholders, the Government made the collections in the name of the Company and were granted their name. This they certainly did, for the collections made by them were in the name of the Company. As to the assertions, I believe that the real cultivator at the time of Tippoo; what share was allowed to the Jelm-kar, I can very precisely trace the exact period of their tenure, and the course of the Malabar year 967 they were mostly

returned; and as far as the ancient Kanamkars would permit it, had both re-entered their lands and began to participate in the revenue from them which has had a general influence in lessening the receipts of this revenue to the Company, and not the inability of the cultivators to pay the revenue fixed by Tippoo of which I shall endeavour to state my proofs.

Under the 26th ultimo, in examining a complaint referred to me by certain Mapillas of the district of Mellapoor, stating that more was demanded of them than the half of the Jumma of Arshed Beg, I had occasion to observe that they allowed that they cultivated the same land as in the time of Tippoo; that it produced the same, that the produce was as valuable. I could not help asking why they could not pay to the Company the same rent they paid to Tippoo. They said they could very well pay it, and would very willingly, if nothing else, was demanded, but that over and above the revenue they paid to the Company they were also ordered to pay a Pattom or rent to the ancient Jelm-kars or landholders; that Tippoo's Jumma being rated on the produce of the land, they could not without oppression pay both. This answer and information I got in many instances from the Mapillas who came with complaints from what are called the Mapilla countries.

The fourth Raja of the Samoori's family being anciently a great landholder, and as I was told well informed of the ancient customs, I particularly questioned him on these subjects at different times; he had frequently asserted to me that if the ancient Jelm-kars were restored to their landed property, they would gladly pay to the Company the revenue they were rated at by Tippoo, which rather astonished me, as the ancient rents appeared rather less than the revenue of Tippoo. He said frankly that in taking the surveys on which the revenue of Tippoo was formed, his surveyors were bribed, and that the real produce of the country was under-rated, on the knowledge of which circumstance he would engage that at least three-fourths of the ancient Jelm-kars would gladly agree to abide by his offer.

I observed to the Raja that if the cultivators were so well able to pay the revenue fixed by Tippoo, it appeared foolish in the Durbar of the Samoori to have lessened this revenue needlessly both to the Company and himself by rating it this year at only half of the revenue fixed by Arshed Beg. He said the Samoori did this to favor the ancient landholders whom he considered as his peculiar subjects; that in the places they were returned to these Jelm-kars had been restored to their Jelm or landed estates; that they left the ancient cultivators or Kanamkars in the holding and cultivation of their lands taking from them the ancient Pattom or rent out of which they paid the revenue to the Sircar in the proportion of one-half the Jumma of Arshed Beg; that where the Jelm-kars were not arrived, the Sircar's Officers collected directly from the cultivators, that in his District of Venkattykotta they were almost all arrived and in possession of their lands as well as in most other districts except the Mapilla countries of Ernád, Shernad, Mellapoor, &c., where the Mapillas had refused to surrender their lands to the ancient Jelm-kars, saying that they would pay the revenue due to the Government, but not any of the ancient Pattom or rent to the Jelm-kars or landholders.

In examining a complaint from sundry Mapilla cultivators of the Betutnaad country, their condition was found to be worse than in the time of Tippoo, by paying in the proportion of 11 to 10 as follows the Sircar demands

Do. for Collection expenses	..	..	..	7½
The ancient Jelm-kars	..	..	..	2½

In all .. 11

They all owned that they were fully able and willing to pay the revenue as fixed by Tippoo, if nothing more was demanded, and when I told them that the Jelm-kars had levied on them without authority, and that this should be stopped and refunded, they seemed very averse wishing to have the reduction made in the Sircar's share of the revenue, feeling that the ancient masters.

These facts and informations I have thought meriting your attention. Previous to any permanent settlement it is very necessary to be well informed of the landed property which seems to have undergone some material change since the troops of Tippoo. Instead of Government collecting at once from the land, the ancient Jelm-kar or landholder has in many places interfered, on account of rent must certainly operate a decrease in the Government's accounts for the assertion of the Samoori in his letter delivered on the 20th ult. could not offer more than half of the revenue levied by Arshed, which at stood to arise solely from the uncultivated and depopulated state of the country does not seem to have been his idea, but that, if it was exacted, the ancient holders would be left without adequate maintenance. This idea he put in our letter, hinting to him that we found the country would bear three-fourths. Arshed Beg, wherein he says that levying more than half would occasion the banishment in Travancore, and not for the real cultivators of the country, a great interest in this reduction, many of them I am informed belong to different parts of the country.

Many of the mortgagees and other landholders, now let their lands to, (*Kudians*); but they can seldom procure any person who will give the (*Pir-Pattom*) great price. The leases in general are for three years, and the annual rent is fixed, and always paid in. is commonly called the *Pattom* or produce of an estate. When the landholder under the necessity of allowing the farmer to pay the land-tax, who of course

obliged to sell his rice at the lowest rate, and therefore charges a large share of the produce as expended for this purpose; but landholders in tolerable circumstances keep their grain until it rises to a medium price, and discharge the land-tax themselves.

The *Dera-Stanum* or temple-lands and those called *Cherical*, which belong to the Rajas, were under the management of these chiefs, and were let out exactly like those of the *Namburis*. The temple-lands were exempted by *Hyder* from the assessment: but the *Cherical* lands were considered as private property. Tippoo seized on the former, and they are now subject to the tax; but they still yield a profit, and are managed by the Raja for the benefit of the temples.

(3). The tenures by which plantations are held differ considerably from those by which the *Paddum*, *Dhanmurry*, or low land, has been granted by the *Namburis*. When a man wishes to plant a space of *Parum* land, he obtains from the landlord a lease called *Cuey Kanam*, which is granted for a time sufficient to allow him at least two years' full produce from the garden, and often much longer. If the lease be for any considerable time, he in general pays some money in advance, which is called the *Kanam*, or mortgage. When the term of the lease has expired, the landlord may resume the plantation, by paying up the mortgage, and liquidating the amount of all the charges incurred by the *Kanamkar* or mortgagee, for buildings, wells, fences, &c., together with the value of the trees brought to maturity. The amount of these sums due to the mortgagee by the landlord, who wishes to reassume a plantation, is generally determined by arbitration. When the lease has expired, and the sum due to the (*Cuey Kanamkar*) mortgagee has been determined, the landlord either reassumes the garden by liquidating the claims of the planter, or he grants it to the planter on proper *Kanam*, or full mortgage. In this case the *Pattom*, or neat rent of the garden, having been ascertained to the satisfaction of both parties, the mortgagee agrees to pay the amount to the landlord, after deducting the land-tax, and the interest of his claims; which are then consolidated into one sum, called *Kanam*, or mortgage.

3. Extract from Mr. Warden's Report on the condition of Pálghat and other Division of the District of Malabar, dated 19th March 1801.

The *Namburis* (Malabar Brahmins) are the principal original landlords of the country. There are not many of them now in the province, but a few having returned of those who took refuge in Trávancore on the Muhammadan invasion. The lands which belonged to *Namburis* are either the property of the Pagodas, Rajas or Nadwaries. These are *ryots* who have become by purchase the rightful owners of landed property, but they are few in proportion to the number of others. The Malabar term for a landlord is *Jenmkar*. The common tenure upon which the ryot holds his ground of the *Jenmkar* is upon what is called *Kanam*; this is a species of tenure greatly resembling a mortgage, but the land is always redeemable upon the *Jenmkar* paying the money which he originally received from the *Kanamkar* or lender in pledge of his ground. This redemption has been seldom known to occur, unless it is when another person offers to the *Jenmkar* a larger sum for the ground in pledge than what the ryot in possession gave for it; who, if he should decline to pay the surplus offered, is obliged to resign to the superior bidder, who discharges the amount of his loan, and the *Jenmkar* benefits by the surplus. This certainly operates in some measure as a kind of discouragement to the exertion of industry on the part of the ryot, who knows that the more he improves the estate, he is so much the more liable to lose it; but it is the established custom of the country, and therefore not complained of. The common agreement between the *Jenmkar* and *Kanamkar* with regard to the produce of the ground in pledge is, that the latter shall pay one-fifth of a specific rent in grain to the former, proportionate to the produce of the soil, which rent is called the *pattom*. The *pattom* is generally limited to one-third of the produce. The highest produce in these districts does not exceed 15 fold. From the *pattom* the interest on the *Kanamkar's* loan is deducted, also the Sircar's revenue; the residue which is trifling, is the share of the *Jenmkar*. The implements of husbandry, cattle, and every expense are provided and incurred by the cultivator. On these considerations the *Jenmkar* who is quite an inactive spectator, cannot expect to receive a larger share. The estates belonging to *Namburis* are mostly rented out on this tenure, as are likewise a great portion of those belonging to the pagodas, &c. What are not let out on this tenure are generally rented by the ryots on *pattom*, in which case there is no loan made to the proprietor, who allows four-fifths of the *pattom* to the tenant to discharge the revenues, and receives the remaining one-fifth as his rent. If the ground be under-assessed or a very productive one, the *Jenmkar* will receive the whole of *pattom* and pay the revenues himself by which he will gain more than one-fifth. This being done by most of the principal landlords in Pálghat, is one among other reasons which have convinced me that the grounds in this district belonging to these people are considerably under-assessed. I do not mean that it should be inferred from this declaration that the rate of division of the produce between the Sircar and ryot is too advantageous to the latter and not sufficiently beneficial to Government. I mean to be understood that there is a great portion of ground in Pálghat that does not pay any revenue; for instance, a batty field (of the most productive kind) sowing 100 parabs of seed, might, upon an average be assessed in the Cutcherry accounts at 70. The cultivator himself does not benefit by this under-assessment (unless the ground is his own), for he has his *pattom* to pay, which is pretty accurately proportioned to the produce at the rate of one-third of it. Calculating therefore upon a spot of ground fully-assessed,

the rate of division of its produce may be affixed for these districts as follows:—two-thirds to the cultivator, one-fifth of one-third or one-fifteenth of the produce to the *Jenmkar*, four-fifths of one-third or four-fifteenth of the produce to the Sircar.

4. Précis of Major Walker's Report on the land tenures of Malabar, dated 20th July 1801.

Chapter I deals with the *Attipet ola* (deed of sale), and describes the formalities required to be observed on its execution.

The preliminary deeds, viz., *Kayividu otti*, *Ottikumpuram*, and *Nir Mudal* or *Kudima Nir* are then described.

The first of these deeds is sufficient to confer on its holder the right of pre-emption, should the *Jenmkar* wish to sell. If he refuses to exercise that right, the *Jenmkar* is at liberty to sell to another and pay off the prior encumbrances.

The sale deed cannot take place without the consent of the heir, but the *Jenmkar* may let out *paramba* on *kanam* (mortgage) and for *pattom* or rent without the privacy and consent of the heir.

The *Jenm* right is usually surrendered by degrees, it being the interest of the *Jenmkar* to avoid the final step, whilst it is the interest of the tenant to expedite it.

Chapter II deals with leases. The *Jenmkar* wishes to lease a *paramba* on *kanam*, he gives his own estimate of the rent which it will yield. Persons acquainted with the custom of the country are then called in to assess the annual produce. The *pattam* is reckoned at two-thirds of the produce, one-third being reserved to the *Pattamkar*.

The share of the *Jenmkar* is then commuted into money at a moderate rate and this is called the *pattam*. The *Pattamkar* gains a considerable profit by selling his produce in open market and paying his rent in money.

The *pattam* of paddy fields depends on the quantity of seed that the ground by proper cultivation is capable of receiving and the number of fold it may be expected to yield. The fold varies from three to thirty. The *pattam* is fixed by assessors and is paid in kind. The usual mode of assessment is to deduct the seed and double the quantity for the expenses of cultivation, and to divide the balance in the proportion of two-thirds to the *Jenmkar* and one-third to the *Pattamkar*.

In the case of waste land nothing is deducted for seed and cultivation expenses, but the cultivator pays two-tenths of the gross produce to the *Jenmkar*. The same rule holds good in the case of jungle cleared cultivation (*ponam*).

The *kanam kondavan*, the tenant or the person who gives security to pay the *pattam*, has to perform certain gratuitous services for the *Jenmkar*. At the feast of *Oonam* he pays him two fanams. The same acknowledgment is made by the *kudian* who executes the deeds called *verumpattom*, *kulikanam*, &c.

The usual period of a lease is from three to six years when, if the parties think necessary, the *pattam* is re-assessed, and on the renewal of his lease the *Pattamkar* pays half the *pattam* as a present to the *Jenmkar*.

The term of the lease may be extended or reduced at the pleasure of the parties, but expires in every case on the death of the *Jenmkar*, when it must be renewed by his heir. An entire year's *pattam* is then paid or a deduction made from the *kanam*. The lease must also be renewed at the death of the *Pattamkar* if the *Jenmkar* is willing to renew it to his family, but this is at his option. A lease by a Raja is somewhat different. It lasts for his life or for the life of the *Pattamkar*, and is not renewed at fixed periods. During the period of the lease the *pattam* undergoes no alteration. It may, however, be revised when renewed, on which occasion the *Pattamkar* pays one year's *pattam*, and makes him a present, or suffers a deduction to be made from the *kanam*. The *kudians* of the Rajas are in a more favorable position than other *kudians*; but they are obliged to perform greater services and to pay four fanams instead of two fanams at the feast of *Oonam*.

The *kanam* is a sum of money deposited in the hands of the *Jenmkar* as a security in case the *kudian* should fail to pay his yearly rent. Should the *kudian* neglect his payment, the *Jenmkar* reimburses himself from the *kanam*. If he is punctual in his payment, he receives interest on his *kanam*.

If the *Jenmkar* demands back the *paramba* from his *kudian*, he must pay the original *kanam* with the interest and also *kulikanam* or a sum of money equal to the expense or value of the improvements introduced by the tenant.

If the *kudian* has neglected the *paramba* and the produce is diminished, the loss is made good to the *Jenmkar* from the *kanam*.

If the *kudian* is himself desirous to return the *paramba*, he must submit to a deduction of twenty per cent. from the *kanam*, but is entitled to the value of his improvement.

A lease may be revoked by a *Jenmkar* at any time except harvest time. If the term has not expired, but he has to pay double the value of the improvements. The same is applicable to *kanam* are also applicable to *Panayam* or pledge. Any sum less than an *ott* is not a *kanam*.

In the case of a *panayam*, if no mention is made of *kulikanam*, the *kudian* cannot claim reimbursement for his improvements, and he forfeits the whole of the *kanam* if he diminishes the value of the *paramba*. This deed is renewed every six years, when renewal fees are paid.

He is not liable for loss arising from natural causes.

The *Kanam-pattamkar* and *Panayam-pattamkar* are synonymous terms.

kulikanam, if the *Jenmkar* takes back the *paramba*.

Chapter III deals with mortgages, under which head are classed *Kayividu otti*, *Ottikumpuram* and *Kudina Nir* already referred to. These three tenures are more properly deeds of sale with reservation of certain seigniorial rights.

kudian is entitled to *kulikanam*. The *Otti-kondaran* has the power of the sub-letting.

inferior castes. The Indian is not mentioned in the deed.

This is the great distinction between *adima jenn* and *kayirudu otti*. The *patlam* is equivalent to the interest.

for any surplus proceeds. The creditor has no right of pre-emption and may be redeemed.

If the *kudian* remains in possession for a series of years and there are considerable improvements, the *Jenmkar* must pay back the sum agreed on with interest.

produce of three years as a reward for his industry.

established usage, whenever the *Jenmkar* thinks fit to take back the *paramita*.

their growth. 1. Classification of soils with reference to their productive

powers. of the land measures and grain measures in use.

Chapter VII describes the Cherumars or slaves of the soil.

Chapter VIII gives an account of the origin and rights of man and of his duties to God and to his fellow-men. "Man," it says, "possesses the entire right of the soil, and no earthly authority can with justice

regularly in proportion to their strength, levied contributions on the landed proprietors

the Indians were to the necessity of following him.

Chapter X contains specimens of deeds taken from a book called Vyavaharam with some concluding observations and suggestions, from which the following are extracted :—

by various tenures which are not sufficiently understood.

the peculiar possession of individuals, but there is every appearance that it is of great antiquity.

and by certain fugitive forfeits or immunities which were more singular than advantageous. In

January 1803. (Fifth Report, Vol. II. p. 440).

authority of written documents.

necessary:—

to some of those various conditions from which no subject can be exempt.

reuter. The rent is annual¹ or for a definite term; and the conditions specified in writing.

for the occupancy of the land made over by the mortgagor. If the produce exceed the interest

Jenmikar has the right of resumption, on paying the renter for the buildings and wells

p. 441.

Appendix I to the Mcerasi Papers.

Meerasidar.

8. *Extract from Ellis' Report, dated 30th May 1816 (Meerasi Papers, p. 179).* -

In the three southern provinces of the tract called by the natives Malayalam, the Coast of Malabar, there are no villages and, consequently, no rights of any kind in common; each family of Nairs reside apart on their own estate and hold their *jennum* right free of all participation or control, and, formerly, free of all rent, the share which the law gives the Sovereign in the produce of land having been commuted for military service, each *Nadu* or district, being assessed at so many armed Nairs, instead of so many measures of grain, or so many Veray fanams.

This was, also, the condition of the fourth or Northern Division of Malayalam, *Tulunadu*, now called Canara, before the foundation of the Vijayanagara, or, as corruptly called, the Bijanuggar empire, in which this district was, by force or agreement, included: a general assessment was then introduced, grounded on the share allowed by law to the Sovereign in landed produce, one-sixth; this has since, by successive additions, been considerably increased, but does not appear to have operated any considerable alteration in landed tenures, which, divested of all community of right, like those of Malabar, are nearly the same as those which obtain in the *Ayudi-carei* villages to the south of the Colleroon. There appears, however, in practice to exist this essential difference, that, though the mortgage, assignment, and temporary or permanent lease of Meerasi land are known in the districts of Tanjore, Madura, and Coimbatore, they are not generally prevalent, the actual cultivation of the lands being more or less in the hands of the Meerasidars, by whom the Sircar revenue is paid; on the contrary subordinate tenures of all kinds are very common in Canara, and in many districts of Malabar the possession of the land has passed from the proprietary Jenmkar to under tenants of various descriptions, who render him a *Swadimihogam*, or acknowledgment of superiority, pay the Government rent, and enjoy all remaining profits.

9. *To the same effect as the other Reports is Mr. Græme's Report, dated 15th January 1822.*

Note.—Mr Græme, it may be observed, was the first to draw attention to the fact that lands were not expressly and for the first time made over to the Kanamkars to discharge an existing debt contracted for causes unconnected with the land, but that the money was almost invariably borrowed from tenants who were previously in possession.

Order—dated 29th July 1884, Mis. No. 500, Political.

The Government resolve to request to be furnished with the opinions of the Honorable the Judges of the High Court and the Advocate-General on the draft Bill drawn up by the Commission.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Judges of the High Court, with C.L., and five copies of Bill, &c.
„ Advocate-General, with copy of Bill, &c.

G.O., dated 31st July 1884, Mis. No. 504, Political.

MADRAS, 8th July 1884.

To
THE CHIEF SECRETARY TO GOVERNMENT,
FORT ST. GEORGE.
SIR,

Before submitting our proposals regarding the Land Tenures of Malabar, we, the members of the Committee appointed by G.O., dated 29th January 1884 No. 53, Political, have the honor to submit our views relating to two other questions which are noticed in Mr. Logan's report, and on which we anticipate that there will be little, if any, difference of opinion.

The first of these questions relates to a Marriage and Succession law for Hindus following the *marumakkatayam* law of inheritance, and the second relates to the control of sites of Mosques, Burial-grounds, &c.

2. Paragraphs 481 to 488 of Mr. Logan's report deal with the question of a law of succession to self-acquired property. Mr. Logan points out the hardship of a

man's self-acquisitions devolving on his Tarwad at his death rather than on his wife and children, and proposes to grant to all adults, male and female, testamentary power over their acquisitions, and, in cases of intestacy, to allow the wife and children to inherit one-third of the self acquired property.

3. The law, as at present administered in the High Court, is that the self-acquisitions of an individual member of a Malabar family are at his absolute disposal during his lifetime, but that at the moment of his death they pass to the family, of which he was a member.

The leading case on the point is the case reported at II., Madras High Court Reports, page 162.

In a more recent case, it was held that the self-acquired property of an individual member, though it becomes Tarwad property at his death, still remains liable for the debts of the deceased acquirer in the hands of the members of the Tarwad (Indian Law Reports, IV., Madras, 150). The High Court have further, in a case not reported (S.A. No. 534 of 1878), refused to recognise the validity of a Will, on the ground that it conflicts with the reversionary right of the family.

4. So far as we are informed, we believe that there is *consensus* of opinion among the majority of those interested that the time has come when a permissive form of marriage should be provided for Hindus following the *marumakkatayam* law of succession. They want to be able to contract a marriage which the law will respect, and this, we think, the Legislature may enable them to do, without interfering with their peculiar law of succession to ancestral property, which they do not desire.

To provide for the wife and issue of such marriages, we propose a limited change in the law of succession to separate and self acquired property; and the change is one which will, we believe, commend itself to the majority of the people. Our proposal is that, should the husband or wife die intestate as to any separate or self-acquired property, that property should devolve on the survivor and the children in equal shares; but that they should in their lifetime have power to dispose of such property by Will.

The only restriction we place on the testamentary power is that, if the husband fails to make sufficient provision for the wife and children, they will be entitled to claim so much of the property as will provide them a suitable maintenance.

Further, we provide that property devolving on the survivor of a marriage and the children shall be their self-acquired property, which they, in their turn, can dispose of under the general law, and which, if they marry under our Act, they can dispose of by Will.

It was suggested to us that we might, with advantage, extend the testamentary power to all persons following the *marumakkatayam* law of succession, whether they contracted a marriage under our Act or not. We have, however, thought it best to retain the section as it stands. Testamentary power over separate and self-acquired property is a right which, we think, ought to be conferred on every Hindu in the Presidency; but this would properly form the subject of a separate enactment applicable to the whole Presidency.

5. In drafting our Malabar Marriage Act, we have followed the lines of the Brahmo-Samaj Marriage Act (III of 1872).

We think that, for the present at all events, the operation of the Act should be confined to Malabar, though we provide for its future extension to other parts of the Presidency, where colonies of persons following the *marumakkatayam* law of inheritance may be settled (section 3).

We adopt generally the conditions imposed by the Brahmo-Samaj Act, though we have purposely altered clause (1) of section 4, so as to preserve existing restrictions as to mixed marriages.

We impose on the Registrars and Sub-Registrars of Assurances the duty, in cases of dispute, of determining, in their capacity of Marriage Registrars, whether a proposed marriage ought to be solemnised. And we allow an appeal to the District Court, whose decision will be final (sections 5 to 13).

We require certain formalities to be gone through before the marriage is solemnised and certain fees to be paid (sections 14 to 17).

We make bigamy an offence by prescribing penalties for contracting a second marriage during the continuance of the first marriage. We also prescribe penalties for making false statements (section 18).

We provide that a marriage contracted under this Act may be dissolved under the Indian Divorce Act (section 19).

We enumerate the civil rights acquired by husband, wife and children after a marriage has been solemnised under this Act as follows:—

The wife and children are to pass from the guardianship of the head of their natural family (Tarwad) to the guardianship of the husband.

While they retain their rights as members of their natural family (Tarwad), they are to acquire a right to maintenance from the husband.

On the husband's death, the guardianship of the children passes to the wife.

Husband or wife will forfeit the right of guardianship by a change of religion.

Lastly, we confer testamentary power on the husband or wife as explained above (section 20).

The remainder of the Act deals with the formalities to be observed in exercising the testamentary power (sections 21 to 23). We do not consider that it is desirable to extend the elaborate provisions of the Hindu Wills Act (XXI, of 1870) to Wills under this Act. The simple form of procedure we have adopted is, at any rate for the present, sufficient.

The Schedule contains the necessary forms of notices, declaration, and certificate referred to in the Act.

6. We have purposely omitted all mention of the ceremony of tying the *tali*, which is now performed before a girl attains her puberty. It is unnecessary to declare that such ceremony does not constitute a legal marriage, for no legal incidents whatever attach to it.

7. With regard to the Mosque question, paragraphs 287 to 304 of Mr. Logan's report explain how difficulties are purposely placed by Hindu landed proprietors in the way of Mappillas' and other rival religionists' acquiring sites for places of public worship, &c., how such sites have been sometimes taken by force by Mappillas, and sometimes surreptitiously acquired, how the titles to the sites of some mosques are therefore defective, and how quarrels thus arising have led to outrages in the past, and may possibly lead to outrages in the future.

Paragraphs 489 to 506 of Mr. Logan's report contain his proposals. Mr. Logan proposes, by adding two sections to the Mappilla Outrages Act (XX of 1859), to impose severe penalties on any Mappilla who erects a mosque, or converts a building not hitherto used as such into a mosque, without the sanction of the Magistrate of the district, and to apply the Land Acquisition Act (X of 1870), where necessary, for the acquisition of new or already occupied sites by any religious sect.

8. We have carefully considered these proposals, and, though we do not under-rate the difficulties which have occurred in the past, and which may at any moment occur again in connection with this question, we are unanimously of opinion that it is better to avoid, if possible, further class legislation; and we have, therefore, drafted an Act for controlling the erection and use of all buildings intended to be used as places of public worship.

9. Our Act provides that in future no place of public worship shall be erected or used, and no public burning or burial ground shall be opened, without a license to be obtained from the Collector (section 2).

By the form of application, the Collector's attention will be directed to the public necessity which exists for a new building, &c., and the number of persons who are to benefit by it (Schedule). After hearing any objections which may be raised, the Collector will decide whether the license ought to be granted or refused. An appeal will lie from the Collector's decision to the Governor in Council (section 3).

We prefer that the functions imposed by the Act should be performed by the Collector rather than the Magistrate. Those functions are more of an executive than a judicial character.

The site to be appropriated is to be demarcated and surveyed, and a plan thereof prepared, at the expense of the applicant, before the license is granted (section 4).

The form of license is to be settled by the Governor in Council, and every license may contain such special conditions as in the circumstances may appear necessary (section 5).

We discussed the question whether we should provide that conditions might be imposed "for the regulation of music and processions;" but we came to the conclusion that such matters must be left to the general law. We think that it would be politically advisable that licenses for new places of public worship should, as a rule, prohibit processions outside their precincts. But we were unable to agree whether, if other conditions were imposed, the Governor in Council should be empowered from time to time to alter such conditions or to add fresh conditions, with reference to new circumstances that might arise.

10. We authorise the Collector, with the sanction of the Government, to acquire sites under the Land Acquisition Act (X of 1870) for the members of any religious sect who are otherwise unable to obtain suitable sites (section 6).

We impose penalties on any one who contravenes the Act, or who abets its contravention, or who uses any building as a place of public worship or any public burning or burial ground, for which a license is required, knowing that such license has not been granted (section 7).

The intention with which an offence is committed under the Act will vary considerably with the circumstances of each case; but, if the offence has been attended with aggravating circumstances, we think that the offender should be liable to severe punishment; and for this we have provided. We trust that the punishment awardable in such aggravated cases may be found to be sufficiently deterrent.

Lastly, we exclude from the Act churches erected and cemeteries opened by the Government (section 8).

11. We have recommended that the Act should apply to Malabar only, as it is hardly within our province to discuss the advisability of extending it, or any portion of it, to other parts of the Presidency. But we have provided that it may, if necessary, be extended by notification (section 1).

We have the honor to be,

Sir,

Your most obedient servants,

(Signed)	T. MADAVA RAO,
{ " }	W. LOGAN,
{ " }	H. WIGRAM,
{ " }	C. SANKARAN NAIR,
{ " }	P. KARUNAKARA MENON.

DRAFT ACT.

Whereas it is expedient to provide a form of marriage for Hindus following the *marumakkatayam* law of succession, and to provide for the maintenance of the wives and children after the performance of such marriages; It is hereby enacted as follows:—

1. This Act shall be called the 'Malabar Marriage Act.'
2. It shall come into force as soon as it has received the assent of the Governor-General in Council.
3. It extends to the Collectorate of Malabar and to such portions of the Madras Presidency as the Governor in Council may, by notification, direct.
4. Marriages may be solemnised under this Act between Hindus following the *marumakkatayam* law of succession upon the following conditions:—

- (1) Neither party must, at the time of the marriage, have a wife or husband living, whom he or she has married under the provisions of this Act, unless such marriage has been declared null, or been dissolved as hereinafter provided.

- (2) The man must have completed the age of eighteen years and the woman the age of fourteen years.
- (3) Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his, or her, legal guardian to the marriage.
- (4) The relation of the parties must not be such in respect of consanguinity, affinity or otherwise that, according to any recognised custom, a marriage between them would be improper.

5. The District Registrars of Assurances shall be *ex-officio* Marriage Registrars in their districts; and the Sub-Registrars of Assurances shall be *ex-officio* Marriage Registrars within their local jurisdictions.

6. When a marriage is intended to be solemnised under this Act, the man shall give notice in writing to the Marriage Registrar before whom it is to be solemnised. The Registrar, to whom such notice is given, must be either the Marriage Registrar of the district or the Marriage Registrar of the locality in which the man or woman ordinarily resides.

Such notice shall be in the form given in the Schedule to this Act.

7. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be kept for that purpose and to be called the 'Marriage Notice Book'; and such book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

8. A copy of the notice shall be served, at the expense of the applicant, on the legal guardian of the woman, and he shall be required to show cause, within fourteen days from the date of service, why the marriage should not be solemnised. A copy of such notice shall also be posted on a notice-board at the Registrar's office.

9. The legal guardian, or any other person, may object to the proposed marriage on the ground that it would contravene one or more of the conditions prescribed in section 4.

The nature of the objection made shall be recorded in writing by the Registrar, and shall be read over and, if necessary, explained to the person making the objection, and shall be signed by him or on his behalf. The Registrar shall take evidence and determine whether the objection is valid.

10. If no objection is made, under section 9 before the expiry of the fourteen days mentioned in section 8, the marriage may be solemnised on such day as the parties may select. If an objection is made, but the Registrar is satisfied for reasons to be recorded by him in writing that the objection cannot be sustained, the marriage shall not be solemnised until one month has elapsed from the date of the Registrar's decision, or, if within that month the District Court is closed, until one month has elapsed from the re-opening of such Court.

11. Within that period, the person objecting to the marriage may apply to the District Court for an injunction to stay such marriage on the ground that it will contravene some one or more of the conditions prescribed in section 4.

The District Court shall forthwith issue a temporary injunction to the Registrar to stay proceedings until the further order of the Court.

12. If the Registrar decides that the objection to the proposed marriage is valid, the party aggrieved by such decision may, within one month, apply to the District Court for an order directing the Registrar to solemnise the marriage.

13. The District Court shall dispose of applications made under sections 11 and 12 after taking evidence; and shall pass such order as it thinks fit. A copy of such order shall be communicated to the Registrar who shall act in accordance therewith. Such order shall be final.

14. In solemnising a marriage under this Act, the following procedure shall be adopted:—

- (a) The parties to the marriage and three witnesses shall, in the presence of the Registrar, sign a declaration in the form given in the schedule to this Act.

If either party has not completed the age of twenty-one years, the declaration shall be signed by his or her legal guardian, and, in every case, it shall be countersigned by the Registrar.

- (b) The marriage shall be solemnised in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnised in any form, provided that each party says to the other in the presence and hearing of the Registrar and witnesses "I (A) take thee (B) to be my lawful wife (or husband)."

15. The marriage may be solemnised either at the office of the Registrar, or at such other place within reasonable distance of the office of the Registrar, as the parties desire: provided that the Local Government may prescribe the conditions under which such marriages may be solemnised at places other than the Registrar's office and the additional fees to be paid thereupon.

16. When the marriage has been solemnised, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book' in the form given in the schedule to this Act; and such certificate shall be signed by the parties to the marriage and the three witnesses.

17. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Marriage certificate book shall, at reasonable times, be open for inspection, and shall be admissible as evidence of the truth of the statement therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for such extract.

18. (a) Every person married under this Act who, during the lifetime of his, or her, wife, or husband, contracts any other marriage shall be liable to punishment under sections 494 and 495 of the Penal Code.

(b) Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Penal Code.

19. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided and for the causes therein mentioned.

20. When a marriage has been solemnised under this Act, the following civil rights shall accrue:—

- (a) The husband shall be *ipso facto* the legal guardian of his wife and of her children born to him before or after such marriage. He shall, however, forfeit such right, if, without the concurrence of his wife, he becomes a convert to another religion.
- (b) The wife and children shall retain their rights as members of their Tarwad, and shall further be entitled to claim maintenance from the husband.
- (c) After the husband's death the wife shall become the legal guardian of the children in her own separate right, but she shall forfeit such right if she becomes a convert to another religion without the consent of the head of her Tarwad. In such cases the guardianship shall vest in the head of the Tarwad.
- (d) If either husband or wife die intestate in respect of any of his or her separate or self-acquired property, the said property shall devolve on the survivor and children (if any) in equal shares, and failing them, on the Tarwad.

(e) It shall be lawful for such husband or wife to dispose of his or her separate or self-acquired property by Will: provided that the husband shall make sufficient provision for his wife and children. In case of default, the wife and children shall have a right to so much of the property as will provide them with a suitable maintenance, with due regard to what they have already received from the husband.

(f) Property devolving on the survivor of a marriage or the children, whether by inheritance of Will, shall be deemed to be their self-acquired property.

21. Every Will made under this Act shall be signed by the testator, and the signature shall be attested by at least two witnesses. The Will shall either be registered or deposited in the Registrar's Office under the provisions of Act III of 1877. If the Will is deposited as aforesaid, it shall be accompanied by a declaration in the form given in the Schedule to this Act, which shall itself be registered.

22. Certified copies of this declaration shall be given by the Registrar to any person applying for the same in accordance with the rules in force relating to the granting of certified copies.

23. Any person interested in the property disposed of by the testator shall be at liberty to file a suit for a declaration that the property is not the separate or self-acquired property of the testator as alleged by him.

SCHEDULE.

(Notice referred to in Section 6.)

To

The Marriage Registrar of—

I hereby give you notice that a marriage under Act _____ of 188 _____ is intended to be had between the undermentioned parties:—

Name in full and Tarwad name.	Age.	Caste.	Tarwad Residence.
(Husband) A.B.	21	Kiriyattil Nayar	(Here enter name of Amsam and taluk.)
(Wife) C.D.	14	Chanur Nayar.	Do.

(Signed)
Name.
Present residence.
Profession.

(Declaration referred to in Section 14.)

I (A.B.) declare as follows:—

- (1) I am at the present time unmarried.
- (2) I have completed the age of 18 years.
- (3) I am not related to C.D. in any degree of consanguinity or affinity or otherwise that a marriage between us would be improper.

[And when (A.B.) has not completed the age of 21 years.]

(4) The consent of my legal guardian (here enter name) has been given to a marriage between myself and (C.D.), and has not been revoked.

(5) I am aware that if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and fine.

(Signed) A.B.

I (C.D.) declare as follows:—

- (1) I am at the present time unmarried.
- (2) I have completed the age of 14 years.
- (3) I am not related to A.B. in any degree of consanguinity or affinity or otherwise that a marriage between us would be improper.

[And when (C.D.) has not completed the age of 21 years.]

(4) The consent of my legal guardian (here enter name) has been given to a marriage between myself and (A.B.), and has not been revoked.

(5) I am aware that if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and fine.

(Signed) C.D.

Signed in our presence by the abovenamed A.B. and C.D.

Three witnesses .. { (Signed) G.H.
 " I.J.
 " K.L.

[And when the bride or bridegroom has not completed the age of 21 years].
Signed in my presence and with my consent by the abovenamed C.D. or A.B.

{ (Signed) Legal guardian of C.D.
 " Legal guardian of A.B.
(Countersigned) E.F.
Marriage Registrar.

(Marriage certificate under Section 16.)

I (E.F.), Marriage Registrar of _____ certify that on the _____ day of _____ 188 _____ appeared before me A.B. and C.D., each of whom in my presence and in the presence of three credible witnesses, whose name are signed hereunder, made the declarations required by Act of 188 _____, and that a marriage under the said Act was solemnised between them in my presence.

(Signed) E.F.
Marriage Registrar.

Three witnesses .. { (Signed) A.B.
 " C.D.
 " G.H.
 " I.J.
 " K.L.

Dated the _____ day of _____ 188 _____

(Declaration under Section 21.)

I (A.B.) hereby declare that the undermentioned property is my separate or self-acquired property.

I further declare that the Will which I deposit herewith, and which is attested by two witnesses, disposes of no other property than is mentioned in this declaration.

Description of Property.

(Here enter particulars of property, real or personal.)

(Signed) A.B.

DRAFT ACT.

WHEREAS it is expedient to control the erection of places of public worship and the opening of public burial or burning grounds, and further to afford reasonable facilities for the acquisition of sites for the same in certain cases: It is hereby enacted as follows:—

1. This Act may be called 'The Places of Public Worship Act.'

It extends to the Malabar District, and may hereafter be extended, wholly or in part, to such other districts, or parts of districts, as the Governor in Council may by notification direct.

2. After the passing of this Act no temple, mosque, church, or other place of public worship shall be erected, and no building, not hitherto in use as a place of public worship, shall be converted to such use without a license.

After the passing of this Act no ground shall be appropriated as a public burning or burial ground without a license.

Licenses may be obtained in the manner hereinafter provided.

3. The application for a license shall be made to the Collector of the district in the form given in the Schedule to this Act annexed. The Collector shall give public notice of the application, and shall fix a date for hearing objections. After hearing

the objections, he shall record his decision whether the license ought or ought not to be granted. An appeal shall lie from the Collector's decision to the Governor in Council at any time within one month from the date of the Collector's decision being made known to the parties. No license shall be granted during such month or whilst an appeal is pending.

4. Before the license is granted, the site of the proposed building, or burning or burial ground shall be permanently demarcated and surveyed, and a plan thereof prepared, at the expense of the applicant.

The license, with copy of the plan attached, shall be registered by the licensee.

5. The license shall be in such form as the Governor in Council may direct, and may contain conditions as to the enclosure of sites, the erection of buildings, and such other matters as may appear necessary.

6. The members of any religious sect, who are unable to obtain a suitable site for a place of public worship or a public burial or burning ground, may apply to the Collector to acquire a suitable site, and the Collector, if satisfied that there is a *bona fide* difficulty in obtaining a site, may acquire such site under the Land Acquisition Act (X of 1870) on their behalf. But the Collector shall, before reporting to the Government, satisfy himself that no reasonable objection exists to the grant of the proposed site, or to the grant of a license under this Act.

7. Whoever acts or attempts to act in contravention to section 2, or abets such act, and whoever uses any building as a place of public worship or uses any public burning or burial ground for which a license is required under section 2, knowing that such license has not been granted, shall on conviction be liable to imprisonment, which may extend to one year, or to fine or both; and if the offence is attended with aggravating circumstances, shall be punished with imprisonment which may extend to seven years and shall also be liable to fine.

8. Nothing in this Act shall apply to any place of public worship or cemetery which may be erected or opened by the Government.

SCHEDULE.

(Application referred to in section 3.)

To

The District Collector of Malabar.

We the undersigned inhabitants of desam of amsam in taluk, hereby notify that we are desirous of erecting a temple (or mosque or church or of opening a public burning ground or public burial ground as the case may be) for the use of (here enter the religious section of the public interested) of the neighbourhood of (here enter desam, amsam and taluk of the locality selected) and we pray that a license may be issued under section 3 of Act of

Particulars of proposed site according to the Registration Act.	How the site has been or is to be acquired by applicants.	Probable number of persons interested in the application.	Detailed reasons for considering that public necessity exists.

(Signed)

ORDER—dated 31st July 1884, Mis. No. 504, Political.

The Government resolve to request the opinion of the Honorable the Judges of the High Court of these two draft bills.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.,
and 5 copies of letter and 5 copies of 2 bills.

From the Hon. P. O'SULLIVAN, Advocate-General, to the Chief Secretary to Government, dated Madras, 18th August 1884.

I have the honor to submit the following observations upon the Malabar tenancy Bill, which has been drawn by the committee appointed by Government to consider Mr. Logan's report on the land tenures of Malabar.

2. The report of the committee, dated the 17th July 1884, addressed to the Chief Secretary to Government, fully explains the reasons which have led the committee to frame the present Bill and contains a clear exposition of its provisions.

3. It is not, I think, necessary to adopt the view of the committee in its entirety respecting the early history of land tenures in Malabar, in order to assent to the conclusion at which the committee has arrived. The respective rights of the *janmi* and *kudian*, prior to the assumption of the district by the East India Company, whatever they were, probably did not include a right to evict the occupier by decree of a Civil Court. This innovation seems to have been made in 1852. It was sanctioned by the late Sadr Court in 1856, and since that period the right of the *janmi* to evict has been fully recognised. The consequences are stated in paragraph 6 of the report as follows:—"Grave discontent prevailing among the agricultural classes regarding the growing insecurity of their tenures; among one class of the community agrarian discontent, fanned by fanaticism, ready to develop at any moment into agrarian outrage; and the existence of a system of tyrannies practised by some *janmis* and apprehended from others." It is obvious that so long as this feeling prevails, the prosperity of the country and of the bulk of the people must be retarded. An unrestricted right of eviction, without adequate provision for compensation for imprisonments made by the occupant, must, sooner or later, produce discontent and injuriously affect the general welfare.

4. It seems to me that the present Bill enforces all the rights to which the *janmi* is reasonably entitled. When the views of the public in Malabar are ascertained, alterations may be required; but I think the substance of the Bill is right.

5. Section 22 will probably require alteration by providing that every contract for payment of rent shall be in writing.

G.O., dated 26th September 1884, Mis. No. 664, Political.

From Raja Sir T. MADAVA RAO, M.C.S.I., President, Malabar Commission, to the Chief Secretary to Government, dated Madras, 18th August 1884.

Adverting to paragraph 62 of our report on the Land Tenures of Malabar, dated 17th July 1884, I have now the honor to forward to you 10 (ten) copies of Mr. Logan's alternative scheme, together with his note thereon. I have also this day instructed the Superintendent of the Government Press to forward to you 100 (one hundred) copies of the same.

2. It appears to me that the scheme of Mr. Logan is liable to objections and I shall send in my remarks in a short time. Probably the opinions of the other members will follow at about the same time.

MR. LOGAN'S ALTERNATIVE SCHEME.

Definitions to be inserted in Chapter II.

(a) 'Cultivator' means the person who accepts the risks of the cultivation of any piece of land; and, if the risks of the cultivation are shared by more than one person, then it means any one, or all, of the persons who share such risks.

(b) 'Settled cultivator' means the cultivator of any piece of land bearing a fixed annual revenue assessment who has acquired the status of a settled cultivator under Chapter III.

(c) 'Temporary Cultivator' means the cultivator of any piece of land not bearing a fixed annual revenue assessment.

(d) 'Collector' means the chief Revenue Officer, above the rank of a Tahsildar, in charge of a taluk, or the Revenue Officer of any grade conducting the annual JAMABANDI of a taluk.

SECTIONS PROPOSED IN LIEU OF SECTIONS 15 TO 20 OF CHAPTER III.

Of Settled Cultivators.

I. The following persons shall be entitled to the settled cultivator's right in respect of the lands hereinafter mentioned, and shall be entitled to claim the Government *puttahs* for the same if such lands are, or hereafter may be, assessed with a fixed annual assessment:—

- (a) An occupancy tenant in respect of his occupancy lands.
- (b) A tenant or sub-tenant who, on the day on which this Act comes into force, holds the *puttah* of any land which he cultivates: provided that there is no occupancy tenant of such land.
- (c) A janmi or permanent tenant whose lands are at the passing of this Act held by any persons other than the tenants or sub-tenants mentioned in clause (a) or (b).

II. The settled cultivator's right shall attach to the soil of every piece of land for which a Government *puttah* has already been, or hereafter may be, issued, and shall indefeasibly belong to the settled cultivator thereof, if he has been let by any of the persons mentioned in clauses (a), (b), and (c) of section I into legal possession of the land for purposes of agriculture after the date on which this Act came into force.

Explanation I (a).—The planting and rearing of fruit-bearing trees, of timber trees, or of other useful trees or plants;

- (b) The construction of tanks, wells, channels, dams, &c., for the storage or supply of water for irrigation; or, for the drainage of cultivated lands; or, for its protection from floods; and
- (c) The reclaiming, clearing or enclosing of lands for cultivation; shall, among other things, be deemed to be 'purposes of agriculture.'

Explanation II (a).—The erection of dwelling houses, of buildings appurtenant thereto, and of farm or agricultural buildings;

- (b) The construction of tanks, wells, channels, dams, &c., for the storage or supply of water for domestic purposes only; shall be deemed to be 'purposes of agriculture' only in so far as they are suitable to the agricultural status of the cultivator of the holding in which they may be respectively erected or constructed.

Explanation III.—The erection of shops, bazaars or buildings other than those mentioned in the last preceding explanation shall be deemed to be 'purposes of agriculture' only in so far as they are suitable for disposing of, or for manufacturing, the produce of the holding in which they are situated.

Explanation IV.—A tenant or a sub-tenant let into legal possession of the site of a dwelling house other than one which is suitable to his agricultural status as the cultivator of the holding in which the house is situated, shall not, after the passing of this Act, except by express contract in writing, be deemed to have been let into possession of the holding for 'purposes of agriculture.'

III. The settled cultivator's right shall be heritable, and, with the previous written consent or subsequent ratification of the Janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall likewise be transferable by gift or sale, but it shall not be transferable by mortgage. Every transfer shall be in writing, and no instrument of transfer contravening the provisions of this clause shall be valid.

IV. When the right in any piece of land of a settled cultivator other than the persons mentioned in clauses (a) and (c) of section I is transferred at a Court sale in execution of a decree, the Janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall have the right of pre-emption at the price paid by the purchaser plus interest at 12 per cent. from the date of the sale: provided that he elects to exercise such right of pre-emption either within one month from the date of the confirmation of the sale, or from the date when the next instalment of the settled cultivator's rent falls due.

V. After the passing of this Act, the settled cultivator of any piece of land in whose name the Government *puttah* of such land has not been prepared may apply to the Collector for the *puttah* at the annual *jamabandi*; and on proof after a summary inquiry made publicly in the presence of the inhabitants assembled at such *jamabandi*, that the claimant is the cultivator of such land, and that he was let into possession of the land for purposes of agriculture subsequently to the passing of this Act, or that he is the heir of a deceased *puttah* holder, or that he is the legal transferee of the *puttah* holder's interest, the Collector shall prepare the *puttah* of such land in his name.

VI. If the risks of the settled cultivator are shared by two or more persons, each of such persons may demand a partition of the holding into equal shares corresponding to the number of persons sharing the risks. On proof that any such person has been put into immediate possession of a separate share of the land, the Collector shall, at the ensuing annual *jamabandi*, issue a separate Government *puttah* therefor.

Explanation.—If the members of an undivided family or of a *Tarwad*, in their corporate capacity, share the risks, the undivided family or the *Tarwad*, as the case may be, shall count as only one person in each such partition.

VII. But any person who, by right recognised by sections I to IV is entitled to the settled cultivator's right and to the Government *puttah* of any piece of land, may file a suit for possession of the land, or for a declaration that he is entitled to the *puttah*; and on proof that the decree has been executed by placing the decree-holder in immediate possession of such land, or that the decree-holder has obtained a decree declaratory of his right to the *puttah* of any land of which he is already in immediate possession, the Collector shall at the ensuing *jamabandi* prepare the revenue *puttah* of such land in the name of the decree-holder or in the name of the transferee (if any) of the decree-holder's settled cultivator's right.

VIII. The settled cultivator other than the persons mentioned in clauses (a) and (c) of section I shall not sublet his holding or any portion of his holding: provided always that if the settled cultivator or the heirs or representatives of a deceased settled cultivator are physically unfitted, owing to minority or other cause, for cultivating, or superintending the cultivation of, the holding, they may sublet the same, subject to the following conditions and rules:—

- (a) The lease shall be in writing.
- (b) It shall remain in force for such term not exceeding five years as the parties may agree upon.
- (c) And it may be renewed with the Collector's sanction as hereinafter prescribed.
- (d) While the lease is in force, the lessee shall be entitled to the sub-tenant's share of the produce as defined in section 25, clause (a) of this Act, but to none of the other privileges of his lessor as defined in this Act.
- (e) On the date on which the term of the lease expires, the lease shall cease to have effect, and if the lessor has not meanwhile demanded, or in case of refusal filed a suit for, recovery of the land, the lessee shall be entitled to all the privileges of the settled cultivator from whom or from whose heirs or representatives he derived possession of the holding.
- (f) The lease shall be attached to the Government *puttah*, and a short memorandum of its contents shall be endorsed by the Tahsildar of the taluk on the *puttah*, and be likewise entered in the *puttah* register.

- (g) The lease and the memoranda on the *puttah* and in the *puttah* register shall, if the Collector considers the lease to be *bona fide*, and if the lease has been drawn up in accordance with the provisions of this section, be countersigned by the Collector at the annual *jamabandi*.
- (h) Any instrument or renewal of an instrument of subletting not countersigned by the Collector as herein prescribed shall, if otherwise valid, operate as a full transfer of the settled cultivator's right to the person who is by such instrument let into possession of the holding.

IX. If the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, *bona fide* requires any portion of the permanent cultivator's holding —
Parallel to section 11 of the draft Act.

for any purpose other than agriculture; or
for any scheme for permanently improving the cultivation or the management of his lands; or

for any improvement to his estate whether in his own or in his lessees' occupation, it shall be lawful for him to resume the same provided that he give notice to the settled cultivator, through the Collector, of the purpose for which he requires the land and the price he proposes to pay for the settled cultivator's right and improvements. The Collector, after hearing the parties at the annual *jamabandi*, shall, if he thinks that the application is made in good faith, and that the purpose for which the land is required is reasonable, record a decision in writing to that effect, and shall in such case refer the parties to the Civil Court if they cannot agree as to the price to be paid to the settled cultivator. The fact that the land was previously resumed for some such purpose, and that such purpose was not carried out may be pleaded as a bar to a second resumption. In cases of dispute the Civil Court shall fix the price to be paid to the settled cultivator, and may for this purpose take the opinion of assessors. The price to be paid shall be the full market value of the settled cultivator's interest in the land to be resumed, and additional compensation not exceeding 20 per cent. of such market value in consideration of the compulsory nature of the acquisition. The price shall be paid into Court within such time not exceeding six months as the Court may direct, and thereupon the Court shall order delivery of possession.

X. The settled cultivator of any piece of land other than the persons mentioned in clauses (a) and (c) of section I, if in legal possession of the same, shall not be dispossessed thereof, except for any one or more of the following reasons:—
Parallel to section 8 of the draft Act.

- (a) That the rent is in arrears for one year or for such longer period as may from time to time in years of famine or drought, be fixed by the Local Government.
- (b) That in the case of customary and equitable renewal fees have not been paid within one year from the date on which they fell due.
- (c) That the settled cultivator has been guilty of grave insult or annoyance to the Janmi, or permanent tenant, or occupancy tenant.
- (d) That the settled cultivator has wilfully denied the title of the Janmi, or permanent tenant, or occupancy tenant so as to prejudice his interests.
- (e) That the settled cultivator has been guilty of wilful waste in his holding so as to prejudice the interests of the Janmi, or permanent tenant, or occupancy tenant.
- (f) That the price of the settled cultivator's interest fixed by the Court under section IX together with customary interest thereon (if any) has been paid into Court.

XI. If the settled cultivator is evicted from any piece of land under the provisions of the last section, he shall be entitled to compensation for his improvements under Chapter V of this Act.
Parallel to section 8 of the draft Act.

XII. The settled cultivator's right in his holding shall be deemed to be hypothecated for the rent and renewal fees as they fall due, and these shall take priority over all other charges except Land-revenue.
Parallel to section 14 of the draft Act.

XIII. When the right in any piece of land of a settled cultivator, other than the persons mentioned in clauses (a) and (c) of section I, is sold in execution of a decree, the Janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall be entitled to be paid out of the sale-proceeds any rent or renewal fees which may be due to him by the settled cultivator.
Parallel to section 14 of the draft Act.

Of Temporary Cultivators.

XIV. The cultivator, whether settled or temporary, may utilise his holding to the best advantage for purposes of agriculture.

XV. Every temporary cultivator shall, before he is dispossessed of his holding, be entitled to compensation for improvements under Chapter V of this Act.
Parallel to section 18 of the draft Act.

When compensation is payable by a Janmi, or permanent tenant, or occupancy tenant, the sub-tenant in possession of any part of a holding shall be entitled to receive, out of any sum payable by the Janmi, or permanent tenant, or occupancy tenant, whatever share of the compensation he can claim in respect of such part.

NOTE BY MR. LOGAN.

1. I have prepared an alternative scheme to be substituted for the 'non-occupancy tenants and sub-tenants' sections of Chapter III. This scheme has been discussed only in principle and not in detail by my colleagues, so that the draft has not had the benefit of their detailed criticism.

2. My chief reasons for thinking that sections 15 to 20 of the draft Act fail to remedy many of the evils brought to notice in my report are:

I. The 'occupancy tenants' sections (6 to 14) deal chiefly with the preservation, so far as they still exist, of the ancient co-proprietorship rights, as we have called them in paragraph 16 of our report, of the classes who in former times were the mainstay of political power, and who, in their corporate capacity, were the ultimate arbiters and protectors of all popular rights,—the 'eyes,' the 'hands,' and the givers or conveyers of 'orders' as they were specifically called (paragraph 13 of our report) in former times. It is unnecessary that I should say more about this class than that I fully agree with my colleagues that these sections (6 to 14) contain in principle the only practicable solution of the suggestions thrown out in paragraphs 331 and 332 of my report.

II. But since the British occupation of the district in 1792, the class whom we seek to protect by sections 6 to 14 has been gradually dwindling away, chiefly because the ancient Hindu law of custom, which regulated all landed interests in former days, has, through the action of the Courts, been in process of gradual supersession by the British law of contract; and because of the complete supersession by the British Courts and British Executive of the supervising and protecting functions of the class referred to.

III. There has consequently been growing up a new and rapidly increasing class of persons interested in the soil, who in one sense may be said to be the creatures of contract, but who, from another point of view may be regarded as the inheritors of the wise principles embodied in the ancient law relating to land,—principles which, owing to the over-riding British law of contract, have not received at the hands of the British Courts and British administrators the protection which, in my opinion, they undoubtedly deserved.

IV. The result has been, on the one hand, that a large and steadily increasing body of the cultivators of the soil are, as I have shown in my report, hopelessly in debt and hopelessly in arrears with their rents.

V. And, on the other hand, this miserable state of things has come about notwithstanding that the British Government, in all its Land-revenue Settlements, has most carefully preserved * the main principle of the ancient law by setting aside for the cultivator † his customary share of produce (one-third).

* Paragraphs 226, 226 (a), 254, 260, 285, 305, and 306 of Appendix II, and Nos. 19, 20, 21 and 23 of Appendix III to my report.

† *Kudian* (from *kudi* = a 'house, hut, dwelling') = inhabitant, subject, tenant, (*Gundert's Dictionary*, page 256); = one 'who pays revenue direct to Government' (*Græme's Glossary*), i.e., the *puttah*-holder. His share of produce was called *Kudiyankuru* = 'cultivator's share' (*Græme's Glossary* and *Gundert's Dictionary*, page 257).

‡ Nos. 16 and 17 of Appendix III to my report.

that as the cultivator's customary (‡) one-third of the net produce has been steadily set aside for him by the British Government, the law should now be framed to enable him to get it.

VIII. Whereas under sections 15 to 20 of the draft Act and particularly under clause (e) to section 15, it will be impossible for him to get it.

IX. 'Mere advice,' such as that contained in section 20 of the draft Act, is absolutely futile since disregard of a law which imposes no penalties for its breach sits lightly on the consciences of ordinary people, and will not weigh for one moment with those who look only to their own interest. There is no doubt in my mind, and in this I am fully supported by Mr. Hudleston, whose opinion is on the record, that limitation of rent (sections 20 and 25) without fixity of tenure [section 15, clause (e)] are quite unworkable provisions.

X. Moreover, there are other obvious objections to the sections. If the provisions of section 17 are ever generally accepted, and ten-year leases come into vogue, the worst features of the present *kanam* tenure will be reproduced. In my report I have characterised the existing *kanam* renewal system as an 'outrageous system of forehand renting' (paragraphs 169 to 170), as 'favorable to no one but the money-lender' and 'ruinous to the agricultural class' (paragraph 110). But I am very doubtful if the ten-year-lease provision will ever come to be generally adopted, for a *jaini* has only to refrain from giving such a lease, and the tenant becomes a tenant-at-will or at most from year to year. Whereas, on the other hand, an occupancy tenant is under no such hampering and irritating restrictions, as to subletting (section 12). It is obvious I think that the provisions of section 17 will be universally evaded, the non-occupancy tenants and sub-tenants will become simple tenants-at-will, and willing *sub rosâ* to part, as they do in many cases at present, with the whole and sometimes more than the whole of the gross produce of their holdings as rent. It hardly needs to be pointed out that it is the easiest thing in the world to rack-rent a tenant-at-will, or from year to year, to the full extent of the gross produce of his holding, whether that gross produce has been increased or not by the improvements he may have made in his holding. To give him, then, the value of his improvements (section 18), supposing even a tenant-at-will has any motive to make such improvements, is useless, so long as he is denied that fixity of tenure, which, with limitation of rent, is absolutely necessary for his security. Moreover, the cultivator has, from time immemorial, enjoyed the privilege of selling his improvements in the soil for the best price he could get for them, and these sections virtually take from him this most valuable ancient custom.—This is, in particular, a point in which the British law of contract has unduly encroached on the ancient customary law, and it seems to me to be beyond question that some re-adjustment of personal relations is necessary to secure harmonious working in the future. To ignore, as these sections virtually do in spite of section 17, this ancient privilege is a retrogressive step, for which there is no justification. Chapter V giving the value of improvements to evicted tenants and sub-tenants ought really to be viewed from the point of view of a Malayali cultivator as dealing with forced sales.

VI. The *jainis* even agree ‡ to the preservation of this main principle when convoked by Mr. Rickards in 1803 to consult as to the principles which should regulate the Government demand upon their lands.

VII. Under these circumstances, all that my alternative scheme proposes is,

XI. All these provisions (sections 15 to 20) simply mean *slavery* and *starvation* and *stealing*.

3. What I now propose in lieu of sections 15 to 20 is a plan whereby the settled cultivator shall be placed in such a position that he will be able to get the share of produce, which is his by ancient custom, which we have agreed to reserve for him by section 25 of the draft Act, which Special Commissioner Mr. Græme described as 'a comfortable subsistence for a family,' and which, as already said, the British Government has carefully set aside for him in all its revenue settlement schemes.

4. But it is not merely on historical grounds that I propose this plan. If all the parties interested in the soil had managed to adjust their relations satisfactorily among themselves, it would be, in the highest degree, unwise to disturb those relations merely on historical grounds however strong. I have already indicated, however, in clauses II to VI of paragraph 2 above, how the ancient customary law has been overlooked, but something more requires to be said:

I. By the 'occupancy tenant' sections, we are virtually creating a new and large and partially untried class of proprietors. What guarantee have we that this class will exercise any more forbearance to those beneath them than the class of *jainis* whom they supersede? We have no such guarantee. On the contrary, there is abundant evidence in my report (paragraphs 211 and 212) that this new class will not be slow to follow in the footsteps of those before them, and will exact from their sub-tenants rents and renewal fees as extravagant as those of which the *kanam* holders so justly complained to me.

II. Population is increasing with giant strides as the subjoined figures show:—

Years.	Total population of Malabar as per Census returns.
1802	465,594
1807	707,556
1821-22	907,575
1837	1,165,791
1851-52	1,514,909
1856-57	1,602,914
1861-62	1,709,081
1866-67	1,856,378
1871	2,261,250
1881	2,365,035

III. The population is a non-emigrating-stay-at-home population. Early marriage is universal, and in the case of females obligatory. The right of maintenance from the family property imposes almost a premium on early marriages and large families, so that the conditions are peculiarly favorable for a still more rapid increase of the population. There are no expanding industries except agriculture. The best lands have long since been appropriated, and this immense and rapidly increasing population,—increasing in debts, and poverty, and crime as well as in numbers,—must of necessity settle down to the cultivation of the poorer soils.

IV. The result is that these poverty-stricken people scramble for every bit of land thrown into the market; they offer rents in excess even of the gross produce they can ever hope to reap off their holdings; and in preference to slavery and starving on such terms they take naturally enough to stealing, and this was conspicuously brought to notice in the dacoity outbreak of 1874—1877. And it is reasonably to be expected that it will become still more conspicuous as the old easy customary rates of rent still in force over large tracts give place to the competition rents agreed to by impoverished cottiers.

5. Under such circumstances, I contend that the true policy of Government is to give the cultivators security in their holdings and enable them to convert the poorer soils into rich gardens.

6. Sections 38 to 41 of our draft Act, founded on recommendations in paragraphs 438—452 of my report, have been introduced with a view to provide settled homes for the surplus population. But I contend that these provisions are not by themselves

sufficient; that the classes whom it is sought to reach have no leisure and no capital to take up fresh lands; and that they will consequently never be in a position to take them up and do any good with them if they are left free to be rack-rented, as at present, out of the whole of the surplus produce of their holdings. And, on the contrary, I contend that if those of them who are now cultivating permanently reclaimed lands are restored to their ancient privileges,—privileges sacredly preserved by the British Government,—‘a comfortable subsistence to a family,’ as Mr. Graeme called the ancient cultivator’s share of produce, will be secured to them, and they will be enabled to settle their surplus hands on the poorer soils with a good chance of prospering.

7. The placing within the reach of all settled cultivators of the share of produce, which Mr. Graeme called ‘a comfortable subsistence to a family,’ will, I contend, lead in Malabar, as similar measures elsewhere have led, to an increase in the thrift, industry and foresight of the cultivating class. I claim for my scheme that it holds out no encouragement to the improvident, the idle, and the thoughtless. If a man wants this ‘comfortable subsistence,’ he must, by my scheme, buy it and pay for it too either in ready money or in assured credit. With increasing thrift will come in good time postponement of marriages and a slower rate of increase in the population; and I am of opinion that if the Act we have likewise drafted for legalising marriages and wills becomes law, another very important step will be gained in this same direction.

8. I do not in the least think, however, that if this scheme becomes law, the cultivating class will all of a sudden change their habits and ways of life. Borrowing and lending will still go on. Expensive wedding ceremonies will still render recourse to the money-lender necessary, and consequent bonds and interest on loans, it may be contended, will do as much as extravagant rents to keep down and impoverish the cultivating class. All this I freely admit, but, on the other hand, it will be seen from the details of the scheme that, though the settled cultivator’s interest in the soil may be sold, it may not be mortgaged. If he runs into debt, he will lose his holding by being sold out of it, but the man who comes in his place will be a cultivator also; and he will enter on the land free from any mortgage claims upon it. A fresh start will thus be made; and it will not take long to convince the cultivator that if he wishes to maintain himself in his holding, and to enjoy what Mr. Graeme called his ‘comfortable subsistence,’ he must keep away from the money-lender’s doors when bent on schemes of extravagance. But with improving credit, he will be able to borrow money for the improvement of his holding, or for the settlement of members of his family on fresh lands. There is nothing more certain than that the village money-lender’s terms to persons of approved credit are extremely moderate, and in good time there will no doubt be a marked improvement in the borrowing habits of the cultivators.

9. The cultivator is the man on whose industry and credit all above him,—Government, *Janmi*, permanent tenant, or occupancy tenant,—depend for their shares of the produce of the soil. It is, in reality, he who pays everybody. And I do not doubt that in a few years’ time, if this scheme succeeds, that even *Janmis* will see that it was wise policy to give the fullest security to the settled cultivator, as it is mainly on his industry and self-denial that it will depend whether the *Janmis*’ poorer soils now alone remaining for the extension of cultivation are ever reclaimed.

10. In dealing then with the cultivating class, my alternative scheme is founded both on historical claims and on strong grounds of public policy.

11. What that scheme is I will now briefly set forth, merely repeating here that the draft has not been subjected to detailed criticism by my colleagues, though they had it in substance before them at our last meetings.

12. I first of all define what is meant by a ‘cultivator.’ I think it is correct to define a cultivator as the man who accepts the risks,—rent, drought, floods, storms, disease, fire, accidents, &c.,—to which his calling is subject. His one-third share of produce was specifically assigned to him, so Mr. Rickards was informed when elaborating

his scheme of land assessment in 1803, in order to guard the cultivator against losses. Referring to this one-third share

* Literally ‘plough profit’ or ‘cultivator’s share,’ (*Graeme’s Glossary*), or ‘cultivator’s profit of produce after deducting the expenses of cultivation and the taxes,’ (*Gunder’s Dictionary*, page 312), or ‘a comfortable subsistence to a family,’ (*Graeme’s Report*, paragraph 1428). Other words to signify the same thing are (a) *Kudiyankura* = ‘cultivator’s share,’ (*Graeme’s Glossary* and *Gunder’s Dictionary*, page 257); (b) *Cherulabham* = ‘profit of the earth or soil, the cultivator’s share,’ (*Graeme’s Glossary*), or ‘cultivator’s share of profit,’ (*Gunder’s Dictionary*, page 391); (c) *Kilayikkura* = ‘the tenant’s share,’ (*Gunder’s Dictionary*, page 253) consisting of $\frac{1}{3}$ while $\frac{2}{3}$ was the *Mudayikkura* = ‘the *ami* right,’ (*Gunder’s Dictionary*, page 361). These latter terms occur in the *Keralaputti*, a work written in the seventeenth century, long before the British occupation. The *Vyavahara nitha*, a work for which a still more ancient date is claimed, also has it that of garden produce at least the cultivator’s customary share was $\frac{1}{3}$ one-third.

Mr. Rickards’s informant wrote: “This is called *Kotulabham*,* but when once the *puttam* is fixed the *Kudiyankura* is liable to pay the quantity regularly, although he suffers a loss, which may be the case on the part of the *Kudiyankura*.” (Appendix III, No. 15, to my report.)

13. A clear distinction is next drawn between cultivators who are ‘settled’ and those who are merely ‘temporary.’ The test applied, and which is for practical purposes a sufficient test, is that the lands which are permanently reclaimed are entered in the Government *puttaks* issued at the annual *jamabandis*. No items of land are entered in these *puttaks*, except such as are taken up permanently for cultivation, and bear a fixed annual revenue assessment. ‘Temporary’ cultivation, on the other hand, applies to lands which are cultivated only occasionally with fugitive crops such as *modan*, *panum*, *elhu*, *ginger*,

&c., and which are never brought into the Government *puttaks*, because the lands are assessed to revenue only in the years in which particular crops are raised, and they consequently do not bear a fixed annual revenue assessment. The test, then, and it is a clear and distinct test for practical purposes is,—the cultivator of lands entered in a Government *puttak* is a ‘settled cultivator,’—the cultivator of lands not entered in a Government *puttak* is a ‘temporary cultivator.’

14. It is in respect to ‘settled cultivators’ only that I am prepared to go further than some of my colleagues in the direction of conferring fixity of tenure. If all *puttak* holders become eventually ‘settled cultivators,’ their numbers will reach to over 178,000. In respect to ‘temporary cultivators,’ it is obviously the best plan to leave the parties free to settle their own bargains as to duration of tenancy and shares of produce.

15. Turning, then, to the ‘settled cultivator,’ I have endeavoured in my draft (sections I to VII) to leave him at the outset exactly in the position which he occupies at present.

16. If I have drafted the sections properly, the great advantage will be secured that the existing occupants and the existing terms of their contracts will not be disturbed at all by the legislation contemplated.

17. Nor will they be disturbed in the future, unless, indeed, the parties find that they cannot manage to live on together on their present footing.

18. When they do fall out the land goes back into the hands that gave it, and it seems to me that it is at such a time quite equitable, and, as matter of public policy, most highly desirable that the cultivator next let into possession should have a more stable footing on the soil than the impoverished cottier class, whose wretched condition I have brought to notice in my report.

19. The *Janmi*, the permanent tenant, and the occupancy tenant, who is, by our sections 6 to 14, virtually converted into a permanent tenant will at such times, when letting a ‘settled cultivator’ into possession, have the opportunity, which is equitably theirs, of getting from him the full market value of the rights they are at such times called on to relinquish to him. They need not let their lands at such times, unless they choose to do so; they may undertake the risks of cultivation themselves and save the share which, by the customary law of the land, belongs to the cultivator. It is obvious that, under such circumstances, the *Janmis* who have in the past encroached the most unduly

on ancient customary rights, and who have in consequence impoverished their tenantry the most, will find it the hardest to obtain tenants who are in a position to pay largely for the rights they are called on to relinquish to them at such times. And this is just as it ought to be.

20. The scheme of the sections (I to XIII) relating to 'settled cultivators' may be stated briefly thus:

- (a) The 'settled cultivator' right in their respective lands is assigned (section I) to Janmis, permanent tenants, and occupancy tenants, and to a fourth-class to whom two of my colleagues and myself think it equitable that fixity of tenure should be at once conveyed. This fourth-class, we think, contains the representatives of the ancient *kudiyans* with whom Hyder Ali and Tippoo's officers formed the first revenue settlement of the district. In their case, however, there must have been breaks in occupancy which would disentitle them to the rights of 'occupancy tenants' under sections 6 to 14, or customary tenants may have slipped in between them and their Janmis. Though we cannot make occupancy tenants of them, we think they are entitled to the modified rights of 'settled cultivators.'
- (b) Care is taken (section I) that at the passing of the Act the 'settled cultivator' right shall belong to only one and not to two or more of the persons abovenamed.
- (c) If, however, any of these persons, after the date on which the Act comes into force, lets a 'settled cultivator' into possession for purposes of agriculture, then the 'settled cultivator' right indefeasibly attaches (section II) to the soil of the holding and to the cultivator thereof. I have already dwelt on this point in paragraphs 15 to 19 above.
- (d) The explanations to section II define what is intended to be included among other things in the phrase 'purposes of agriculture.' These explanations deal only with what might turn out to be doubtful points, and perhaps the matter could be more exhaustively treated.
- (e) Sections III and IV are the parallel sections to sections 12 and 13 of the draft Act, and define the 'settled cultivator's' powers of transmitting and transferring his rights. The main point that seems to require notice is the non-transferability of the right by mortgage. I dealt with this point in paragraph 393 of my report. It is absolutely necessary to prohibit the settled cultivator from mortgaging his rights, for what happens now may happen hereafter, and the cultivator by pledging his interest in his holding might, if he were sold up, convey to the transferee the possession of the holding 'with all the incubus of the mortgage debt lying heavy on it,' as sometimes happens at the present time. The transferee, in order to have a fair chance of succeeding, must enter into possession free from such liabilities. The cultivator, as I point out over and over again in my report, has, from time immemorial, had the privilege of selling his interest in his holding to the highest bidder, subject to a certain degree of control by the Janmi. This control, it will be seen, has been strengthened and retained, for the cultivator must obtain the consent of those above him to a transfer of his right to a third party. The benefit of this provision is that objectionable persons will be kept out of the holding, but much will depend on the judgment and tact of those holding the superior interests in the soil, whether this provision can remain permanently on the statute book. For, if it is worked so as to prevent all reasonable transfers, it will have to be abolished altogether.
- (f) Sections V and VI merely reproduce what is very much the present practice of the Revenue Department in regard to the transfer of *puttahs*; but they fit the practice, which at present has no legislative recognition, into the proposed law in such a way, that eventually the words '*puttah holder*' will become identical with the words 'settled cultivator.' The 'settled cultivator' will eventually become the person responsible for

the Government revenue, and this, I submit, will be a most important point gained. The 'settled cultivator,' I repeat at the risk of being thought tedious, is the man on whose industry Government revenue and Janmis and others' rents alike depend. But at present the '*puttah holder*' is very often not the 'settled cultivator' at all, and when remission is given of the Government land-revenue (as happened in the famine years, 1876-77) the remission went very often not into the pockets of those who deserved it,—the cultivators to wit,—but into the pockets of Janmis and other rent receivers who deserved it not at all. This anomaly will cease when the words '*puttah holder*' become identical with 'settled cultivator.'

- (g) Section VII enables all persons to whom rights accrue under sections I to IV to guard those rights. It is also founded on the present practice of the Revenue Department.
- (h) Section VIII provides, in cases which seem to require it, a limited power of subletting by the 'settled cultivator.' If the 'settled cultivator' become physically unfitted to cultivate, it would be hard to call on him to sell his holding, especially if there was a prospect of a member of his family attaining age and experience enough in a few years to take his place. These and other similar cases are provided for, by making the Collector during the annual overhaul of the *puttahs* and *puttah* registers the arbiter of the *bona fides* of such subletting. Such cases will be very few; if they become numerous, it will be a sign of laxity of supervision in the revenue officials, and the matter can be easily controlled. I think that the Board of Revenue and the Government should, in virtue of the immense stake which the Government has in the land, and of its interest in the proper development of the agricultural industry, be the ultimate controlling authorities in such matters as are dealt with in this and in the following section.
- (i) In section IX, which is parallel to section 11 of the draft Act, I have recognised in the occupancy tenant rights similar to those which I propose to confer on Janmis and permanent tenants, namely, to take back from the 'settled cultivator' any piece of his lands which may be required for the purposes enumerated. I have not followed the procedure laid down in section 11 by conferring jurisdiction in such cases on the 'Civil Court' alone, because I think the power of deciding as to the *bona fides* and reasonableness of such purposes and schemes will be more appropriately placed in the hands of the revenue officials as guardians of the '*puttah holder*' or 'settled cultivator' than in those of the Courts. It is, of course, left to the latter to adjust the outstanding accounts between the parties after the Collector has decided that the purpose in view is both *bona fide* and reasonable.
- (j) Sections X and XI are parallel to section 8 of the draft Act, and protect the 'settled cultivator' against illegal dispossession, and give him the value of his improvements if he is dispossessed.
- (k) Sections XII and XIII are parallel to section 14 of the draft Act, and require no remarks.

21. As regards 'temporary cultivators,' all that it is necessary to enact regarding them is that they are entitled (section XIV) to use their lands to the best advantage for purposes of agriculture, and (section XV) that they are entitled to compensation for improvements if evicted,—two provisions of the ancient and wise customary law of the district which ought never to be lost sight of.

22. It only remains for me to set forth the position in which I find myself in regard to sections 15 to 20 of the draft Act. I view them as only a partial remedy for the many evils brought to light in my report. I foresee very clearly, for the reasons set forth at large in paragraph 4 of this note, that it is not a final settlement of the question of landlord and tenant in Malabar. Whereas, on the other hand, I believe that my alternative scheme meets the many difficulties likely to arise in the future. I deprecate the suggestion thrown out in paragraph 23 of our report that

isolated action for Malabar would embarrass the Government in dealing with the general question, believing as I do that another such opportunity as this now afforded of settling finally the policy of the Government in regard to the tenants-at-will in Malabar will not present itself, for perhaps another generation. My report supplies, I fully believe, all the materials which it is necessary to collect before preparing to legislate on a question of the kind. The question is, therefore, ripe for settlement in Malabar now. The same cannot be said of any other district in the Presidency. And, finally, it is extremely doubtful if a general law for the Presidency on this subject would be any less difficult of application in Malabar than the various Rent Regulations and Acts heretofore and at present in force, which no Collector of Malabar has yet had the temerity to administer in that district. Malabar has retained to the present hour its own peculiar land customs. Elsewhere the Muhammadan invasion and long terms of oppression before the British occupation have pretty nearly destroyed them.

23. I would accept sections 15 to 20 of the draft Act under such circumstances, only if no more final settlement, such as I believe my alternative scheme presents commends itself to the Government.

(Signed) W. LOGAN.

23rd July, 1884.

From Raja Sir T. MADAVA RAO, K.C.S.I., President, Malabar Commission, to the Chief Secretary to Government, dated Mylapore, 20th September 1884.

Adverting to paragraph 2 of my letter, dated the 17th ultimo, forwarding to you copies of Mr. Logan's alternative scheme for Malabar, I have now the honor to send you a memorandum expressing my objections to that scheme.

2. I enclose also Mr. Wigram's note on the same.

3. The opinions of the other two members will follow shortly.

MEMORANDUM BY RAJA SIR T. MADAVA RAO, K.C.S.I., ON MR. LOGAN'S ALTERNATIVE SCHEME FOR MALABAR.

I have read the following two printed papers which Mr. Logan has prepared, and which he sent to me just before he left Madras for Europe, namely:—

1st—The paper bearing the heading "Mr. Logan's Alternative Scheme," and

2nd—The note on ditto by the same gentleman, dated 23rd July 1884.

2. I may take the liberty of stating at the outset that, so far as I understand Mr. Logan's alternative scheme propounded in these papers, it is open to many grave objections, which, in the aggregate, appear to me to be fatal in effect.

3. The scheme has its origin in the intense sympathy which Mr. Logan feels for the *actual cultivator* of land, apart from all other parties interested in the same.

4. It appears to me, however, that Mr. Logan carries his sympathy for the actual cultivator too far. In his ardent desire to benefit the actual cultivator, he makes light of the long-recognized superior rights of the *person who lent the land to the actual cultivator*. He does not hesitate to curtail and even destroy these superior rights whenever they stand in the way of his endeavours to benefit the actual cultivator. He does not think it necessary to respect the terms on which the landlord let the land to the actual cultivator. The landlord may have let the land for only one year, but Mr. Logan would legislate to the effect that such a lease for one year should be taken for a perpetual lease.

5. It may be admitted that *some* interference with the rights of the landlord becomes necessary and unavoidable in endeavouring to ameliorate the condition of the actual cultivator. But the extent to which Mr. Logan would interfere with the landlord's rights in favor of the actual cultivator is excessive, is unusual, and is unsupported by any sound principle or by the requirements of the situation and circumstances.

6. Mr. Logan's proposed remedy goes much beyond the disease complained of. The burden of the complaints from Malabar is that raiyats who have held land from janmis for generations on kanam tenure; which, by custom, had become practically a permanent tenure, are being evicted, or threatened with eviction, by the janmis. The complaints refer to a particular class of evictions. Instead of confining the remedy to this particular class of evictions, Mr. Logan would prevent *all* evictions by conferring right of occupancy on *all* raiyats who are actual cultivators, without regard to the tenure on which they hold, to the length of their possession, and to the ancient customs of the country.

7. Mr. Logan's scheme avowedly aims at maintaining the actual cultivator in possession against the landlord, without reference to the latter's rights. In short, the actual cultivator is to be invested with the "indefeasible" right to hold the land,* while the landlord is to be reduced to the position of a simple rent-receiver. Few would recognize this as sound and moderate legislation for a whole district.

8. If this scheme of Mr. Logan be applicable to the district of Malabar, it should be applicable to all the districts of the presidency, for the scheme bears no exclusive reference to Malabar. We may easily imagine what the feelings of the landlords of Tanjore or Tinnevely would be if they were told that, when they only let their lands, they thereby forfeit their right to resume their lands. They would cry out against such a scheme as revolutionary and calculated to extinguish landlords as a body.

9. Mr. Logan's scheme would take the cultivators of Malabar by surprise. They have not even dreamt of the advantages which Mr. Logan would confer upon them—much less have they asked for these advantages. I must submit that, in practical politics, it cannot be wise or prudent to cause loss to one class of people in order to confer advantages on another—advantages which they have never enjoyed, which they have not asked for, and which they do not expect.

10. Mr. Logan's scheme would invert the natural order of things. According to past and present ideas of property in land, some one is a landlord or in the position of a landlord, and he lets the land to a tenant, who may let it again to a sub-tenant, the series ending in the actual cultivator, who is thus at the bottom of the scale. But, according to Mr. Logan's scheme, he who is at the bottom of the scale is to be artificially elevated to the position of a permanent and perpetual holder of the land to the exclusion of those who lent him the land.

11. The actual cultivator, standing at the bottom of the scale, is generally the person who gets the least profit from the land, who looks for little more than the wages of his labor, and who seldom has any capital to spare for the improvement of the land, of which he is the cultivator. Yet it is such a person that Mr. Logan labors hard to erect into a permanent and perpetual holder.

12. And such a person is to be made solely responsible to the Government for the payment of the public revenue, and solely responsible also to those who let the land to him for the payment of the rent due to them. The poor fellow will too often be unable to bear the weight of this double responsibility.

13. Generally living from hand to mouth, he may often be unable to provide seed; he may be unable to replace dead or superannuated bullocks; and so forth. Little as his credit generally is, it will be reduced almost to zero owing to Mr. Logan's prohibition to mortgage the land. Suppose, in these circumstances, he fails to cultivate the land in any year. Why, then, the Government will lose its revenue and the rent-receivers their rent, and the general population will suffer from diminished production in the district.

14. Similar consequences will ensue if he, in a bad season, ate up the scanty outturn of the land. And Mr. Logan himself expressly contemplates other similar contingencies from drought, floods, storms, disease, fire, and other accidents. To this I would add a material fall in market prices.

15. What guarantee is there against his repeated insolvency as described above, entailing loss on the Government, on the rent-receivers, and on the general

community? Very little indeed. It would not be just to the public that the public revenue should be exposed to such risk. It would not be just to the rent-receivers that their dues should be also exposed to such risk.

16. Mr. Logan says that, if the cultivator fail to pay the Government taxes and the private rents, the land held by the defaulting cultivator may be sold. But the actual cultivator's interest in the land is very limited and will sell but for little.

17. The land will have to be repeatedly sold for repeated default, and this must be a great evil.

18. I have said that the actual cultivator, standing at the bottom of the scale, is generally the person who gets the least profit from the land, who looks for little more than the wages of his labor, and who seldom has any capital to spare. I have said that such a person might, not unfrequently, find it difficult to carry on the cultivation and to pay his taxes and rents. How, then, can he be expected to lay out capital for the improvement of the land of which he is the actual cultivator? It is to be noted in this connection that, when the actual cultivator is made the perpetual and permanent holder of the land to the exclusion of those who let him the same, the latter will not think of spending *their* capital on the land which they are debarred from resuming and reletting. The consequence must be a great check to the progress of improvement of lands.

19. There are many other objections to which Mr. Logan's scheme is liable, and which it would require much patience to go through exhaustively. But let us see what would be said of the scheme by the several parties deeply interested in the matter.

20. First, the *janmi* would object as follows:—

"I am the most ancient landlord of the lands of Malabar. From time immemorial I have been in the habit of letting my lands because, owing to my situation and circumstances, it is not convenient for me to cultivate all my lands myself.

"Since the accession of British power in Malabar, up to the present moment, I have enjoyed the right to resume my lands from my tenants, and I value this right as dearly as any landlord in any part of the world.

"A particular class of my tenants known as *kanamkars* have preferred complaints to the effect that they suffer much hardship as they are liable to be evicted by me in the exercise of my right above alluded to, whereas the *kanam* tenure, according to ancient custom, is understood to be practically a perpetual tenure.

"In consideration of these complaints, the majority of the Malabar Commission of 1884 recommend that I should be deprived of the right to resume such lands as have been uninterruptedly let by me for certain specified periods. This is detrimental enough to me.

"But Mr. Logan, one of the Commissioners, wants to go much further still.

"Without reference to length of the tenant's possession, or other such plausible grounds, Mr. Logan, in the pursuit of a purely arbitrary theory of his own, aims at depriving me altogether of the important right of resuming my lands. I am to be reduced into a mere rent-receiver by converting all my tenants into perpetual tenants.

"Mr. Logan would launch into this destructive process by enacting that every tenant or sub-tenant who is cultivating my land with a puttah for it shall be at once a perpetual and permanent tenant. Perpetual and permanent he shall be at once, though he may have been put in possession only a few years, or even a few months, or even a few days ago! Perpetual and permanent he shall be at once, though the lease he holds may contain any number of stipulations to the contrary. In short, all special contracts under which the land was let to the tenant or sub-tenant are to be, at one stroke, set aside and nullified, and he is to be declared a perpetual and permanent tenant.

"This, I protest, would be a most arbitrary proceeding. It would be confiscation of my rights in order to benefit others who have not even asked for the benefit! Anything more preposterous in legislation it is impossible to conceive.

"A tenant or sub-tenant may have got a puttah from the Collector, but how can this circumstance alone nullify the terms on which the land has been leased to

him? The Collector gives out puttahs as a matter connected with the collection of the land revenue and by no means with the view of interfering with existing landed rights as between other parties. The rules, if any, under which the Collector grants puttahs are merely departmental ones and have no legislative recognition. They have not the legal force and fixity of a law. They are liable to be altered from time to time. Knowing all this how the Collector grants puttahs has been almost a matter of indifference to *janmis*. We, *janmis*, have not cared much to whom the Collector grants puttahs. When he granted puttahs to some of our tenants, we sometimes thought it somewhat a matter of convenience to us. But we never dreamed that the mere possession of a puttah by any of our tenants would have such inordinate artificial effect assigned to it as Mr. Logan now proposes—that it is to be, in itself, destructive of our most valued rights as landlords.

"It is most curious how Mr. Logan reasons about these puttahs. The holders of these puttahs he chooses to regard as the representatives of the ancient *kudians*, with whom Hyder Ali and Tippu's officers formed the first revenue settlement of the district. This statement, skilfully as it may have been framed for the purpose in view, is most misleading. In what sense are our present tenants, holding puttahs, the representatives of those ancient *kudians*? We, *janmis*, have over and over again resumed our lands from one tenant and let them to another in no way related to the first. There is no necessary connection between the successive tenants such as would make the existing tenants representatives of the ancient *kudians* as alleged by Mr. Logan. There is no connection such as would constitute a basis of right or even of consideration.

"And Mr. Logan is not satisfied with the large confiscation of our rights which he would effect immediately on the passing of his legislative project. He would continue the process, for he provides that such tenants of ours as have not already got puttahs should get puttahs hereafter, so as to qualify them to become perpetual and permanent tenants irrespective of the terms of their leases.

"The matter does not end even here. Mr. Logan proposes to enact that in the future the moment we let any of our lands to a cultivator, this cultivator shall become a perpetual and permanent tenant, notwithstanding everything to the contrary in the leases we grant him!

"In short, according to Mr. Logan's scheme, we, the ancient landlords of Malabar, are to be superseded by the actual cultivator in most important respects.

"All this would be grievous to us beyond measure."

21. Next would come the protest of persons who are very much in the position of *janmis*, namely, those whom Mr. Logan calls "permanent tenants" and who are described in section 3, chapter I of our draft Act, and also in paragraph 26 of our joint report. These are, in fact, permanent alienees of the *janmis*' lands. Their objections and complaints would closely follow those of the *janmis* as already dwelt upon.

22. Next would come the protest of even those upon whom our draft Act proposes to confer occupancy rights. They would say:

"We are thankful for the proposal to invest us with occupancy rights. But Mr. Logan's scheme would prove seriously detrimental to us. The avowed aim of Mr. Logan's scheme is that the actual cultivators of our lands should supersede ourselves in occupancy rights. From time immemorial we have had the right to let our lands to actual cultivators. Our actual cultivators have, from time immemorial, thoroughly and uniformly understood that they are liable to be changed by us according to our interest and convenience. It never entered their heads to claim to be perpetual and permanent cultivators. Yet Mr. Logan would make them such in supersession of ourselves."

23. Next would come the protest of a considerable body of existing actual cultivators referred to in the 15th and following paragraphs of Mr. Logan's note explanatory of his scheme. They would say:

"We are a considerable body of poor people earning our livelihood by cultivating the lands let to us by *janmis*, *janmis*' alienees, *kanamkars*, and other superior holders. We have been getting on peacefully. We have adjusted ourselves to those from whom we have leased the lands. We do not complain against them.

We lay claim to no new rights or privileges. While so, Mr. Logan's scheme, without doing us any good, is calculated to disturb us all seriously.

"It is true that Mr. Logan intends that we should not be dispossessed during the currency of our existing leases. But these leases must terminate sooner or later. What will be our position then? It is very probable that we shall be refused any renewal of our leases lest renewal amount to a letting in after the passing of the Act, which would deprive our superiors of their right to resume their lands. The prospect of losing the means of our livelihood is most painful to us."

24. Such will be the chorus of complaint against Mr. Logan's scheme—complaint by the jannmis, by the janmis' alienees, by the kanamkars, by the occupancy tenants, and by the existing ordinary actual cultivators. It is certain that Mr. Logan's scheme would create much more complaint than redress the same. The remedy would be worse than the disease.

25. After the foregoing explanation, it is difficult to accept Mr. Logan's statement that his "alternative scheme is founded both on historical claims and on strong grounds of public policy." The explanation goes to show how little the scheme is founded on strong grounds of public policy. And, as for the alleged historical claims, I believe there are really none. Mr. Logan, in the exuberance of his benevolent zeal for the actual cultivator, too readily assumes that a certain fixed permanent share of the produce has been *guaranteed to the actual cultivator* by the British Government, simply because, in estimating the surplus produce for the purposes of settling the Government assessment, the settlement of officers deducted from the gross produce a certain proportion on account of the cost and profit of actual cultivation. Settlement officers must necessarily do this everywhere for purposes of calculation, and it cannot follow that thereby they give any guarantee to individual actual cultivators. If Mr. Logan were right in his assumption, the guarantee must exist in *all* assessed districts. And one fact may be here mentioned, which is, by itself, fatal to Mr. Logan's assumption, and this fact is that the actual cultivators know nothing whatever of this supposed guarantee in their favor—much less have they appealed to such guarantee anywhere and at any time.

26. On the whole it seems to me that Mr. Logan's scheme has not come out of a practical consideration of the actual state and circumstances of the land-problem in the district of Malabar, but that it has rather been evolved from independent abstract speculation. Mr. Logan's scheme means, not *repair*, but *reconstruction*; and it is reconstruction on a fancy design.

MADRAS,
20th September 1884.

(Signed) T. MADAVA ROW.

P.S.—I beg to append to this memorandum the copies of Mr. Logan's printed papers with some brief remarks by me on the margin, in addition to those above recorded.

REMARKS BY RAJA SIR T. MADAVA ROW IN ADDITION TO THOSE RECORDED IN HIS MEMORANDUM DATED 20TH SEPTEMBER 1884.

Definitions to be inserted in Chapter II.

* The whole scheme depends upon the identification of the person Mr. Logan has in view and whom he designates 'the cultivator.' The definition seems imperfect. The 'risk' meant is explained by Mr. Logan in his memorandum to be of drought, floods, storms, disease, fire, accidents, &c. If the lessor provides in the contract that he would grant remis-

(a) * 'Cultivator' means the person who accepts the risks of the cultivation of any piece of land; and, if the risks of the cultivation are shared by more than one person, then it means any one, or all, of the persons who share such risks.

(b) 'Settled Cultivator' means the cultivator of any piece of land bearing a fixed annual revenue assessment who

sion in case such accidents occur, the lessee would not be a cultivator according to this definition, and the whole scheme might be defeated in this way. It might be defeated also by a contract to share the gross produce as it is realized each season.

has acquired the status of a settled cultivator under chapter III.

(c) 'Temporary Cultivator' means the cultivator of any piece of land not bearing a fixed annual revenue assessment.

(d) 'Collector' means the chief Revenue Officer, above the rank of a Tahsildar, in charge of a taluk, or the Revenue Officer of any grade conducting the annual JAMABANDI of a taluk.

SECTIONS PROPOSED IN LIEU OF SECTIONS 15 TO 20 OF CHAPTER III.

Of Settled Cultivators.

I. The following persons shall be entitled to the settled cultivator's right in respect of the lands hereinafter mentioned, and shall be entitled to claim the Government *puttahs* for the same if such lands are, or hereafter may be, assessed with a fixed annual assessment:—

(a) An occupancy tenant in respect of his occupancy lands.

* The tenant or sub-tenant may have obtained *puttah* easily enough because no one has heretofore dreamt that it would, in itself, destroy or create important rights as contemplated in this scheme. This provision would, therefore, work great injustice. See further remarks in my memorandum.

(b) A tenant or sub-tenant who, on the day on which this Act comes into force, holds the *puttah* of any land which he cultivates: provided that there is no occupancy tenant of such land.

(c) A jannmi or permanent tenant whose lands are at the passing of this Act held by any persons other than the tenants or sub-tenants mentioned in clause (a) or (b).

† See remarks in my memorandum. Under this provision, the obligation to render service and the land assigned for such service might get separated, and this would be very undesirable.

II.† The settled cultivator's right shall attach to the soil of every piece of land for which a Government *puttah* has already been, or hereafter may be, issued, and shall indefeasibly belong to the settled cultivator thereof if he has been led by any of the persons mentioned in clauses (a), (b) and (c) of section I into legal possession of the land for purposes of agriculture after the date on which this Act came into force.

Most of these things will require capital to effect.

Suppose the actual cultivator has on capital, no improvements will take place. Yet, is the land not to be resumed by him who let it?

The arrangement best for agriculture is that the landlord should be free to let the land for *ordinary* management, while he reserves to himself the right to *improve*

Explanation I (a).—The planting and rearing of fruit-bearing trees, of timber trees, or of other useful trees or plants;

(b) The construction of tanks, wells, channels, dams, &c.,

for the storage or supply of water for irrigation; or,

for the drainage of cultivated lands; or,

for its protection from floods; and

(c) The reclaiming, clearing or enclosing of lands for cultivation; shall, among other things, be deemed to be 'purposes of agriculture.'

Explanation II (a).—The erection of dwelling houses, of buildings appurtenant thereto, and of farm or agricultural buildings;

(b) The construction of tanks, wells, channels, dams, &c., for the storage or supply of water for domestic purposes only;

shall be deemed to be 'purposes of agriculture' only in so far as they are suitable to the agricultural status of the cultivator of the holding in which they may be respectively erected or constructed.

Explanation III.—The erection of shops, bazaars or buildings other than those mentioned in the last preceding explanation shall be deemed to be 'purposes of agriculture' only in so far as they are suitable for disposing of, or for manufacturing, the produce of the holding in which they are situated.

Explanation IV.—A tenant or a sub-tenant let into legal possession of the site of a dwelling house other than one which is suitable to his agricultural status as the cultivator of the holding in which the house is situated, shall not, after the passing of this Act, except by express contract in writing, be deemed to have been let into possession of the holding for 'purposes of agriculture.'

III. The settled cultivator's right shall be heritable, and, with the previous written consent or subsequent ratification of the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall likewise be transferable by gift or sale, but it shall not be transferable by mortgage. Every transfer shall be in writing, and no instrument of transfer contravening the provisions of this clause shall be valid.

IV. When the right in any piece of land, of a settled cultivator other than the persons mentioned in clauses (a) and (c) of section I, is transferred at a Court sale in execution of a decree, the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall have the right of pre-emption at the price paid by the purchaser plus interest at 12 per cent. from the date of the sale: provided that he elects to exercise such right of pre-emption either within one month from the

the land by means of his own capital. Such arrangement will bring both labour and capital to bear on the land. But Mr. Logan's plan falls much short of this standard.

Explanations II, III, and IV would create endless uncertainties and lead to endless litigation. Very difficult to decide if any of the things mentioned is, or is not, "suitable to the agricultural status of the cultivator."

How would it be possible to prevent a cultivator from selling, in his bazaar, other produce than that of a particular piece of land?

Parallel to section 12 of the draft Act.

If the land has come to the cultivator from the janmi through kanamkars, &c., the consent of a series of persons would be necessary.

Interdict to mortgage would, often precipitate the insolvency of the cultivator, who has to pay taxes, rents, &c.

Parallel to section 13 of the draft Act.

This provision would make matters very complicated for daily life. Numerous court sales will take place of course. The whole mechanism of the scheme is too elaborate for practical working.

date of the confirmation of the sale, or from the date when the next instalment of the settled cultivator's rent falls due.

V. After the passing of this Act, the settled cultivator of any piece of land, in whose name the Government *puttah* of such land has not been prepared, may apply to the Collector for the *puttah* at the annual *jamabandi*; and on proof, after a summary inquiry made publicly in the presence of the inhabitants assembled at such *jamabandi*, that the claimant is the cultivator of such land, and that he was let into possession of the land for purposes of agriculture subsequently to the passing of this Act, or that he is the heir of a deceased *puttah* holder, or that he is the legal transferee of the *puttah* holder's interest, the Collector shall prepare the *puttah* of such land in his name.

VI. If the risks of the settled cultivator are shared by two or more persons, each of such persons may demand a partition of the holding into equal shares corresponding to the number of persons sharing the risks. On proof that any such person has been put into immediate possession of a separate share of the land, the Collector shall, at the ensuing annual *jamabandi*, issue a separate Government *puttah* therefor.

Explanation.—If the members of an undivided family or of a *Tarwad*, in their corporate capacity, share the risks, the undivided family or the *Tarwad*, as the case may be, shall count as only one person in each such partition.

VII. But any person who, by right recognised by sections I to IV is entitled to the settled cultivator's right and to the Government *puttah* of any piece of land, may file a suit for possession of the land, or for a declaration that he is entitled to the *puttah*; and on proof that the decree has been executed by placing the decree-holder in immediate possession of such land, or that the decree-holder has obtained a decree declaratory of his right to the *puttah* of any land of which he is already in immediate possession, the Collector shall at the ensuing *jamabandi* prepare the revenue *puttah* of such land in the name of the decree-holder or in the name of the transferee (if any) of the decree-holder's settled cultivator's right.

VIII. The settled cultivator, other than the persons mentioned in clauses (a) and (c) of section I, shall not sublet his holding or any portion of his holding: provided always that if the settled cultivator or the heirs or representatives of a

deceased settled cultivator are physically unfitted, owing to minority or other cause, for cultivating, or superintending the cultivation of, the holding, they may sublet the same, subject to the following conditions and rules :—

- (a) The lease shall be in writing.
- (b) It shall remain in force for such term, not exceeding five years, as the parties may agree upon.
- (c) And it may be renewed with the Collector's sanction as hereinunder prescribed.
- (d) While the lease is in force, the lessee shall be entitled to the sub-tenant's share of the produce as defined in section 25, clause (a) of this Act, but to none of the other privileges of his lessor as defined in this Act.
- (e) On the date on which the term of the lease expires, the lease shall cease to have effect, and if the lessor has not meanwhile demanded, or in case of refusal filed a suit for, recovery of the land, the lessee shall be entitled to all the privileges of the settled cultivator from whom or from whose heirs or representatives he derived possession of the holding.
- (f) The lease shall be attached to the Government *puttah*, and a short memorandum of its contents shall be endorsed by the Tahsildar of the taluk on the *puttah*, and be likewise entered in the *puttah* register.
- (g) The lease and the memoranda on the *puttah* and in the *puttah* register shall, if the Collector considers the lease to be *bona fide*, and if the lease has been drawn up in accordance with the provisions of this section, be countersigned by the Collector at the annual *jamabandi*.
- (h) Any instrument or renewal of an instrument or subletting not countersigned by the Collector as herein prescribed shall, if otherwise valid, operate as a full transfer of the settled cultivator's right to the person who is by such instrument let into possession of the holding.

IX. If the janmi, or the permanent tenant, or the occupancy tenant, as the

Too elaborate for practical working.
Government ought not to interfere in and regulate such matters.
Too much work for the Collector.

Many a minor would be defrauded under this provision!

Too much interference by the Tahsildar.

Too much work for the Collector.

Omission by Collector is made highly penal to *third* parties. This would be very unfair.

Parallel to section 11 of the draft Act.

case may be *bona fide* requires any portion of the permanent cultivator's holding—

for any purpose other than agriculture; or

for any scheme for permanently improving the cultivation or the management of his lands; or

for any improvement to his estate whether in his own or in his lessees' occupation,

Too elaborate for practical working when applied, as intended to be, to all the lands of the district.

Too much work for the Collector. Many abuses on the part of subordinate officials.

Vague; would lead to needless litigation.

Too much work for the Court.

Unfair, considering that the lessor has been compelled by this law to relinquish the right to resume under the terms of his lease.

Parallel to section 8 of the draft Act.

*Too much work for Government. Government also not fit to deal with such matters.

it shall be lawful for him to resume the same provided that he give notice to the settled cultivator, through the Collector, of the purpose for which he requires the land and the price he proposes to pay for the settled cultivator's right and improvements. The Collector, after hearing the parties at the annual *jamabandi*, shall, if he thinks that the application is made in good faith, and that the purpose for which the land is required is reasonable, record a decision in writing to that effect, and shall in such case refer the parties to the Civil Court if they cannot agree as to the price to be paid to the settled cultivator. The fact that the land was previously resumed for some such purpose, and that such purpose was not carried out may be pleaded as a bar to a second resumption. In cases of dispute the Civil Court shall fix the price to be paid to the settled cultivator, and may for this purpose take the opinion of assessors. The price to be paid shall be the full market value of the settled cultivator's interest in the land to be resumed, and additional compensation not exceeding 20 per cent. of such market value in consideration of the compulsory nature of the acquisition. The price shall be paid into Court within such time not exceeding six months as the Court may direct, and thereupon the Court shall order delivery of possession.

X. The settled cultivator of any piece of land other than the persons mentioned in clauses (a) and (c) of section I, if in legal possession of the same, shall not be dispossessed thereof, except for any one or more of the following reasons :—

(a) That the rent is in arrears for one year or for such longer period as may from time to time in years of famine or drought, be fixed by the Local Government.*

(b) That in the case of customary tenants, customary and equitable renewal fees have not been paid within one year from the date on which they fell due.

- (c) That the settled cultivator has been guilty of grave insult or annoyance to the janmi, or permanent tenant, or occupancy tenant.
- (d) That the settled cultivator has wilfully denied the title of the janmi, or permanent tenant, or occupancy tenant so as to prejudice his interest.
- (e) That the settled cultivator has been guilty of wilful waste in his holding so as to prejudice the interests of the janmi, or permanent tenant, or occupancy tenant.
- (f) That the price of the settled cultivator's interest fixed by the Court under section IX together with customary interest thereon (if any) has been paid into Court.

XI. If the settled cultivator is evicted from any piece of land under the provisions of the last section, he shall be entitled to compensation for his improvements under chapter V of this Act.

XII. The settled cultivator's right in his holding shall be deemed to be hypothecated for the rent and renewal fees as they fall due, and these shall take priority over all other charges except Land-revenue.

XIII. When the right in any piece of land of a settled cultivator, other than the persons mentioned in clauses (a) and (c) of section I, is sold in execution of a decree, the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall be entitled to be paid out of the sale proceeds any rent or renewal fees which may be due to him by the settled cultivator.

Of Temporary Cultivators.

XIV. The cultivator, whether settled or temporary, may utilise his holding to the best advantage for purposes of agriculture.

XV. Every temporary cultivator shall, before he is dispossessed of his holding, be entitled to compensation for improvements under chapter V of this Act. When compensation is payable by a janmi, or permanent tenant, or occupancy tenant, the sub-tenant in possession of any part of a holding shall be entitled to receive, out of any sum payable by the janmi, or permanent tenant, or occupancy tenant, whatever share of the compensation he can claim in respect of such part.

Resumption on the determination of the lease is carefully excluded from this category. Thus, a great blow is given to freedom of contract. And landlords are hereby nearly abolished! And this, too, in a district containing the most ancient landlords in the world!

Parallel to section 8 of the draft Act.

Parallel to section 14 of the draft Act.

This is very slender security indeed for the payment of rents, taxes, &c., by the poor cultivator. See my memorandum.

Parallel to section 14 of the draft Act.

Very often the sale proceeds would not meet the liabilities!

Parallel to section 18 of the draft Act.

Needless for fugitive and occasional cultivation. Little or no improvements in such cases, though some might be alleged merely for purposes of vexatious litigation.

REMARKS BY RAJA SIR T. MADAVA
ROW IN ADDITION TO THOSE
RECORDED IN HIS MEMORAN-
DUM DATED 20TH SEPTEMBER 1884.

NOTE BY MR. LOGAN.

I doubt very much if this alternative scheme will find acceptance. It would not well fit into the Act proposed by the majority of the members of the commission.

1. I have prepared an alternative scheme to be substituted for the 'non-occupancy tenants and sub-tenants' sections of chapter III. This scheme has been discussed only in principle and not in detail by my colleagues, so that the draft has not had the benefit of their detailed criticism.

2. My chief reasons for thinking that sections 15 to 20 of the draft Act fail to remedy many of the evils brought to notice in my report are:

I. The 'occupancy tenants' sections (6 to 14) deal chiefly with the preservation, so far as they still exist, of the ancient co-proprietorship rights, as we have called them in paragraph 16 of our report, of the classes who in former times were the mainstay of political power, and who, in their corporate capacity, were the ultimate arbiters and protectors of all popular rights,—the 'eyes,' the 'hands,' and the givers or conveyers of 'orders' as they were specifically called (paragraph 13 of our report) in former times. It is unnecessary that I should say more about this class than that I fully agree with my colleagues that these sections (6 to 14) contain in principle the only practicable solution of the suggestions thrown out in paragraphs 331 and 332 of my report.

II. But since the British occupation of the district in 1792, the class whom we seek to protect by sections 6 to 14 has been gradually dwindling away, chiefly because the ancient Hindu law of custom, which regulated all landed interests in former days, has, through the action of the courts, been in process of gradual supersession by the British law of contract; and because of the complete supersession by the British courts and British executive of the supervising and protecting functions of the class referred to.

III. There has consequently been growing up a new and rapidly increasing class of persons interested in the soil, who in one sense may be said to be the creatures of contract, but who, from another point of view, may be regarded as the inheritors of the wise principles

Good so far.

embodied in the ancient law relating to land,—principles which, owing to the over-riding British law of contract, have not received at the hands of the British courts and British administrators the protection which, in my opinion, they undoubtedly deserved.

IV. The result has been, on the one hand, that a large and steadily increasing body of the cultivators of the soil are, as I have shown in my report, hopelessly in debt and hopelessly in arrears with their rents.

V. And, on the other hand, this miserable state of things has come about notwithstanding that the British Government, in all its land-revenue settlements, has most carefully preserved* the main principle of the ancient law by setting aside for the cultivator† his customary share of produce (one-third).

VI. The janmis even agreed‡ to the preservation of this main principle when convoked by Mr. Rickards in 1803 to consult as to the principles which should regulate the Government demand upon their lands.

VII. Under these circumstances, all that my alternative scheme proposes is, that as the cultivator's customary ($\frac{1}{3}$) one-third of the net produce has been steadily set aside for him by the British Government, the law should now be framed to enable him to get it.

VIII. Whereas under sections 15 to 20 of the draft Act, and particularly under clause (e) to section 15, it will be impossible for him to get it.

IX. 'Mere advice,' such as that contained in section 20 of the draft Act, is absolutely futile since disregard of a law which imposes no penalties for its breach sits lightly on the consciences of ordinary people, and will not weigh for one moment with those who look only to their own interest. There is no doubt in my mind, and in this I am fully supported by Mr. Hudleston, whose opinion is on the record, that limitation of rent (sections 20 and 35) without fixity of tenure [section 15, clause (e)] are quite unworkable provisions.

X. Moreover, there are other obvious objections to the sections. If the provisions of section 17 are ever generally accepted, and ten-year leases come into vogue, the worst features of the present *kanam* tenure will be reproduced. In my report I have characterised the existing *kanam* renewal system as an

Doubt if the effect is due to the cause mentioned.

* Paragraphs 226, 226 (a), 254, 260, 285, 305, and 306 of Appendix II. and Nos. 19, 20, 21 and 23 of Appendix III to my report.

† *Kudiyin* (from *kudi* = a 'house, hut, dwelling') = inhabitant, subject, tenant, (*Gunderl's Dictionary*, page 256); = one 'who pays revenue direct to Government' (*Græme's Glossary*), i.e., the *puttah* holder. His share of produce was called *Kudiyakuru* = 'cultivator's share' (*Græme's Glossary* and *Gunderl's Dictionary*, page 257).

‡ Nos. 16 and 17 of Appendix III to my report.

Government has, by no means, *guaranteed* any such share to the actual cultivator. See my memorandum. The fact assumed as the very foundation of this alternative scheme does not seem correct.

It is manifest from this that Mr. Logan would not tolerate any land-leases less than perpetual! This is contrary to the principles and usages recognised in all civilized countries of the world.

If Mr. Logan doubts that the janmi will grant ten years' leases, how can he expect him to grant *perpetual* leases under his scheme?

All civilised countries regard long leases as beneficial. But Mr. Logan insists upon *perpetual* leases throughout.

'outrageous system of forehand renting' (paragraphs 169 to 170) as 'favorable to no one but the money-lender' and 'ruinous to the agricultural class,' (paragraph 110). But I am very doubtful if the ten-year lease provision will ever come to be generally adopted, for a janmi has only to refrain from giving such a lease, and the tenant becomes a tenant-at-will or at most from year to year. Whereas, on the other hand, an occupancy tenant is under no such hampering and irritating restrictions as to subletting (section 12). It is obvious I think that the provisions of section 17 will be universally evaded, the non-occupancy tenants and sub-tenants will become simple tenants-at-will, and willing *sub rosa* to part, as they do in many cases at present, with the whole and sometimes more than the whole of the gross produce of their holdings as rent. It hardly needs to be pointed out that it is the easiest thing in the world to rack-rent a tenant-at-will, or from year to year, to the full extent of the gross produce of his holding, whether that gross produce has been increased or not by the improvements he may have made in his holding. To give him, then, the value of his improvements (section 18), supposing even a tenant-at-will has any motive to make such improvements, is useless so long as he is denied that fixity of tenure, which, with limitation of rent, is absolutely necessary for his security. Moreover, the cultivator has, from time immemorial, enjoyed the privilege of selling his improvements in the soil for the best price he could get for them, and these sections virtually take from him this most valuable ancient custom.—This is, in particular, a point in which the British law of contract has unduly encroached on the ancient customary law, and it seems to me to be beyond question that some re-adjustment of personal relations is necessary to secure harmonious working in the future. To ignore, as these sections virtually do in spite of section 17, this ancient privilege is a retrogressive step, for which there is no justification. Chapter V giving the value of improvements to evicted tenants and sub-tenants ought really to be viewed from the point of view of a Malayali cultivator as dealing with forced sales.

The alliteration here pleases the ear, but fails to convince the intellect.

XI. All these provisions (sections 15 to 20) simply mean *slavery* and *starvation* and *stealing*.

3. What I now propose in lieu of sections 15 to 20 is a plan whereby the settled cultivator shall be placed in such a position that he will be able to get the share of produce, which is his by ancient custom, which we have agreed to reserve for him by section 25 of the draft Act, which Special Commissioner Mr. Græme described as 'a comfortable subsistence for a family,' and which, as already said, the British Government has carefully set aside for him in all its revenue settlement schemes.

4. But it is not merely on historical grounds that I propose this plan. If all the parties interested in the soil had managed to adjust their relations satisfactorily among themselves, it would be, in the highest degree, unwise to disturb those relations merely on historical grounds however strong. I have already indicated, however, in clauses II to VI of paragraph 2 above, how the ancient customary law has been overlooked, but something more requires to be said:

I. By the 'occupancy tenant' sections, we are virtually creating a new and large and partially untried class of proprietors. What guarantee have we that this class will exercise any more forbearance to those beneath them than the class of *jannis* whom they supersede? We have no such guarantee. On the contrary, there is abundant evidence in my report (paragraphs 211, 212) that this new class will not be slow to follow in the footsteps of those before them, and will exact from their sub-tenants rents and renewal fees as extravagant as those of which the *kānam* holders so justly complained to me.

II. Population is increasing with giant strides as the subjoined figures show:—

Years.	Total population of Malabar as per Census returns.
1802	465,594
1807	707,556
1821-22	907,575
1837	1,165,791
1851-52	1,514,909
1856-57	1,602,914
1861-62	1,709,081
1866-67	1,856,378
1871	2,261,250
1881	2,365,035

III. The population is a non-emigrating, stay-at-home population. Early marriage is universal, and in the case of females obligatory. The right of maintenance from the family property im-

See my memorandum.

Occupancy tenants are found in abundance in all districts, and cannot therefore be said to be a new and untried class.

Doubtful if the earlier figures are correct.

Mr. Logan's scheme will not cure or mitigate these evils.

By all means, afford facilities for the taking up of *waste* lands, but do not needlessly disturb long-existing rights in lands cleared and brought under cultivation ages ago.

The security should belong more to the landlord than to the tenant, whose labor is engaged merely to carry on cultivation.

See my memorandum.

poses almost a premium on early marriages and large families, so that the conditions are peculiarly favorable for a still more rapid increase of the population. There are no expanding industries except agriculture. The best lands have long since been appropriated, and this immense and rapidly increasing population,—increasing in debts, and poverty, and crime as well as in numbers,—must of necessity settle down to the cultivation of the poorer soils.

IV. The result is that these poverty-stricken people scramble for every bit of land thrown into the market; they offer rents in excess even of the gross produce they can ever hope to reap off their holdings; and in preference to slavery and starving on such terms they take naturally enough to stealing, and this was conspicuously brought to notice in the dacoity outbreak of 1874—1877. And it is reasonably to be expected that it will become still more conspicuous as the old easy customary rates of rent still in force over large tracts give place to the competition rents agreed to by impoverished cottiers.

5. Under such circumstances, I contend that the true policy of Government is to give the cultivators security in their holdings and enable them to convert the poorer soils into rich gardens.

6. Sections 38 to 41 of our draft Act, founded on recommendations in paragraphs 438—452 of my report, have been introduced with a view to provide settled homes for the surplus population. But I contend that these provisions are not by themselves sufficient; that the classes whom it is sought to reach have no leisure and no capital to take up fresh lands; and that they will consequently never be in a position to take them up and do any good with them if they are left free to be rack-rented, as at present, out of the whole of the surplus produce of their holdings. And, on the contrary, I contend that if those of them who are now cultivating permanently reclaimed lands are restored to their ancient privileges,—privileges sacredly preserved by the British Government,—'a comfortable subsistence to a family,' as Mr. Græme called the ancient cultivators' share of produce, will be secured to them, and they will be enabled to settle their surplus hands on the poorer soils with a good chance of prospering.

7. The placing within the reach of all settled cultivators of the share of produce, which Mr. Græme called 'a comfortable subsistence to a family,' will, I contend, lead in Malabar as similar measures elsewhere have led to an increase in the thrift, industry, and foresight of the cultivating class. I claim for my scheme that it holds out no encouragement to the improvident, the idle, and the thoughtless. If a man wants this 'comfortable subsistence,' he must by my scheme buy it and pay for it too either in ready money or in assured credit. With increasing thrift will come in good time postponement of marriages and a slower rate of increase in the population; and I am of opinion that if the Act we have likewise drafted for legalising marriages and wills becomes law, another very important step will be gained in this same direction.

8. I do not in the least think, however, that if this scheme becomes law, the cultivating class will all of a sudden change their habits and ways of life. Borrowing and lending will still go on. Expensive wedding ceremonies will still render recourse to the money-lender necessary, and consequent bonds and interest on loans, it may be contended, will do as much as extravagant rents to keep down and impoverish the cultivating class. All this I freely admit, but, on the other hand, it will be seen from the details of the scheme that, though the settled cultivator's interest in the soil may be sold, it may not be mortgaged. If he runs into debt, he will lose his holding by being sold out of it, but the man who comes in in his place will be a cultivator also; and he will enter on the land free from any mortgage claims upon it. A fresh start will thus be made; and it will not take long to convince the cultivator that if he wishes to maintain himself in his holding, and to enjoy what Mr. Græme called his 'comfortable subsistence,' he must keep away from the money-lender's doors when bent on schemes of extravagance. But with improving credit, he will be able to borrow money for the improvement of his holding, or for the settlement of members of his family on fresh lands. There is nothing more certain than that the village money-lender's terms to persons of approved credit are extremely moderate, and in good time there will no doubt be a marked improvement in the borrowing habits of the cultivators.

Over-sanguine!

But *land* is also an essential element in production. Therefore, the rights of him who gives the land ought to be respected.

See my memorandum.

In respect to the rest of this paper, see my remarks in the margin of Mr. Logan's draft Act.

9. The cultivator is the man on whose industry and credit all above him,—Government, *Jammi*, permanent tenant, or occupancy tenant,—depend for their shares of the produce of the soil. It is, in reality, he who pays everybody. And I do not doubt that in a few years' time, if this scheme succeeds, that even *Jannis* will see that it was wise policy to give the fullest security to the settled cultivator, as it is mainly on his industry and self-denial that it will depend whether the *Jannis*' poorer soils now alone remaining for the extension of cultivation are ever reclaimed.

10. In dealing then with the cultivating class, my alternative scheme is founded both on historical claims and on strong grounds of public policy.

11. What that scheme is I will now briefly set forth, merely repeating here that the draft has not been subjected to detailed criticism by my colleagues, though they had it in substance before them at our last meetings.

12. I first of all define what is meant by a 'cultivator.' I think it is correct to define a cultivator as the man who accepts the risks,—rent, drought, floods, storms, disease, fire, accidents, &c.,—to which his calling is subject. His one-third share of produce was specifically assigned to him, so Mr. Rickards was informed when elaborating his scheme of land assessment in 1803, in order to guard the cultivator against losses. Referring to this one-third share Mr. Rickards' informant wrote: "This is called *kolulābham*,"* but when once the *pāttam* is fixed the *kudiyān* is liable to pay the quantity regularly, *although he suffers a loss*, which may be the case on the part of the *kudiyān*." (Appendix III, No. 15, to my report.)

13. A clear distinction is next drawn between cultivators who are 'settled' and those who are merely 'temporary.' The test applied, and which is for practical purposes a sufficient test, is that the lands which are permanently reclaimed are entered in the Government *puttals* issued at the annual *jamabandis*. No items of land are entered in these *puttals*, except such as are taken up permanently for cultivation, and bear a fixed annual revenue assessment. 'Temporary' cultivation, on the other hand, applies to lands which are cultivated only occasionally with fugitive crops, such as

* Literally 'plough profit' or 'cultivator's share,' (*Græme's Glossary*), or 'cultivator's profit of produce after deducting the expenses of cultivation and the taxes,' (*Gundert's Dictionary*, page 312), or 'a comfortable subsistence to a family,' (*Græme's report*, paragraph 1428). Other words to signify the same thing are (a) *kudiyānkūru* = 'cultivator's share,' (*Græme's Glossary* and *Gundert's Dictionary*, page 257); (b) *Chērlābham* = 'profit of the earth or soil, the cultivator's share' (*Græme's Glossary*), or 'cultivator's share of profit,' (*Gundert's Dictionary*, page 391); (c) *Kilāyikkūru* = 'the tenant's share,' (*Gundert's Dictionary*, page 253) consisting of $\frac{1}{3}$ while $\frac{2}{3}$ was the *Mēlāyikkūru* = 'the janmi right,' (*Gundert's Dictionary*, page 861). These latter terms occur in the *Kēralolpatti*, a work written in the seventeenth century, long before the British occupation. The *Vyavahāra māla*, a work for which a still more ancient date is claimed, also has it that of garden produce at least the cultivator's customary share was $\frac{1}{3}$ one-third.

modan, punam, ellu, ginger, &c., and which are never brought into the Government *puttahs*, because the lands are assessed to revenue only in the years in which particular crops are raised, and they consequently do not bear a fixed annual revenue assessment. The test, then, and it is a clear and distinct test for practical purposes is,—the cultivator of lands entered in a Government *puttah* is a 'settled cultivator,'—the cultivator of lands not entered in a Government *puttah* is a 'temporary cultivator.'

14. It is in respect to 'settled cultivators' only that I am prepared to go further than some of my colleagues in the direction of conferring fixity of tenure. If all *puttah* holders become eventually 'settled cultivators,' their numbers will reach to over 178,000. In respect to 'temporary cultivators,' it is obviously the best plan to leave the parties free to settle their own bargains as to duration of tenancy and shares of produce.

15. Turning, then, to the 'settled cultivator.' I have endeavoured in my draft (sections I to VII) to leave him *at the outset* exactly in the position which he occupies at present.

16. If I have drafted the sections properly, the great advantage will be secured that the existing occupants and the existing terms of their contracts will not be disturbed at all by the legislation contemplated.

17. Nor will they be disturbed in the future, unless, indeed, the parties find that they cannot manage to live on together on their present footing.

18. When they do fall out the land goes back into the hands that gave it, and it seems to me that it is at such a time quite equitable, and, as matter of public policy, most highly desirable that the cultivator next let into possession should have a more stable footing on the soil than the impoverished cottier class, whose wretched condition I have brought to notice in my report.

19. The Janmi, the permanent tenant, and the occupancy tenant, who is, by our sections 6 to 14, virtually converted into a permanent tenant will at such times, when letting a 'settled cultivator' into possession, have the opportunity, which is equitably theirs, of getting from him the full market value of the rights they are at such times called on to relinquish

to him. They need not let their lands at such times, unless they choose to do so; they may undertake the risks of cultivation themselves and save the share which, by the customary law of the land, belongs to the cultivator. It is obvious that, under such circumstances, the Janmis who have in the past encroached the most unduly on ancient customary rights, and who have in consequence impoverished their tenantry the most, will find it the hardest to obtain tenants who are in a position to pay largely for the rights they are called on to relinquish to them at such times. And this is just as it ought to be.

20. The scheme of the sections (I to XIII) relating to 'settled cultivators' may be stated briefly thus:

(a) The 'settled cultivator' right in their respective lands is assigned (section I) to Janmis, permanent tenants, and occupancy tenants, and to a fourth class to whom two of my colleagues and myself think it equitable that fixity of tenure should be at once conveyed. This fourth class, we think, contains the representatives of the ancient *kudiyans* with whom Hyder Ali and Tippu's officers formed the first revenue settlement of the district. In their case, however, there must have been breaks in occupancy which would disentitle them to the rights of 'occupancy tenants' under sections 6 to 14, or customary tenants may have slipped in between them and their Janmis. Though we cannot make occupancy tenants of them, we think they are entitled to the modified rights of 'settled cultivators.'

(b) Care is taken (section I) that at the passing of the Act the 'settled cultivator' right shall belong to only one and not to two or more of the persons abovenamed.

(c) If, however, any of these persons, after the date on which the Act comes into force, lets a 'settled cultivator' into possession for purposes of agriculture, then the 'settled cultivator' right indefeasibly attaches (section II) to the soil of the holding and to the cultivator thereof. I have already dwelt on this point in paragraphs 15 to 19 above.

(d) The explanations to section II define what is intended to be included among other things in the phrase 'purposes of agriculture.' These explanations deal only with what might turn out to be doubtful points, and perhaps the matter could be more exhaustively treated.

(e) Sections III and IV are the parallel sections to sections 12 and 13 of the draft Act, and define the 'settled cultivator's' powers of transmitting and transferring his rights. The main point that seems to require notice is the non-transferability of the right by mortgage. I dealt with this point in paragraph 393 of my report. It is absolutely necessary to prohibit the settled cultivator from mortgaging his rights, for what happens now may happen hereafter, and the cultivator by pledging his interest in his holding might, if he were sold up, convey to the transferee the possession of the holding 'with all the incubus of the mortgage debt lying heavy on it,' as sometimes happens at the present time. The transferee, in order to have a fair chance of succeeding, must enter into possession free from such liabilities. The cultivator, as I point out over and over again in my report, has, from time immemorial, had the privilege of selling his interest in his holding to the highest bidder, subject to a certain degree of control by the Janmi. This control, it will be seen, has been strengthened and retained, for the cultivator must obtain the consent of those above him to a transfer of his right to a third party. The benefit of this provision is that objectionable persons will be kept out of the holding, but much will depend on the judgment and tact of those holding the superior interests in the soil, whether this provision can remain permanently on the statute book. For, if it is worked so as to prevent all reasonable transfers, it will have to be abolished altogether.

(f) Sections V and VI merely reproduce what is very much the present practice of the Revenue department in regard to the transfer of *puttahs*; but they fit the practice, which at present has no legislative recognition, into the proposed law in such a way, that eventually the words '*puttah holder*' will become identical with the words '*settled cultivator*.' The '*settled cultivator*' will eventually become the person responsible for the Government revenue, and this, I submit, will be a most important point gained. The '*settled cultivator*,' I repeat at the risk of being thought tedious, is the man on whose industry Government revenue and Janmis and others' rents alike depend. But at present the '*puttah holder*' is very often not the '*settled cultivator*' at all, and when remission is given of the Government land-revenue (as happened in

the famine years, 1876-77) the remission went very often not into the pockets of those who deserved it,—the cultivators to wit,—but into the pockets of Janmis and other rent receivers who deserved it not at all. This anomaly will cease when the words '*puttah holder*' become identical with '*settled cultivator*.'

(g) Section VII enables all persons to whom rights accrue under sections I to IV to guard those rights. It is also founded on the present practice of the Revenue department.

(h) Section VIII provides, in cases which seem to require it, a limited power of subletting by the '*settled cultivator*.' If the '*settled cultivator*' became physically unfitted to cultivate, it would be hard to call on him to sell his holding, especially if there was a prospect of a member of his family attaining age and experience enough in a few years to take his place. These and other similar cases are provided for, by making the Collector during the annual overhaul of the *puttahs* and *puttah* registers the arbiter of the *bona fides* of such subletting. Such cases will be very few; if they become numerous, it will be a sign of laxity of supervision in the revenue officials, and the matter can be easily controlled. I think that the Board of Revenue and the Government should, in virtue of the immense stake which the Government has in the land, and of its interest in the proper development of the agricultural industry, be the ultimate controlling authorities in such matters as are dealt with in this and in the following section.

(i) In section IX, which is parallel to section 11 of the draft Act, I have recognised in the occupancy tenant rights similar to those which I propose to confer on Janmis and permanent tenants, namely, to take back from the '*settled cultivator*' any piece of his lands which may be required for the purposes enumerated. I have not followed the procedure laid down in section 11 by conferring jurisdiction in such cases on the '*Civil Court*' alone, because I think the power of deciding as to the *bona fides* and reasonableness of such purposes and schemes will be more appropriately placed in the hands of the Revenue officials as guardians of the '*puttah holder*' or '*settled cultivator*' than in those of the Courts. It is, of course, left to the latter to adjust the outstanding accounts between the parties after the Collector has decided

that the purpose in view is both *bona fide* and reasonable.

(j) Sections X and XI are parallel to section 8 of the draft Act and protect the 'settled cultivator' against illegal dispossession, and give him the value of his improvements if he is dispossessed.

(k) Sections XII and XIII are parallel to section 14 of the draft Act, and require no remarks.

21. As regards 'temporary cultivators,' all that it is necessary to enact regarding them is that they are entitled (section XIV) to use their lands to the best advantage for purposes of agriculture, and (section XV) that they are entitled to compensation for improvements if evicted,—two provisions of the ancient and wise customary law of the district which ought never to be lost sight of.

22. It only remains for me to set forth the position in which I find myself in regard to sections 15 to 20 of the draft Act. I view them as only a partial remedy for the many evils brought to light in my report. I foresee very clearly, for the reasons set forth at large in paragraph 4 of this note, that it is not a final settlement of the question of landlord and tenant in Malabar. Whereas, on the other hand, I believe that my alternative scheme meets the many difficulties likely to arise in the future. I deprecate the suggestion thrown out in paragraph 23 of our report that isolated action for Malabar would embarrass the Government in dealing with the general question, believing as I do that another such opportunity as this now afforded of settling finally the policy of the Government in regard to the tenants-at-will in Malabar will not present itself, for perhaps another generation. My report supplies, I fully believe, all the materials which it is necessary to collect before preparing to legislate on a question of the kind. The question is, therefore, ripe for settlement in Malabar now. The same cannot be said of any other district in the Presidency. And, finally, it is extremely doubtful if a general law for the Presidency on this subject would be any less difficult of application in Malabar than the various Rent Regulations and Acts heretofore and at present in force, which no Collector of Malabar has yet had the temerity to administer in that district. Malabar has retained to the present hour its own peculiar land customs. Elsewhere the Muhammadan invasion

In practical legislation we must not too much aim at final settlements.

While the present generation deals with its opportunities, it may well leave the next generation to deal with its opportunities.

Mr. Logan's scheme is not founded on the peculiarities of the Malabar District. It is a radical scheme evolved from abstract

speculation. The arguments adduced in its support would make it applicable anywhere and everywhere—wherever there are landlords letting lands for cultivation.

(Signed) T. MADAVA ROW.

and long terms of oppression before the British occupation have pretty nearly destroyed them.

23. I would accept sections 15 to 20 of the draft Act under such circumstances, only if no more final settlement, such as I believe my alternative scheme presents, commends itself to the Government.

(Signed) W. LOGAN.
23rd July 1884.

NOTE BY MR. H. WIGRAM ON MR. LOGAN'S ALTERNATIVE SCHEME.

The principal features of Mr. Logan's alternative scheme, as I understand it, are—

- (1) There must be a "settled cultivator" for every piece of land for which the Government have issued a putta.
- (2) The following persons are to be the first settled cultivators:—
 - (a) The occupancy tenant as defined in our Act.
 - (b) The non-occupancy tenant or sub-tenant who happens to hold the putta.
 - (c) In default of these, the janmi or his alienee. (I am not sure whether the latter is to have priority over the former.)
- (3) Hereafter, any person newly let into possession of putta land *ipso facto* becomes the settled cultivator.
(The word "settled" in section 2, line 6, of Mr. Logan's draft must, I think, be omitted to make the meaning clear.)
- (4) The settled cultivator's right is something less than our occupancy tenant's right, inasmuch as the former is absolutely prohibited from subletting except in cases of disability and inasmuch as the person entitled to receive the rent may resume the land by paying for it. In all other respects he appears to be, to all intents and purposes, an occupancy tenant.
- (5) In process of time, the putta will be synonymous with the settled cultivator's title-deed. The settled cultivator who has not got the putta can obtain it in one of two ways—either by a declaratory suit (section 7) or by application to the Collector in certain cases (section 5).

2. Notwithstanding that the present scheme is, in my opinion, a considerable improvement on the original scheme sketched by Mr. Logan in his report, it seems to me open to several grave objections, which I will enumerate:—

- (1) It goes further than any agrarian legislation I ever read or heard of, and converts *all* landlords into rent-receivers. By "landlord" I mean a person who owns land but does not cultivate it. Without intending any reproach, I think it must be admitted that it nationalizes the land without compensating the landlord.
- (2) It goes far beyond anything that the lower agricultural classes themselves have ever dared to expect, still less to ask for. If the principle of the scheme is sound, it ought to be applied, not to one province only, but to the whole Presidency. The cultivator in Malabar is, I am convinced, no worse off than the cultivator in other districts.

- (3) The principle of conferring permanent or *quasi*-permanent rights of occupancy on those who have no capital to start with seems to me radically unsound. One bad season ruins such men. If capitalists alone come forward to take up vacant lands, the inevitable result will be the accumulation of lands in the hands of a few persons, which most persons admit to be a most undesirable result.
- (4) The possession of the putta is an arbitrary rule on which to base the acquisition of the settled cultivator's right. In many cases the janmi surrendered the putta to the tenant for the sake of convenience. In many cases he retained it without exactly knowing why. Tenants under the same janmis who are now on exactly the same footing will be treated most differently.
- (5) In some cases a junior member of a tarwad will acquire the rights of a settled cultivator against his karnavan. It not unfrequently happens that a junior member cultivates outlying tarwad lands at his own risk and holds the putta. If the karnavan is not an occupancy tenant, the junior member becomes a settled cultivator. Will the karnavan have no power to resume such land for the benefit of the tarwad?
- (6) The power granted to the Revenue authorities is immense. They can manufacture "settled cultivators" at will by granting puttas to any one who holds land for temporary cultivation. A janmi may thus be deprived of every acre of land belonging to him.
I respect the discretion of the hoary-headed Collector, surrounded by his adikaris and menons, exercising his parental jurisdiction at the annual jamabandi, but I cannot forget that the same powers are entrusted to the newly-fledged Assistant Collector with little or no experience.
- (7) Assuming that the scheme affords a comfortable subsistence to a few lucky persons, it will have no effect on the ever-increasing masses. It will inevitably shut out a much larger class than it lets in.
It is questionable whether it will encourage industry and thrift. In the case of those who obtain lands on easy terms, it will probably have a contrary effect. Freedom from interference and supervision is apt to make a man careless and unwilling to do more than he is absolutely obliged.
- In the case of those who pay, or rather promise to pay, large sums for the privileges of a "settled cultivator," they will be in a perpetual state of bondage to their janmi. Sooner or later they will be sold up to be succeeded by others who will be equally embarrassed. When the lands have changed hands a few times, the evicted tenants will have no resource but to join the criminal classes. We shall then have to deal with boycotting, maiming of cattle, and dacoity if not murder. The last state of the janmi will, I much fear, be worse than the first.
- (8) Fortunately for the janmi, there is a loop-hole by which he can escape all the consequences of the Act. If he lets his land on what is known as *varam* tenure, he becomes, under the definition clause, a joint "cultivator" with his tenant, for he accepts the risks of the cultivation. The tenant cannot, as against him, claim the rights of a "settled cultivator."

COIMBATORE,
30th August 1884.

(Signed) H. WIGRAM.

From Raja Sir T. MADAVA ROW, K.C.S.I., President, Malabar Commission, to the Chief Secretary to Government, dated Mylapore, 27th September 1884.

Adverting to paragraph 3 of my letter, dated the 20th instant, forwarding to you my memorandum and Mr. Wigram's note on Mr. Logan's alternative scheme for Malabar, I have now the honor to send you Mr. Sankaran Nair's note on the same.

2, Mr. Karunakara Menon's note will follow shortly.

NOTE BY M.R.RY. C. SANKARAN NAIR AVARGAL, B.A., B.L.,
ON MR. LOGAN'S ALTERNATIVE SCHEME.

I have read the papers submitted by Mr. Logan.

Before discussing the principles on which his alternative scheme is based, I shall say a few words in defence of certain provisions of the draft Act, which have been violently attacked by him.

He thinks that all our "provisions simply mean slavery, starvation, and stealing" (sections 15—20). I confess I was surprised at this strong protest, as these sections were passed unanimously and were accepted by Mr. Logan as a distinct advance in the right direction on the present verumpattam tenure.

His reasons are—

- (1) If ten-year leases come into vogue, the worst features of the kanam tenure will be reproduced.
- (2) It is very doubtful if the ten-year lease provision will ever come to be generally adopted.

Some of the evils of the modern kanam tenure might be reproduced, but it is not denied that a tenant would prefer a kanam tenure to a verumpattam tenure. It is also suggested that these provisions will be evaded, as the janmis are very reluctant to grant leases for ten years. If the janmis are reluctant to grant ten-year leases, they will be very slow to turn out the tenant already in possession. It is only when the tenant in possession is evicted, that these sections compel the janmi to grant a lease for ten years to the in-coming tenant.

Indirectly these sections are thus useful in restraining arbitrary evictions.

We were mainly induced to support the suggestion of ten-year leases, as we fully believe that within ten years an industrious tenant would be able so to improve the land that, if evicted at the termination of that period, he would be entitled to receive a substantial sum as the price of his improvements.

Ten years after the passing of the Act there will be no tenant who either has had not been in possession of his land for ten years or would not be entitled to remain in possession for ten years from the date of his entry.

I shall now proceed to consider the proposals submitted by Mr. Logan to help the "actual cultivator."

Our sections (6—11) protect those classes of people whose historical pretensions entitle them to some relief, and they have been foremost in their complaint. The question which we have now to consider is how far public policy requires us to interfere in favor of the actual cultivator. I understand that the Government have now under consideration a Bill for defining the rights and obligations of the landlord and tenant throughout the whole presidency.

I would, therefore, prefer to wait for the result of those discussions, as it appears to me that the grounds, on which interference is sought to be justified in Malabar in favor of the actual cultivator, exist also in many of the other districts. Further, the contemplated survey and settlement may have the effect of increasing the assessment and thereby diminishing the fund out of which the actual cultivator has to receive his share.

For these reasons, I would not urge further legislative interference at present in favor of the actual cultivator.

As I concur in one portion of this scheme on grounds not the same as those put forward by Mr. Logan, it is necessary to state my reasons at some length.

I am of opinion that it is the duty of the Government to see that the actual cultivator (*i.e.*, the person chiefly responsible for the proper cultivation of lands) is a man of some substance—able to carry on the cultivation of the lands in a proper manner.

Where there are capitalists who look to agriculture as a profession, it may not be necessary to confer any fixity of tenure on the actual cultivator.

Where a janmi cultivates his own lands by hired labor, &c., obviously no interference on the part of the Government is necessary. In other cases the question is, how is this object to be achieved?

It may be done in two ways: either by forcing the tenant holding directly under the janmi (who is generally a man of substance) to cultivate the lands himself, *i.e.*, by

prohibiting subletting, and by conferring on him fixity of tenure or "settled cultivator's right;" or by declaring that the occupancy right shall pass with the land, *i.e.*, the actual cultivator, whoever he is, shall be an occupancy tenant.

In the first case, there will be no intermediaries entitled to the possession of the land between the janmi and the tenant cultivator. In the second case, there may be many.

Mr. Logan's scheme is based on the principle that in the case of lands permanently cultivated the actual cultivator, whoever he is, ought to have fixity of tenant.

(The only cases in which the occupancy right does not pass with the land are those enumerated in section 8. Sections 2 and 5 give the occupancy right or, as it is called, "settled cultivator's right" to the actual cultivator, in all other cases.)

The scheme is open to the various objections set out in paragraphs 11—18 inclusive in Sir Madava Rao's memorandum. The greater the number of intermediaries, the less the probability of the actual cultivator, the man at the bottom of the scale, being a competent cultivator.

But, in other cases, some provision to secure the immediate holder (who might really be a man of substance) of the land under the janmi against arbitrary eviction does not appear to me to be open to the same objections.

If subletting is allowed, then the cultivation may pass into the hands of insolvent tenants, and therefore, though it may be extremely difficult to prohibit subletting absolutely, I am strongly of opinion that severe restrictions ought to be placed upon it, so that it may be practised in very few cases.

In the old days also, when, as Mr. Logan shows, agriculture was in a flourishing condition, there were two classes, and *only two* classes, of people interested in the soil, and arbitrary evictions were not general. The system appears, therefore, to be eminently suited to the genius of the people, and I believe I am justified in advocating a restoration of that system so far as altered circumstances will permit.

Acting on this principle in the case of occupancy tenants, we have placed restrictions on their subletting. In this view it appears to me that we may usefully adopt Mr. Logan's suggestion—Clause (b), Section 1—to confer the occupancy right of the settled cultivator's right on the tenant or sub-tenant who holds the puttah on any land he cultivates. Mr. Logan thinks that the puttahdars are entitled to this relief on historical claims. Sir Madava Rao is of opinion that they are in no way the representatives of ancient kudians,—puttahdars as they are not either the descendants or the assignees of the old puttahdar. But I do not understand Mr. Logan to use the word in that sense. The modern tenants who are puttahdars are the representatives of the ancient kudians,—puttahdars in the sense that they occupy, in the body politic, the position formerly occupied by the kudians. They perform the same functions which the kudians performed. In this sense they may fairly be said to be representatives. Generally the puttah is transferred to the name of a tenant only if he has some substantial interest in the land he holds. I do not agree with Sir Madava Rao in considering that the share set apart for the kudians by the Government was only for the purpose of determining the Government assessment. The Government did it because such a custom was found to exist (paragraph 18 of the report).

Therefore, I see no objection to confer the actual cultivator's right as defined by Mr. Logan on tenants who hold the puttah.

One class of tenants who will be benefited by this section will be cowle-holders—men in possession of lands originally waste, but since improved by them. Sections 38 to 41 of the draft Act empower the Collector to grant waste lands to applicants for the same, and these tenants acquire occupancy rights. I see no reason why those who have already taken up waste lands on cowle should be excluded from the benefit of those provisions. In the few cases of cultivators not holding under the janmis who are puttahdars, they are really the men whom the Legislature ought to protect. The kanamdar in such cases would be a new tenant, as otherwise he would be an occupancy tenant under sections 6—11 of our draft Act. Very often in such cases the cultivating puttahdar would be an old tenant over whom the janmi has placed a new tenant.

It may be that the rules under which the puttahs are transferred are arbitrary. But, for all practical purposes, a puttahdar may be assumed to be a person who has a real interest in the land.

But these observations do not apply to the future puttahdars of Mr. Logan. Puttahs will be title-deeds according to his new scheme, and I cannot regard without apprehension the enormous powers vested in the subordinate revenue officials—powers which require for their proper exercise a legal training which such officials do not always receive.

The register of petitions shows that the persons holding direct under the janmi have been the real complainants. The actual cultivator of Mr. Logan has not complained.

Sections 2 to 5, (the puttah sections) will have the effect of keeping out a rapidly increasing class of people, as janmis will not let the land when they find that the actual cultivator is converted into a *settled cultivator* on entry.

I have already stated my agreement with Sir Madava Rao in his objections to this part of the scheme (paragraphs 11—18). I have only to add that the draft Act with clauses (a) and (c), section 1, of the scheme will generally create dissatisfaction instead of allaying discontent.

August 1884.

(Signed) C. SANKARAN NAIR.

ORDER—dated 26th September 1884, Mis. No. 664, Political.

Copies of these papers will be sent to the Honorable the Judges of the High Court and the Advocate-General, in continuation of G.O., 29th July 1884, Mis. No. 500.

2. Copies of the complete correspondence will be communicated confidentially to the Revenue department, the Board of Revenue and Collector of Malabar.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.

" Advocate-General.
" Revenue department,
" Board of Revenue, with Mr. Logan's report, } with complete correspondence.
" Collector of Malabar,

From Raja Sir T. MADAVA ROW, K.C.S.I., President, Malabar Commission, to the Chief Secretary to Government, dated Mylapore, 1st October 1884.

Adverting to paragraph 2 of my letter, dated the 27th ultimo, forwarding to you Mr. Sankaran Nair's note on Mr. Logan's alternative scheme for Malabar, I have now the honor to send you Mr. Karunakara Menon's note on the same.

2. The opinions of all the members have thus been forwarded to Government.

NOTE BY MR. P. KARUNAKARA MENON.

In paragraph 62 of the report it was stated that in a portion of Mr. Logan's alternative scheme I was ready to concur, and I am now called upon to state what that portion is. I have Mr. Logan's scheme before me. The portion in which I would concur is clause (b) of his section I, which stands thus: "(b) A tenant or sub-tenant who, on the day on which this Act comes into force, holds the *putta* of any land which he cultivates: provided that there is no occupancy tenant of such land."

2. I will now briefly state the reason why I am prepared to concur with Mr. Logan. From my long personal experience and from the inquiries I have made, I am in a position to affirm that in nearly all, if not all, cases to which the clause under

reference would apply, either the putta-holders, who are themselves cultivators, are persons who have been in possession for the length of time which would give them occupancy right under section 6 of the draft Act, or the persons under whom they hold have virtually abandoned their right to recover the land. In other words, the clause is, in my opinion, almost a surplusage.

3. With regard to the remarks of the President on Mr. Logan's scheme, I concur generally in them. It would, in my opinion, be disastrous to the janmi, the kanakkar, the actual cultivator, and everybody else to make every actual cultivator an "occupancy tenant." Such a measure is not at present called for. It would needlessly interfere with long-recognized superior rights. It would moreover, in a very large number of instances, do more harm than good to the classes of people whom it is sought to benefit. Nearly all the complaints to the Special Commissioner appear to have emanated from kanakkars. I doubt if half-a-dozen petitions by tenants-at-will or from year to year against janmis or kanakkars can be picked out from the petition register, and yet these are the class of actual cultivators whom Mr. Logan would protect in addition to those proposed to be benefited by the other members. To protect such persons with reference alone to the accidental fact of their holding the revenue putta, and in spite of the express terms of their contract with those under whom they hold the land, would be obviously unjust to the latter. As for the "actual cultivator" himself, I can confidently assert that, in many instances, our kindness would actually kill him (figuratively). Raja Sir T. Madava Rao has set forth some of the poor man's disqualifications for bearing the responsibility for rent, revenue, and so forth that will be on his head. I would here only add that in a considerable number of instances he will be actually deprived of his land. He who now prefers to cultivate on temporary tenures a small parcel of land with the assistance of the members of his own family—members who, but for this, would have to work for hire under other cultivators—would find himself unable to obtain any land at all; and he would, I fear, not appreciate the boon intended by a measure which had brought this misfortune on himself and his family.

4. It may, perhaps, be said that such persons are not fit cultivators. The point, at all events, is not so self-evident as those who assert it suppose.

5. For my own part, the only legislative measure I am ready to recommend in favor of the "actual cultivator" further than that embodied in the draft Act has reference to the term of his lease. In my opinion there is little serious objection to enacting that "actual cultivators" shall in future have the right to hold for at least ten years. In practice they do hold for such terms except in rare instances, or for adequate reasons. I assume it is in the interest of the landlord, the tenant, and the State that the land should be cultivated as well as it can be. Some security and fixity of tenure are absolutely necessary in order to encourage the cultivator to effectually cultivate his land. And these would, I expect, be obtained by what I recommend. We have already, in a great measure, secured for him liberal compensation and limited rent. To these I would add long lease.

PONANI,
1st September 1884.

(Signed) P. KARUNAKARA MENON.

Demi-official from E. F. WEBSTER, Esq., Chief Secretary to Government, to W. HOLLOWAY, Esq., C.S.I., dated Fort St. George, 24th November 1884, No. 421.

The Government of Madras desire me to send to you, for favor of any remarks you may be kind enough to offer, copy of Mr. Logan's report with appendices and file of correspondence relating to the land tenures of Malabar.

2. The papers will be forwarded to you in a separate cover.

MR. LOGAN'S REPLY TO THE OBJECTIONS MADE TO THE ALTERNATIVE SCHEME.

It only remains for me, as arranged at our last meeting, to close the discussion on my alternative proposals by replying to the objections to it, which have been placed on record by Raja Sir T. Madava Rao and by Mr. Wigram, no others having reached me.

2. At the outset I may be permitted to remark that several of Sir T. Madava Rao's objections fall wide of the mark, because he has failed to catch the plain meaning of the text.

3. For example, Sir T. Madava Rao says (paragraph 6) that I "would prevent all evictions," whereas (clause (i), paragraph 20 of my note and section VIII) I explicitly state the contrary.

4. Again, he says (paragraph 7) I reduced the landlord to the position of a mere rent-receiver, whereas (section VIII) it is clear that an improving landlord can always recover his land in order to put it to a better use.

5. The same equally groundless objection again crops up (paragraph 18 and remarks opposite explanation I to section II), and Sir T. Madava Rao, in making his remarks, wrongly assumes that any janmi in Malabar ever lays out capital on land held from him by tenants. It is the tenants alone who improve their holdings.

6. Again, Sir T. Madava Rao writes (paragraph 25) as follows:—"Mr. Logan, in the exuberance of his benevolent zeal for the actual cultivator, too readily assumes that a certain fixed permanent share of the produce has been *guaranteed to the actual cultivator* by the British Government." The italics in this quotation are Sir T. Madava Rao's, not mine. And I must confess to very considerable astonishment when I read the words, as they showed that Sir T. Madava Rao had, in spite of the length of his detailed criticism of my scheme, deliberately ignored the main idea it contains; for, when he asserts as a fact that the British Government never gave any such "guarantee" to the cultivator, I entirely agree with him! Sir T. Madava Rao has in this matter drawn on his imagination for his facts, and has attributed to me an expression which I not only never used, but for which there is absolutely no foundation in anything I have written.

7. On the contrary, the position I have all along taken is that it was a grave mistake that no such "guarantee" was given at the outset of British rule.

8. The Government, *with the full consent of the janmis*, did set aside for the cultivator his ancient customary share of produce when framing a system of land-revenue assessment.

9. My proposals aim at securing him in the enjoyment of this share (clauses v, vi, vii, paragraph 2 of my note). My main objection to sections 15 to 20 of the draft Bill is that under them he can be rack-rented out of this share (clause viii, paragraph 2), and in paragraph 6 I allude to the necessity for "restoring" to him his ancient privileges in this respect.

10. In the light of our later experience, it seems to me not to admit of doubt that the raiyat's ancient share of produce should have been "guaranteed" to him at the outset. Why this was not done in Malabar is explained in the latter portion of No. 15 in Appendix III to my report. Mr. Rickards hoped that by leaving people at liberty to make their own arrangements about rent, capitalists would be attracted to the pursuit of agriculture as a profession.

11. But has this been the result?

12. As soon as increasing prices left an attractive margin of profit over after paying the revenue assessments, the Civil Courts were set to work, and now holdings

consisting, many of them, of a cent or two of an acre of land are held by persons whose rents are so heavy that they are practically slaves held down by bonds as pitiless as any ever endured by real slaves.

13. It is no use blinking this aspect of the question. I am quite content to accept Sir T. Madava Rao's own description of what the cultivator is, and of what Sir T. Madava Rao thinks he ought to continue to be (paragraphs 11 to 18). He "poor fellow," generally "gets the least profit from the land;" "looks for little more than the wages of his labor;" "seldom has any capital to spare for the improvement of the land;" "generally lives from hand to mouth;" "may often be unable to provide seed;" "may be unable to replace dead or superannuated bullocks;" "and so forth." To this I would add that one in twenty of them has annually to answer to a suit of ejectment in the Civil Courts; that a much larger proportion of them are annually sued in the Civil Courts for arrears of rent which they are unable to pay; and that the interest on the bonds they are forced to execute to obtain temporary relief from Civil Court persecution is eating like a canker into the vitals of the whole agricultural life of the district.

14. If Mr. Wigram is right in asserting that the cultivator is no worse off in Malabar than elsewhere in the Presidency, then it augurs badly for the permanence of the existing system of *Ryotwari* management. I hardly think, however, that Mr. Wigram can be right in his assertion, for there is this most material difference between the *Ryotwari* of the East Coast and the *Ryotwari* of Malabar, that east of the ghats the property of the Hindu family constantly tends to disintegration, whereas in Malabar the property of the family (*Tarwad*) constantly tends to accumulation. Disintegration of estates, it is unnecessary to add, favors the "Raiyat;" accumulation does not. Sir Thomas Munro expected the "Raiyat" to take on himself some at least of the functions of a cultivator. If he did not expect him to work on the land himself with his own hands, he at least expected him to superintend those who were working (Appendix II to my Report, paragraph 240). And nothing, I make bold to say, would have been less to the mind of Sir Thomas Munro than the idea that the "Raiyat" might in time degenerate into an unctuous money-lender with his sheaves of cadjan-leaf and paper bonds, real and forged, working the tillers of the soil like slaves with a whip of Civil Court warrants and a chain of Civil Jail cells. I do not say he is not quite within his rights in doing all this if his conscience permits him to do it, because the law of contract, as administered in our Courts, allows it.

15. But that law should be modified in Malabar at least, the more especially as it is a law of foreign origin fitting, in some respects, inconveniently into the indigenous law of custom.

16. As matters stand, I see no way out of the difficulties except by giving the "guarantee" which Sir T. Madava Rao very mistakenly says I think the cultivator already possesses.

17. As matter of fact, he has not got this "guarantee;" as matter of policy, he ought to have it.

18. If he possessed it, Sir T. Madava Rao thinks (paragraphs 12 to 15) it would be useless to him, and Government revenue and landlord's rent would both alike be rendered insecure.

19. He seems to think that under my scheme the cultivator—"poor fellow,"—will still obtain "the least profit from the land," but that is just where the difference lies, for Special Commissioner Græme said of the cultivator's customary share of the produce that it was "a comfortable subsistence to a family."

20. When crops fail, as they do occasionally even now-a-days (I may remind Sir T. Madava Rao) under the system which he seeks to bolster up, the remission granted by Government will, at any rate under my scheme, go to relieve those who need it—the cultivators, and not, as at present, to those who do not require it—the persons, to wit, who lend the land.

21. Persons obtaining a "comfortable subsistence" from their holdings are not, I may further observe, in the least likely to fail, and the repeated failures and repeated sales which Sir T. Madava Rao foresees are therefore not in the least likely to happen. The arguments I have used on this point (paragraph 8 of my note) are not met except by mere assertion to the contrary. And, indeed, when I find Sir T. Madava Rao objecting that my scheme will ruin the cultivators and Mr. Wigram objecting that all cultivators will become capitalists, I may fairly claim that my arguments are sound. The fact will turn out to be that, while capitalists will take to cultivation as a profession, the small cultivator, who is frugal and industrious, will easily hold his own. The excessive accumulation of land in the hands of capitalists, which Mr. Wigram fears, is also unlikely to come true, because successful capitalist cultivators can let lands only to the "Raiyat" of my scheme, and there is a limit (easily reached) to the extent of land which one man can successfully cultivate.

22. The security of the land-revenue will likewise be in no way upset so long as the law remains as at present that the land itself is the ultimate security for the land-revenue. I venture, on the contrary, to think that it will be the more secure the greater the security enjoyed by the "poor fellows" who now pay it. Sir T. Madava Rao seems to be laboring under some hazy idea that it is not by the exertion of the "poor fellows" that it is now paid. It is quite certain it would not be paid if the "poor fellows" did not somehow or other raise enough produce to pay it.

23. The speeches Sir T. Madava Rao puts into the mouths of the respective parties concerned have next to be dealt with.

24. As to the janmis' speech (paragraph 20) Sir T. Madava Rao very adroitly makes them expatiate largely on the injustice of converting present puttah-holders into "Raiyats," as if that provision were essential to my scheme, and not merely a subordinate detail. The point is explained in clause (a), paragraph 20, of my note, and the proposal commended itself to a majority of the Commission as a measure which would effectually quiet the apprehensions of the largest body of cultivators. I am well aware there are strong arguments against it, for Sir T. Madava Rao used the same he now brings forward when the point was argued at one of our meetings with the result, however, that the votes were against him. However, as already said, the point is not essential, and clause (c), section I, might be omitted without touching the principles of the scheme.

25. The speech put by Sir T. Madava Rao into the mouths of the future "occupancy tenants" is historically fallacious, and claims for the *kanam* holders of the past a position which is quite untenable. It was "custom" that ruled the relations between the parties in pre-British times, and not "contract" as Sir T. Madava Rao very well knows.

26. As regards the imaginary harangue of the cultivators—"poor fellows"—there need, I think, be no apprehension that they will find fault with a scheme which at any rate "guarantees" to them a "comfortable subsistence" from their holdings.

27. I may add that I have sounded the parties most concerned, and I have reason to think that my proposals would be accepted as the best possible solution of the many difficulties.

28. I have reserved for the last Sir T. Madava Rao's assertion (paragraph 9) that I propose to confer on the cultivators "advantages which they have never enjoyed, which they have not asked for, and which they do not expect." This position is evidently founded on what he adduces (paragraph 6) that "the burden of the complaints from Malabar is that raiyats who have held land from *janmis* for generations on *kanam* tenure, which by custom had become practically a permanent tenure, are being evicted, or threatened with eviction, by the *janmis*." And he views the cry of the petitioners as a cry for relief from "this particular class of evictions."

29. It is with no small surprise that I find Sir T. Madava Rao again taking up this shallow view of the evidence on record, for I thought the point had been decided

so long ago as in March last, when the same thing was brought forward at several of the sittings of the Commission and some amendments of mine to certain proposals of Sir T. Madava Rao's led to the withdrawal of the latter.

30. The cry of the *kanam* holders can only be viewed in the light in which Sir T. Madava Rao wishes it to be regarded, namely, as a cry against "a particular class of evictions," if the motives for the cry are completely overlooked. *Kanam* holders did in the past, and a good many do still hold their lands at easy rates. *Kanam* tenure consequently meant in the past, and does still to a large extent mean, holding at fair rents. The outcry against the change of *kanam* tenure therefore to any one really looking at the true value of the evidence means an outcry against the enhancement of the ancient easy customary rents.

31. I mean to assert, as the conclusion forced upon me after coming into personal communication with the 4,000 and odd witnesses whose evidence is on the record, that that is the true meaning of their cry, and the most natural one too, and that the superficial view which Sir T. Madava Rao takes of the evidence is most misleading.

32. Viewing, then, the cry of the *kanam* holders as one for interference with the law of contract which renders legal the enhancement of the ancient customary share of produce due to the *janmis*, it is clear that reconstituting that tenure without fixing bounds to this demand for increased rent would not satisfy the clamour. We agreed to limit the rent demandable (sections 20 and 25 of draft Bill), but the sections 15 to 19 left all recent *kanam* holders, as well as other cultivators, at the mercy of the landlords by failing to provide them with that fixity of tenure which is necessary to place the cultivators in such a position that they can obtain their ancient rights conceded to them by section 25.

33. That the particular course I eventually adopted was suggested by any of the petitioners, I do not attempt to assert; because, if canvassed, they would one and all say even now that they wanted to revert to the ancient customs with which they are familiar; but that is simply because ancient custom "guaranteed" them a "comfortable subsistence" out of the land. Give them *kanam* tenure without this "comfortable subsistence," and the outcry would be as great as ever. It is this "comfortable subsistence" they are in reality clamouring for, and I propose to give it them.

34. Under such circumstances I would ask whether my proposals are entitled to the hard names Sir T. Madava Rao gives them—"evolved from independent abstract speculation," "reconstruction on a fancy design," "not repair," "not founded on the peculiarities of the Malabar District," "applicable anywhere and everywhere wherever there are landlords letting lands for cultivation." I would ask any candid critic whether this language is either justified by, or in accordance with, the accepted facts, which are—

- (a) that the cultivator in Malabar had an ancient customary share of the produce; and
- (b) that this share having been carefully set aside with the consent of the *janmis* for the cultivator in all British land assessments, I propose to "guarantee" him in the enjoyment of it.

35. I adopted the scheme, not as Sir T. Madava Rao very rashly asserts, from "intense sympathy" for the cultivator apart from all others concerned, but from intense conviction after patiently hearing what the 4,000 and odd witnesses had to say for themselves, that in no other way could their grievances be adequately redressed.

36. Sir T. Madava Rao's one idea throughout the discussions has been to protect the class whom, by sections 10 to 14 of the draft Bill, we propose to constitute as "occupancy tenants." Put in another way, this idea means "protect those who have hitherto sufficiently protected themselves, lest evil befall them, and let all others look out for themselves." Now this also entails that the Bill should protect those who have not complained at all, and should leave unprotected the 4,000 and odd witnesses whose evidence is on record. The class whom we propose to constitute as "occupancy tenants" omitted naturally enough to give evidence. It was

the class of evicted tenants who spoke out. It may be in accordance with the maxims of "practical politics," of which Sir T. Madava Rao speaks, to turn a deaf ear to the complaints of those who have most to complain about, and to strive to protect those who have so far had no grievance, and who have consequently been silent. But, I would ask, is such a course either politic or just?

37. And, lest the fact escape notice, I may as well prominently point out that neither Sir T. Madava Rao nor Mr. Wigram has attempted to controvert my argument (clauses ix and x, paragraph 2 of my note) that fixity of tenure is absolutely necessary to protect a rent which is limited by law. This omission is very significant, because the real point at issue between us is in regard to the degree of fixity which it is necessary to give. I propose a tenure which is almost, but not quite, permanent, because terminable for good cause shown. My arguments against the degree of fixity proposed in the draft Bill have not been answered, and are, I contend, unanswerable.

38. In conclusion, I may remark, in answer to Sir T. Madava Rao, that the "Raiyat" would be "guaranteed" in the enjoyment of "the comfortable subsistence to a family" of which Special Commissioner Mr. Graeme wrote, and that the laborer would have ever before his eyes that this "comfortable subsistence" was within his reach if he was frugal and industrious. And the result may be predicated with certainty, inasmuch as the same motives would be at work which have produced such remarkable results in France and elsewhere. The sub-division of land, it was confidently predicted, would lead to France becoming, as one who was no mean authority expressed it, "the greatest pauper warren in the world." But, on the contrary, the placing within the reach of the poorest laborer of facilities for owning ever so small a bit of land has completely upset all such predictions, and the cry now is that the laws tend to keep the population stationary, although the peasantry are noted as among the most industrious and the thriftiest of their class in any country. All I suggest is that the same motives ought to be brought to bear on the peasantry of Malabar—that "the comfortable subsistence to a family" which was his *of right*, should be "guaranteed" to the cultivator—and the same results are bound to follow, although Sir T. Madava Rao evidently fails to take such a hopeful view of human nature.

S.S. "PEKIN,"

17th November 1884.

(Signed) W. LOGAN.

P.S.—(a) In replying to Sir T. Madava Rao's objections, I have, I find, answered also those of Mr. Wigram, except the last, which is evidently sufficiently answered by a reference to definition (a) and section VI of the Alternative Scheme.

(b) I may point out also here that Sir T. Madava Rao, in enumerating the "risks" to which the cultivator is exposed in his marginal criticism to definition (a) of my scheme, has omitted to enumerate the most important one of all—the one I placed *first* in the passage to which he refers, namely, "rent." This makes a most important difference. If the landlord accepted all the "risks" including that of not receiving any "rent" at all, then he would be the "cultivator."

(c) Mr. Wigram has pointed out one or two mistakes in the draft, and, as one or two other errors and amendments have likewise come to notice, I append to this paper an amended copy of the scheme. I have omitted altogether as superfluous section VII of the original draft, and the numbering of the other sections is consequently altered.

(d) In this amended copy I have substituted the words "Raiyat" and "Ryotwari right" for the words "Settled cultivator" and "Settled cultivator's right," as the former words best express the meaning I wish to be attached to these proposals. The "Raiyats" of this scheme are, I contend, the same as Sir Thomas Munro's "Raiyats," or, in the words of the Board of Revenue when introducing the Ryotwari system, "that particular class only among them" ("the cultivators of the soil in general") "who employ, superintend, and sometimes assist the laborer, and who are everywhere the farmers of the country, the creators and payers of the Land-revenue." (Paragraph 17, Board of Revenue Circular, dated 5th January 1818).

(Initialled) W. L.

MR. LOGAN'S ALTERNATIVE SCHEME AS FINALLY REVISED.

Definitions to be inserted in Chapter II.

(a) "Cultivator" means the person who accepts the risks of the cultivation of any piece of land; and, if the risks of the cultivation are shared by more than one person, then it means any one, or all, of the persons who share such risks.

(b) "Ryot" means the cultivator of any piece of land bearing a fixed annual revenue assessment, who has acquired the Ryotwari right of such piece of land under Chapter III.

(c) "Temporary Cultivator" means the cultivator of any piece of land not bearing a fixed annual revenue assessment.

(d) "Collector" means the chief Revenue officer, above the rank of a Tahsildar, in charge of a taluk, or the Revenue officer of any grade conducting the annual JAMABANDI of a taluk.

SECTIONS PROPOSED IN LIEU OF SECTIONS 15 TO 20 OF CHAPTER III.

Of Ryots.

I. On the day on which this Act comes into operation the following persons shall be entitled to the Ryotwari right in respect of the lands hereinafter mentioned, and shall be entitled to claim the Government *puttas* for the same if such lands are, or hereafter may be, assessed with a fixed annual assessment:—

- (a) A permanent tenant in respect of lands held by him on permanent tenure.
- (b) An occupancy tenant in respect of his occupancy lands.
- (c) A tenant or sub-tenant who on the day on which this Act comes into force holds the *putta* of any land which he cultivates: provided that there is no permanent tenant or occupancy tenant of such land.
- (d) A janmi whose lands are at the passing of this Act held by any persons other than the tenants or sub-tenants mentioned in clause (a) or (b) or (c).

II. The Ryotwari right shall attach to the soil of every piece of land for which a Government *putta* has already been, or hereafter may be, issued, and shall indefeasibly belong to the cultivator thereof if he or his predecessor in interest or title has been let by any of the persons mentioned in clauses (a), (b), (c) and (d) of section I into legal possession of the land for purposes of agriculture after the date on which this Act came into force.

Explanation I (a).—The planting and rearing of fruit-bearing trees, of timber trees, or of other useful trees or plants;

- (b) The construction of tanks, wells, channels, dams, &c., for the storage or supply of water for irrigation; or for the drainage of cultivated lands; or for its protection from floods; and

(c) The reclaiming, clearing or enclosing of lands for cultivation; shall, among other things, be deemed to be "purposes of agriculture."

Explanation II (a).—The erection of dwelling houses, of buildings appurtenant thereto, and of farm or agricultural buildings;

(b) The construction of tanks, wells, channels, dams, &c., for the storage or supply of water for domestic purposes only; shall be deemed to be "purposes of agriculture" only in so far as they are suitable to the agricultural status of the cultivator of the holding in which they may be respectively erected or constructed.

Explanation III.—The erection of shops, bazaars, or buildings other than those mentioned in the last preceding explanation shall be deemed to be "purposes of agriculture" only in so far as they are suitable for disposing of, or for manufacturing, the produce of the holding in which they are situated.

Explanation IV.—A tenant or a sub-tenant let into legal possession of the site of a dwelling house other than one which is suitable to his agricultural status as the cultivator of the holding in which the house is situated shall not, after the passing of this Act, except by express contract in writing, be deemed to have been let into possession of the holding for "purposes of agriculture."

III. The Ryotwari right shall be heritable, and, with the previous written consent or subsequent ratification of the janmi, or of the permanent tenant, or of the occupancy tenant, as the case may be, shall likewise be transferable by gift or sale, but it shall not be transferable by mortgage. Every transfer shall be in writing, and no instrument of transfer contravening the provisions of this clause shall be valid.

IV. When the Ryotwari right in any piece of land belonging to any person other than the persons mentioned in clauses (a), (b) and (d) of section I is transferred at a court sale in execution of a decree, the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall have the right of pre-emption at the price paid by the purchaser plus interest at 12 per cent. from the date of the sale: provided that he elects to exercise such right of pre-emption either within one month from the date of the confirmation of the sale, or from the date when the next instalment of the Ryot's rent falls due.

V. After the passing of this Act, the cultivator of any piece of land in whose name the Government *putta* of such land has not been prepared may apply to the Collector for the *putta* at the annual *jamabandi*; and on proof after a summary inquiry made publicly in the presence of the inhabitants assembled at such *jamabandi* that the claimant is the cultivator of such land, and that he has acquired the Ryotwari right in such land under section II, the Collector shall prepare the *putta* of such land in his name.

VI. If the risks of the Ryot are shared by two or more persons, each of such persons may demand a partition of the holding into equal shares corresponding to the number of persons sharing the risks. On proof that any such person has been put into immediate possession of a separate share of the land, the Collector shall, at the ensuing annual *jamabandi*, issue a separate Government *putta* therefor.

Explanation.—If the members of an undivided family or of a *Tarwad*, in their corporate capacity, share the risks, the undivided family or the *Tarwad*, as the case may be, shall count as only one person in each such partition.

VII. The Ryot other than the persons mentioned in clauses (a), (b) and (d) of section I shall not sublet his holding or any portion of his holding: provided always that, if the Ryot or the heirs or representatives of a deceased Ryot are physically unfitted, owing to minority or other cause, for cultivating, or superintending the cultivation of, the holding, they may sublet the same, subject to the following conditions and rules:—

- (a) The lease shall be in writing.
- (b) It shall remain in force for such term not exceeding five years as the parties may agree upon.
- (c) And it may be renewed with the Collector's sanction as hereinafter prescribed.
- (d) While the lease is in force, the lessee shall be entitled to the sub-tenant's share of the produce as defined in section 25, clause (a) of this Act, but to none of the other privileges of his lessor as defined in this Act.
- (e) On the date on which the term of the lease expires, the lease shall cease to have effect, and if the lessor has not meanwhile demanded, or in case of refusal filed a suit for recovery of the land, the lessee shall be entitled to all the privileges of the Ryot from whom or from whose heirs or representatives he derived possession of the holding.
- (f) The lease shall be attached to the Government *putta*, and a short memorandum of its contents shall be endorsed by the Tahsildar of the taluk on the *putta* and be likewise entered in the *putta* register.

- (g) The lease and the memoranda on the *putta* and in the *putta* register shall, if the Collector considers the lease to be *bona fide*, and if the lease has been drawn up in accordance with the provisions of this section, be countersigned by the Collector at the annual *jamabandi*.
- (h) Any instrument or renewal of an instrument of subletting not countersigned by the Collector as herein prescribed shall, if otherwise valid, operate as a full transfer of the Ryotwari right to the cultivator who is by such instrument let into possession of the holding.

VIII. If the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, *bona fide* requires any portion of the Ryot's holding—

Parallel to section 11 of the draft Act.

for any purpose other than agriculture, or
for any scheme for permanently improving the cultivation or the management of his lands, or
for any improvement to his estate whether in his own or in his lessees' occupation,

it shall be lawful for him to resume the same provided that he give notice to the Ryot, through the Collector, of the purpose for which he requires the land and the price he proposes to pay for the Ryotwari right and improvements. The Collector, after hearing the parties at the annual *jamabandi*, shall, if he thinks that the application is made in good faith, and that the purpose for which the land is required is reasonable, record a decision in writing to that effect, and shall in such case refer the parties to the Civil Court if they cannot agree as to the price to be paid to the Ryot. The fact that the land was previously resumed for some such purpose, and that such purpose was not carried out may be pleaded as a bar to a second resumption. In cases of dispute the Civil Court shall fix the price to be paid to the Ryot, and may for this purpose take the opinion of assessors. The price to be paid shall be the full market-value of the Ryot's interest in the land to be resumed, and additional compensation not exceeding 20 per cent. of such market-value in consideration of the compulsory nature of the acquisition. The price shall be paid into Court within such time not exceeding six months as the Court may direct, and thereupon the Court shall order delivery of possession.

IX. The Ryot, other than the persons mentioned in clauses (a), (b) and (d) of section I, if in legal possession of a piece of land shall not be dispossessed thereof,

Parallel to section 8 of the draft Act.

except for any one or more of the following reasons:—

- (a) That the rent is in arrears for one year or for such longer period as may from time to time in years of famine or drought be fixed by the Local Government.
- (b) That in the case of customary tenants, customary and equitable renewal fees have not been paid within one year from the date on which they fall due.
- (c) That the Ryot has been guilty of grave insult or annoyance to the janmi, or permanent tenant, or occupancy tenant.
- (d) That the Ryot has wilfully denied the title of the janmi, or permanent tenant, or occupancy tenant so as to prejudice his interests.
- (e) That the Ryot has been guilty of wilful waste in his holding so as to prejudice the interests of the janmi, or permanent tenant, or occupancy tenant.
- (f) That the price of the Ryot's interest fixed by the Court under section IX together with customary interest thereon (if any) has been paid into Court.

X. If the Ryot is evicted from any piece of land under the provisions of the last section, he shall be entitled to compensation for his improvements under chapter V of this Act.

Parallel to section 8 of the draft Act.

XI. The Ryot's right in his holding shall be deemed to be hypothecated for the rent and renewal fees as they fall due, and these shall take priority over all other charges except land revenue.

Parallel to section 14 of the draft Act.

XII. When the Ryotwari right in any piece of land belonging to any person other than the persons mentioned in clauses (a), (b) and (d) of section I, is sold in execution of a decree, the janmi, or the permanent tenant, or the occupancy tenant, as the case may be, shall be entitled to be paid out of the sale proceeds any rent or renewal fees which may be due to him by the Ryot.

Of Temporary Cultivators.

XIII. The cultivator may utilise his holding to the best advantage for purposes of agriculture.

XIV. Every temporary cultivator shall, before he is dispossessed of his holding, be entitled to compensation for improvements under chapter V of this Act.

Parallel to section 18 of the draft Act.

When compensation is payable by a janmi, or permanent tenant, or occupancy tenant, the sub-tenant in possession of any part of a holding shall be entitled to receive, out of any sum payable by the janmi, or permanent tenant, or occupancy tenant, whatever share of the compensation he can claim in respect of such part.

OPINION.

With reference to the order of Government, Political department, dated 26th September 1884, Mis. No. 664, I do not think Mr. Logan's alternative Bill is likely to secure much public favor at present. The Bill, prepared by the Committee, if adopted, will effect marked changes in the land tenures of Malabar. Those changes appear to be expedient, if not necessary. But Mr. Logan goes much further in favor of the cultivator. Assuming, what is open to much doubt, that the proposals of Mr. Logan would, in existing circumstances, be of advantage to the class for whose benefit they are intended, they are, I think, of too sweeping a kind to be adopted. It may be that, in the future, land legislation will move in the direction indicated by Mr. Logan; but I do not think public opinion is yet prepared for such legislation.

2. If the principle of Mr. Logan's Bill were accepted, the details of the Bill itself seem to be open to grave objections. I concur in Sir Madhava Row's objections to the Bill as drawn, and I do not think it would be practicable to work it as a legislative enactment.

(Signed) P. O'SULLIVAN,
Advocate-General.

8th October 1884.

G.O., dated 20th January 1885, Mis. No. 36-A, Political.

From J. M. MACPHERSON, Esq., Deputy Secretary to the Government of India, Legislative department, to the Chief Secretary to Government, dated Fort William, 14th January 1885, No. 64.

I am directed to invite attention to the telegram from this department, dated the 13th June last, on the subject of the legislation for the temporary suspension of eviction of tenants by Janmis in the Malabar district suggested by the Government of Madras, and to request that, with the permission of His Excellency the Governor in Council, the Government of India in this department may be informed of the action taken thereon.

Order—dated 20th January 1885, Mis. No. 36-A, Political.

Ordered that the following telegram be despatched :—

"Your letter 64 of 14th instant. Janmi Bill referred High Court for opinion on 26th June last. No reply received up to date although urgent reminders have been sent. This Government do not propose any further action till they have considered the opinion of the Judges."

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

G.O., dated 9th May 1885, No. 322, Political.

Read—the following paper :—

Despatch from the Right Honorable the EARL OF KIMBERLEY, Her Majesty's Secretary of State for India, to His Excellency the Right Honorable the Governor-General of India in Council, dated India Office, London, 19th March 1885, No. 31 (Revenue).

I gather from the letter of your Excellency's Government in the Legislative department, No. 9, dated the 3rd February 1885, that you have deferred any legislation, as proposed by the Madras Government, in regard to the temporary suspension of evictions of tenants within the district of Malabar till you are in receipt of the opinion of the Judges of the High Court at Madras.

2. The matter was submitted to them on the 26th June last, and in the absence of explanation, it is not apparent why there should have been such delay on the part of the High Court in answering the reference which has been made to them. I trust that no further time will be lost in this matter.

No. 726.

Copy forwarded to the Government of Madras for information, with reference to its telegram of 20th January last, and for communication to the High Court.

SIMLA,
30th April 1885.

(Signed) S. HARVEY JAMES,
Offg. Depy. Secy. to the Govt. of India.

ORDER—dated 9th May 1885, No. 322, Political.

In communicating the foregoing despatch and endorsement to the Honorable the Judges of the High Court, the Government resolve to inquire whether Sir Charles Turner recorded any opinion before leaving for England, and how soon the minutes which may be recorded by the Honorable the Puisne Judges may be expected to be placed before the Governor in Council.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Puisne Judges of the High Court, with C.L.

Letter—dated 22nd May 1885, Mis. No. 360, Political.

From W. MORGAN, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 16th May 1885, No. 1573.

In reply to the Proceedings of Government, dated the 9th instant, No. 322, inquiring whether Sir Charles Turner recorded any opinion, before leaving for England,

on the law relating to the temporary suspension of evictions of tenants within the district of Malabar and how soon the minutes which may be recorded by the Honorable the Puisne Judges may be expected to be placed before the Governor in Council, I am directed to inform you that an opinion on the law in question has been recorded and will be submitted as soon as the same is printed.

LETTER—to the Secretary to the Government of India, Legislative Department, dated Ootacamund, 22nd May 1885, Mis. No. 360, Political.

With reference to your endorsement, No. 726, of the 30th ultimo, I am directed

* No. 1573, dated 16th May 1885. to enclose a copy of a letter* from the Registrar of the Madras High Court

stating that an opinion on the proposed legislation for staying evictions in Malabar has been recorded by the High Court, and will be forwarded to Government as soon as it has been printed.

(Signed) E. F. WEBSTER,
Chief Secretary.

G.O., dated 13th June 1885, Mis. No. 400, Political.

From A. G. CARDEW, Esq., Acting Deputy Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 1st June 1885, No. 1645.

With reference to the order of Government, dated 31st July 1884, Mis. No. 504, requesting the opinion of the Honorable the Judges on the "Malabar Marriage" and the "Places of Public Worship" Bills, I am directed to transmit a copy of the minutes recorded by the Chief Justice and Mr. Justice Brandt on the first-named Bill. With regard to second Bill, I am to state that the Chief Justice considers the proposed legislation to be called for by the circumstances of the country; and that Mr. Justice Brandt also approves of the proposed enactment. The remarks, if any, of the other Judges on both the Bills will follow as soon as they are received.

ENCLOSURE.

MINUTES on the Bill relating to Malabar Marriage.

The Chief Justice.—I have not time to consider carefully the language of the sections of the Bill; but I entirely assent to the object proposed. In my judgment, the legislature ought to enable the inhabitants of Malabar to enter into a higher form of marriage than at present obtains among some of them, and it should be open to persons who acquire property and can dispose of it by gift to dispose of it by will, but I would add a provision that when a person intends to take advantage of this power, he should inform the other members of his Tarwad in order that they also may, if they think fit, make their election and deal with such property as they may have acquired.

Mr. Justice Brandt.—I agree. I also have not had an opportunity to consider the Bill in detail.

Order—dated 13th June 1885, Mis. No. 400, Political.

The Government will await the opinions which have been or may be recorded on the draft Bill to which G.O., No. 500, of the 29th July 1884, gave cover.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.

Letter dated 26th June 1885, Mis. No. 431, Political.

From A. G. CARDEW, Esq., Acting Deputy Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 5th June 1885, No. 1665.

Referring to G.O., dated the 26th June 1884, Mis. No. 417, and the papers therein enclosed, I am directed by the Honorable the Chief Justice and Judges to forward herewith a note expressing their opinion on the subject of the stay of execution of the decrees of Civil Courts in the Collectorate of Malabar pending legislation on the subject of land tenures in that district.

2. I am to state that this note has the entire approval of the Chief Justice, and Hutchins and Brandt, JJ., and generally of Kernan and Muthusami Aiyar, JJ.

3. I am directed to express the regret of the Court that the reference now under reply has remained undisposed of so long; the Court had several months ago arrived at the conclusions which are now expressed, but the learned Chief Justice desired that his minute on the report of the Commissioner and of the Committee and the Court's observations on the stay of Execution Bill should be sent in simultaneously, and as he was unable to complete his minute until the last day before his departure, the answer of the Court to the Government Order above referred to has also been delayed.

ENCLOSURE.

NOTE.

The Bill now under consideration proposes to postpone for an indefinite period the execution of all decrees obtained by jannins against tenants for delivery of possession of immovable property: the term tenant is defined as meaning any person who has contractual relations regarding the use and possession of land, and the term janni as including any person to whom the janni has assigned his right to recover possession of immovable property from tenants who have contractual relations regarding the use and occupation of land directly with the janni thereof.

It will doubtless be conceded that a legislative measure which proposes to deprive decree-holders of the rights adjudged to them by the duly-constituted tribunals can only be justified by very urgent political necessity, is calculated to impair the confidence of the people in the administration of justice, and is almost certain to produce among those who are injuriously affected by it serious dissatisfaction.

It will not be denied by those who are most conversant with native feeling that they reckon among the chief benefits derived from British rule the assurance that questions of civil right will be investigated by impartial tribunals where both parties to the dispute may obtain a full and fair hearing and where the decision will proceed on facts so far as they can be ascertained by evidence carefully taken.

It will also be admitted that less irritation is felt at wrong which the civil tribunals have shown themselves incompetent to remedy than at the deprivation of the enjoyment of a right which such tribunals have awarded.

The feeling which the passing of the proposed measure would excite has been aptly described by Mr. Logan, the Collector of Malabar, in the letter addressed by him to the Government on April 21st, 1883, No. D, when the proposal was first made by Mr. Wigram—"such an enactment if passed at once would be nothing less than revolutionary in its operation and most dangerous to the peace of the district." The reasons on which this opinion is based by Mr. Logan still obtain with at least equal if not greater force, as will be hereafter shown.

There are no doubt cases in which so extreme a measure may be imposed on a Government as a necessity. It might be shown that the Courts had misapprehended the law and introduced novel doctrines whereby decree-holders had obtained measures of relief to which they were not entitled. It might be shown that the Courts were so constituted as to be incompetent to ascertain law or fact. It might be shown that the peace of the country would be seriously endangered by the concession to certain classes even of their clearly-ascertained rights and that the administration was not in a position to protect them in the enjoyment of such rights.

It may be asserted that the existence of none of these circumstances has been sufficiently established either by Mr. Logan's report or by the report of the Commissioner.

The committee admit that the law administered by the Courts derives support from the investigations of the earlier inquirers, and in a separate communication the Chief Justice has endeavoured to show that the Courts have substantially recognized no other law than has been reported to obtain in Malabar by every Revenue officer from 1792 up to the date of Mr. Logan's report, and it will probably be conceded that persons who have been declared entitled to certain remedies under that law should not be deprived of them without the opportunity of being heard.

It is known to the Government that up to the present time neither the proposals of the committee nor the report of Mr. Logan have been published, and the committee admit that before action is taken, an opportunity ought to be afforded to the jannins to state their case and arguments.

If, as Mr. Logan considered, there was risk of disturbance should a suspension of execution be enacted when his moderate proposals were under consideration, that risk must be intensified in view of the far more radical changes proposed by the committee.

The Government must be aware that the Bill would not affect merely the relations of landlord and tenant. Mr. Wigram himself admits that in North Malabar, nearly all the kanamkars are mortgagees and the Court believes that to a considerable extent mortgage by way of kanam exists in South Malabar also. That many of the suits which are termed suits for ejectment are in fact suits for redemption appears from the proposals of the committee and from the complaint of Mr. Logan that the jannins are converting kanam tenures into simple leases. It also appears from the circumstance that so few of the decrees are executed that the jannins are rather changing their relations with their tenants than ousting them.

The prosperity of Malabar has enabled the jannins to redeem their mortgages; at the same time, the capitalists, who are largely represented by the official class, can find no equally sound investments for their money and resent the discharge of kanam loans. The desire of the kanamkar to acquire the janni right, which was noticed at the commencement of the century, is thus intensified.

The language of the proposed measure is so wide that it embraces many classes of cases besides those of landlord and tenant.

It is at all times inconvenient that delay should occur in the execution of decrees for redemption of land in Malabar, as the value of improvements in garden lands, &c., necessarily varies. In many cases, e.g., otti mortgages, the janni receives no rent, and, until he can redeem his land, derives no benefit from it.

The disproportion between decrees and execution which Mr. Logan notices shows that the landlords are in many cases not anxious to remove the tenants from the land, and indeed the delay which has occurred in replying to this reference has shown that suits have considerably fallen off in number, and that execution has not substantially increased in Malabar, and this notwithstanding it has been known that the Commissioner and the Committee had made proposals to Government to alter the relations of jannins and kanamkars. The Court strongly deprecates any stay of execution until the jannins have had an opportunity to state their case, and the Government has at least resolved whether any legislation is necessary, and if so the principles on which it should proceed.

So far as the peace of the country is concerned, the Government may have before them information which has not been disclosed to the public, but such circumstances as have come to the knowledge of the Court disclose no more than that the outrages recently committed by Moplahs are dictated by the same spirit of bigotry and fanaticism which induced Moplah disturbances before British rule and which Mr. Strange reported as the exciting causes in the cases investigated by him.

If, as Mr. Logan has suggested, these outrages are in any case promoted by wealthier persons who have, or fancy they have, causes of discontent with the law relating to land, the Court considers that it would be a dangerous policy to make any concessions to such a spirit. On the other hand, the Court is bound to impress on the Government the widespread sense of insecurity which would be engendered by legislation which threatened to deprive suitors of the benefit of their decrees and which would most affect the decree-holders who have been the most long suffering.

(True copy.)

(Signed) A. G. CARDEW,
Acting Deputy Registrar,
Appellate Side.

LETTER—to the Secretary to the Government of India, Foreign department, dated Ootacamund, 26th June 1885, Mis. No. 431, Political.

Adverting to the correspondence ending with my letter, noted in the margin,

I am directed to forward, for the information of the Government of India, the accompanying copy of a note expressing the opinion of the Honorable the Chief Justice and the Judges of the High Court on the subject of the stay of execution of the decrees of the Civil Court in the Collectorate of Malabar, pending legislation on the subject of land tenures in that district. A copy of the letter* from the High Court submitting this opinion also accompanies.

* Dated 5th June 1885, No. 1665.

2. I am to add that His Excellency the Governor in Council proposes to defer consideration of these papers until the minutes of the High Court on the Malabar Tenancy Bill, drafted by the Commission appointed for the purpose, are received, when the Government of India will be further addressed on the whole subject.

(Signed) E. F. WEBSTER,
Chief Secretary.

Letter dated 15th July 1885, Mis. No. 474, Political.

From S. H. JAMES, Esq., Officiating Deputy Secretary to the Government of India, Legislative department, to the Chief Secretary to Government, dated Simla, 3rd July 1885, No. 1120.

With reference to your letter, Mis. No. 360, dated the 22nd May last, I am directed to observe that the opinions of the Honorable the Judges of the High Court on the proposed legislation for the temporary suspension of eviction of tenants by jannmis in the Malabar district have not yet been received, and to inquire when they may be expected.

LETTER—to the Secretary to the Government of India, Legislative department, dated Ootacamund, 15th July 1885, Mis. No. 474, Political.

Adverting to your letter, No. 1120, dated 3rd July 1885, I am to say that the opinions of the Honorable the Judges of the High Court on the proposed legislation for the temporary suspension of eviction of tenants by jannmis in the Malabar district were laid before the Government of India with my letter, No. 431, dated 26th June 1885, addressed to the Foreign department, to which I am to invite attention.

(Signed) E. F. WEBSTER,
Chief Secretary.

G.O., dated 18th July 1885, Mis. No. 482, Political.

Proceedings of the Board of Revenue, dated 5th June 1885, No. 1636.

READ—the following letter from W. LOGAN, Esq., Collector of Malabar, to the Secretary to the Board of Revenue, dated Calicut, 13th May 1885, No. 2030:—

Referring to the last sentence in paragraph 3 of G.O., Revenue department, No. 351, dated 23rd March 1885, I have the honor to submit that this district has special claims to consideration for early survey and settlement.

2. The district is, and has been these last twelve years, in a disturbed state. I have already in my Land Tenures Report expressed a decided opinion that the agrarian question is at the root of the discontent which exists. The settled cultivators or ryots are liable to constant ejectments from their holdings, and rates of rent formerly low by force of custom are now rapidly on the rise by force of contract.

3. Some decision ought soon to be come to in regard to the policy of Government in this matter, and whatever that policy may be, it is obvious that we shall require a detailed survey to give us the materials essential for satisfactorily disposing of the questions likely to arise.

4. Other districts with no such questions requiring an early decision might well wait until Malabar is fully surveyed. The two survey parties ought, I think, to be thrown into this district, instead of into Tanjore, where things are in a quiescent state.

Resolution—dated 5th June 1885, No. 1636.

Submitted to Government.

2. Mr. Logan bases the special claims of Malabar to early survey and settlement on the ground of long existing agrarian discontent arising from the system of land tenures in force in the district, but as the Board have never been called on by Government for an expression of their opinion on the views of Mr. Logan, as put forward in his report on Malabar Land Tenures, they do not feel at liberty to give an opinion on the matter now. They consider, however, that on other grounds, Malabar has preferable claims, if not to Tanjore, certainly to Bellary and Anantapur, to be surveyed, and that if the Government consider the survey of the first-named district politically expedient, it would be better to throw three survey parties into it and get the work finished in five years, than to run any risks by deferring the work till the Tanjore survey is over.

(A true Copy and Extract.)

(Signed) E. GIBSON,
Secretary.

To the Secretary to Government, Revenue department.

Copy to the Collector of Malabar.

" " Superintendent of Madras Survey.

" " Director of Revenue Settlement and Agriculture.

ORDER—dated 18th July 1885, Mis. No. 482, Political.

It is observed that copies of the complete correspondence on the subject of the Malabar Land Tenures were sent to the Board of Revenue in October 1884. It was by an oversight that the opinion of the Board on Mr. Logan's views was not requested at the time. The Government now desire to be furnished, as early as practicable, with such remarks as the Board may have to offer.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Board of Revenue.

" Revenue department.

Telegram from the Secretary to the Government of India, Legislative department, to the Chief Secretary to Government, dated Simla, 3rd September 1885.

Invite attention to my telegram of fourteenth August, regarding proposed jannmi's legislation to which no reply has as yet been received.

Telegram from the Chief Secretary to Government, to the Secretary to the Government of India, Legislative department, Simla, dated Ootacamund, 7th September 1885.

Your telegram third. Opinion of our Judges so entirely opposed to views of recent Commission on Malabar Land Tenures that no legislation can be thought of at present. Whole question referred to committee presided over by member of Government.

From the District Magistrate of Malabar, to the Chief Secretary to Government, dated Bettattpudiyangádi, 10th June 1885, No. K.

This morning when I was engaged in drafting my letter No. J of this day's date to your address, Mr. B. Kamáran Nayar, District Munsif of this place, chanced to call for me, and our conversation naturally turned to the subject now uppermost in the minds of all thinking men in the district, the recent Mappilla disturbances, and the best means of removing the causes which lead to them. It appeared that the district munsif had busied himself during a portion of the recess in visiting some amsams in the Ernád taluk with a view to satisfying himself personally about the matter, and it also appeared that he had drafted a letter to me embodying his views on the subject. I requested him to send me the letter, and it has just this moment reached me—a few minutes after the fair copy of my letter above quoted had been signed. I submit a copy of it for the information of Government.

2. You will observe that the result of his independent inquiry bears out what I have said in the letter above quoted, and what I urged more at length in my report on the Malabar Land Tenures.

(Signed) W. LOGAN,
District Magistrate.

ENCLOSURE.

From the District Munsif of Bettattpudiyangádi, to the District Magistrate of Malabar, dated Bettattpudiyangádi, 10th June 1885.

The recent outbreaks of the Mappillas have set the minds of many thinking men to find out their real causes; and I beg to avail myself of this opportunity to communicate to you the result of my own experience and observations on the matter.

2. With a view to make myself more intimately acquainted with the Mappilla character and his aspirations and wants, I resolved to visit some of the Mappilla districts, and accordingly, during the last recess, visited the amsams of Kannamangalam, Urakummelmuri, Vengara, and others. My general experience of Malabar, with the result of my recent inquiries, has led me to conclude that the disquietude among the community in question and the recent outbreaks may be attributed chiefly to two causes:—

- (1) The land question.
- (2) Want of education and consequent ignorance and fanaticism.

3. It may be, and indeed has been, urged that the recent outbreaks directly arose from the "relapse" of converts, and that no outrages on landlords were committed. But it will be observed on both the occasions those that came forward as the champions of Islamism were extremely poor men of no position in the Mappilla community. On the first occasion they were well armed. Can it be denied that these men were not sympathised by their more well-to-do brethren? I have my fears that these outbreaks are more as means to an end. What struck me especially in Chennad is that the bulk of the lands is in the hands of the Mappilla, though the Nambutiri and the Nayar are the landlords. The Mappilla has the lion's share of the cultivation, and the Mappilla community is evidently pushing the Nayar to the wall. The Nayar, unnerved by his marumakkatayam and groaning under the yoke of his Nambutiri landlord to whom he meekly submits, has considerably degenerated in the purity of his blood, has lost much of his self-reliance and industry, and, despairing either of recovering his lands from his turbulent Mappilla or being able to keep his Nambutiri landlords' lands, has lapsed into indolence. I know many instances where the Nayar is simply afraid to eject a Mappilla tenant, and the latter and his community often manage to procure lands on profitable terms for the simple reason that he can afford to be troublesome. There is unquestionably considerable disquietude on this account, and I feel sure that but for our police arrangements and the promptitude of the district officials the two recent outbreaks would have assumed larger proportions and more serious aspect, and would have been used by the Mappilla community as means to secure a firmer hold of their lands against their landlords. It seems to me that the cause of these disquietudes must be removed. The Nayar and the Nambutiri and the Mappilla must be more properly balanced. Nothing appears to me better calculated to secure this end than allowing fixity of tenure to the Mappilla and the Nayar ryots. It removes disquietude from the minds of the former and settles him down peaceably, and you cannot get a more loyal subject; while it makes the Nayar more independent, frees him from the servile bond in which the Nambutiri landlord holds him, and facilitates the move already on foot to upset his anomalous system of inheritance which has done more than anything else to destroy his manliness, self-reliance, and individuality, and create a

host of indolent and idle hangers-upon a Taravad. I consider therefore that the sooner the land tenure question is settled, the better for the peace and welfare of all classes.

4. Then as to the second point, or want of education and consequent ignorance and fanaticism of the Mappilla, it must be admitted that the Kazis and Mullas possess great influence upon the community in question. They teach them religion. But it will be seen that they themselves know very little of it. The corrupt texts and translations they use, their own ignorance of the true principles of religion and humanity, have tended considerably to mislead the minds of their disciples. English education has done little or nothing in this direction. I know of no better way of eradicating this cause of evil than introducing English Mappilla village schools in every amsam. Every encouragement must be held out to the Mappilla in this direction, and many influential members of that community fully agreed with my views on the subject. I have advised the men of Kannamangalam, one of the most fertile and interesting amsams in Malabar, to open a village English school. I would even go so far as to make education compulsory among Mappillas.

5. In conclusion, I beg to submit that the speedy settlement of the land tenure question and abolition of the Mappilla from the corrupt and debasing influence of the teachings of his Mullas by imparting to him the blessings of English education will restore peace, contentment, and prosperity to the country.

(Signed) B. KAMARAN NAYAR.

From the Acting Registrar of the High Court of Judicature at Madras, to the Chief Secretary to Government, dated Madras, 20th July 1885, No. 2082.

With reference to the last paragraph of Mr. Cardew's letter, dated 1st June 1885, No. 1645, I am directed to forward a copy of the minutes recorded by the Officiating Chief Justice and Mr. Justice Muttusami Aiyar on the "Malabar Marriage" and the "Places of Public Worship" Bills. I am to add that Mr. Justice Hutchins is in favor of the former Bill, and has recorded no opinion on the latter Bill.

(Signed) R. S. BENSON,
Acting Registrar, Appellate Side.

ENCLOSURE.

The Officiating Chief Justice.—As to the proposed Bill, "Malabar Marriage Act," it is permissive only, and I see no objection to it, though some more details may be required.

As to the proposed Bill—The Places of Public Worship Act—I think it will be very useful. Both Bills shall be, I assume, submitted for revision to the Advocate-General before they are introduced.

Mr. Justice Muttusami Aiyar.—The Malabar Marriage Act.—This Bill has my entire support. It only gives effect to what ought to be done to satisfy the requirements of progress. The question which alone demands consideration in connection with the Bill is whether the time has arrived for its introduction into Malabar. From what I have heard and from what I know of the spread of education, I believe that the Bill is necessary to supply a want which has been felt for some years among the educated and the respectable classes in the district.

The Bill is only permissive, and confines the rights of marriage to self-acquired property. I do not think that even those who are in favor of the existing state of the law in regard to sexual relations could have any reason to complain.

The Marriage law is one which affects the status of individuals. In this sense it is rather a personal than a local law. I do not see sufficient reason to confine its operation to Malabar. I would extend it to all Hindus who follow the marumakkatayam law of succession.

There are also Mappillas in Malabar who, though Muhammadans in religion, follow this peculiar system of succession. In their case, the Muhammadan law prescribes forms of marriage, and I believe these are generally observed.

I think that the Bill is intended to apply to Hindus only, and if so, this may be distinctly stated in section 3, so that no litigation may possibly arise among Mappillas with reference to the effect which this Bill may be supposed to have upon the marumakkatayam usage, which they also follow. They are, as a class so ill-educated and so turbulent that it is perhaps not desirable to change the law of succession in their case by any positive enactment until they apply such alteration.

Places of Public Worship Act.—In the special circumstances of this country, the proposed legislation seems to me to be necessary. Persons following different religions and having aggressive religious convictions live side by side in important towns. The riots which have occurred in

this presidency have often led me to think that some positive enactments may not be out of place with respect to the whole presidency in regard to the places enumerated in the Bill, and to marriage, funeral and religious processions. Having regard to the extent to which janmi rights are asserted in Malabar, and to the riots which have occurred, it is, in my opinion, necessary at all events in Malabar.

In section 2, clause 2, I would introduce the qualifying phrase which occurs in clause 1, viz., not hitherto in use as a burial or burning ground.

(True Copies.)

(Signed) R. S. BENSON,
Acting Registrar, Appellate Side.

From the Acting Registrar of the High Court of Judicature at Madras, to the Chief Secretary to Government, dated Madras, 20th July 1885, No. 2088.

With reference to the order of Government, dated 29th July 1884, Mis. No. 500, requesting the opinion of the Honorable the Judges on the draft Bill drawn up by the Malabar Land Tenure Committee, I am directed to submit 75 printed copies of the minute recorded by the late Chief Justice, Sir Charles A. Turner, together with a transcript of the minutes recorded by the Officiating Chief Justice, Mr. Justice Muttusami Aiyar, and Mr. Justice Brandt.

2. Mr. Justice Hutchins entertains a general impression against the proposed Bill, and is of opinion that much may be done at once by the Malabar Courts to secure to the tenants what they are legitimately entitled to by awarding to them the full value of their improvements.

(Signed) R. S. BENSON,
Acting Registrar, Appellate Side.

ENCLOSURE.

Malabar Tenancy Bill, Nos. I and II.

The Officiating Chief Justice.—In my judgment neither of these Bills should be introduced in the Council in the state they now are.

I do not think that the difficulties in the way of legislation on the subject have been clearly understood or duly valued by the committee. No doubt the committee's labors have been productive of much information, but it could not be expected that the first effort to alter and simplify the law on this most difficult subject of Malabar Land Tenures could be successful. The law on this subject is as complex and difficult of arrangement as was the real property law in England as to fines and recoveries before the Act for the abolition of fines and recoveries was passed, and that Act engaged the attention of some of the best lawyers in England for several years before it was passed. Sir Charles Turner has correctly pointed out the many difficulties, which each and every one requires serious consideration. It would not be desirable to propose either of the Bills in their present shape to the Legislative Council.

To effect so radical a change as either Bill proposes, the subject ought, in my opinion, after the objections, pointed out by the Chief Justice, are met, to be ventilated sufficiently that the public could form an opinion as to the effect of the proposed legislation. If the fact be (as suggested) that the Janmis have practically not been represented in the commission, it is probable that other objections which they can make will add to the difficulties in the way of passing the present Bills, or either of them.

I assume that the Government are satisfied that necessity exists for reforming or settling the law on the Malabar tenures.

Mr. Justice Muttusami Aiyar.—I have not had time to study critically the ancient history of Malabar in regard to the incidents of the kanom tenure as recognized in former times, and I am not therefore in a position to express an opinion on that matter.

I agree, however, with the learned Chief Justice (Sir Charles Turner) that there is considerable evidence to show that kanom tenures have been considered to be redeemable at all events from the commencement of the present century. I would refer to his minute on the subject which goes into the question at considerable length. I may add that old documents have now and then come up before me in regular and second appeals which treated the kanom as a redeemable tenure. Further, I feel a difficulty in accepting the view that the courts have recently changed the law on the subject from misconception. If such had been the case, the district munsifs, who

must be acquainted with the usage, and the kanomkars, whose rights have been interfered with, would have persistently drawn attention to it. But I find no trace of their having done so. The Janmis have not been heard. I also understand that in Travancore, where there was legislation similar to the one proposed, inquiry is being made as to whether it does not require to be modified. In these circumstances, I am inclined to think that it is safe to postpone legislation on this subject until the Janmis are heard and Government is satisfied that kanomkars had occupancy rights until recently, and that they have lost them owing to the erroneous action of civil courts. If there is an urgent political necessity for legislation on the lines indicated by the committee, I have nothing to say against it.

Mr. Justice Brandt.—It seems to me that until it is definitely determined not only that legislation on the subject of land tenures in Malabar is a matter of political necessity, and until it is further determined on what principles such legislation is to proceed, we may very well refrain from discussing the draft Bill based on the recommendations of the committee.

Government has now before it on the one side the voluminous and valuable report of the Commissioner, together with papers contributed by gentlemen specially qualified to express an opinion on the subject, who approve more or less fully the views and proposals of the committee; and on the other at least equally valuable papers from which it will be seen how much there is to be said against the propositions, inferences, and proposals of the Commissioner and of the Committee. The Janmis have not yet, however, had an opportunity of formally stating their case and criticising that of the other side.

What the eventual result may be is uncertain, but it is at least possible that even the main features of the committee's proposals may not commend themselves to the Government, and in that case the draft Bill, it may be assumed, either not be introduced into the Legislative Council at all, or be introduced in such a modified form that any present criticism of it would be waste of labor.

Assuming that it is resolved to legislate and to legislate on the lines suggested by the committee, the provisions of the draft Bill are, in my opinion, open to all the objections which are so forcibly stated in the fifth chapter of the note by the learned Chief Justice, which I have had the advantage of perusing and to which I have nothing to add.

(True Copies.)

(Signed) R. S. BENSON,
Acting Registrar, Appellate Side.

ORDER—dated 17th September 1885, No. 650, Political.

The Commission appointed by Government to consider and report on the land tenures of Malabar have framed the following Bills—

- (1) The "Malabar Stay of Execution Bill."
- (2) The "Malabar Tenancy Bill."
- (3) The "Malabar Marriage Bill."
- (4) The "Places of Public Worship Bill."

2. In respect to Bills (1) and (2) the views of the Judges of the High Court are so divergent from those of the Commission that His Excellency the Governor in Council deems it inexpedient to proceed with the measures without further consideration of the many important questions raised by the High Court.

3. His Excellency in Council is accordingly pleased to appoint a committee composed of the gentlemen named on the margin, with the Hon. Mr. Master as President, those gentlemen who are not in the service being invited to join the committee.

Rajah Sir T. Madhava Rao, K.C.S.I.
The Hon. Mr. Hutchins.
W. Wilson, Esq., C.S.
The Advocate-General.
M.R.Ry. S. Subramaiya Aiyar Avargal.
H. T. Ross, Esq., C.S.
M.R.Ry. C. Sankara Nayar Avargal.
Secretary, A. G. Cardew, Esq., C.S.

4. The committee will be requested to review the whole matter in the light of the remarks of the Judges of the High Court, some of whom, it is observed, are of opinion that the Janmis have not had their interests or views fully considered. The committee will be requested to consider this point and to add to their number such Native gentlemen as, on due consideration, they may think would fairly represent the janmi interest.

5. It is observed that the bulk of Mr. Logan's report has been issued to the Malabar public in the vernacular. It would be possible now to have prepared a summary of the case as viewed from different points, and this might be translated and circulated.

6. The Government of India have been informed * that in present circumstances it is not thought desirable to proceed with the "Stay of Execution Bill," which had been sent up to the Legislative Council.

7. The draft of the "Places of Public Worship Bill" will be referred to the Advocate-General for remarks before being laid before the Legislative Council.

8. The "Malabar Marriage Bill" will be deferred for the present.

9. The views of the Board of Revenue, called for in G.O., No. 482, Political, dated 18th July 1885, will be submitted for consideration to the committee appointed in these proceedings.

(True Extract.)

(Signed) W. WILSON,
for Chief Secretary.

ENDORSEMENT—dated 17th September 1885, No. 651, Political.

Copy of the above forwarded to the Government of India, Legislative department, for information with reference to the correspondence ending with Madras Government telegram, dated 7th September 1885.

(Signed) W. WILSON,
for Chief Secretary.

To the Hon. Mr. Master.
 „ Rajah Sir T. Madhava Rao, K.C.S.I.
 „ the Hon. Mr. Hutchins.
 „ W. Wilson, Esq., C.S.
 „ the Advocate-General, with draft Bill.
 „ M.R.Ry. S. Subramaiya Aiyar Avargal.
 „ H. T. Röss, Esq., C.S.
 „ M.R.Ry. Sankara Nayar Avargal.
 „ the Collector of Malabar.
 „ the Board of Revenue.
 „ the Revenue department.
 „ the Honorable the Judges of the High Court, with C.L.
 „ A. G. Cardew, Esq., C.S., with copy of note by the
 Hon. Mr. Master, dated 14th September 1885.

