

REPORT WITH APPENDICES

OF THE

MALABAR LAND TENURES COMMITTEE,

APPOINTED BY

G.O., 17TH SEPTEMBER 1885, No. 650, POLITICAL.

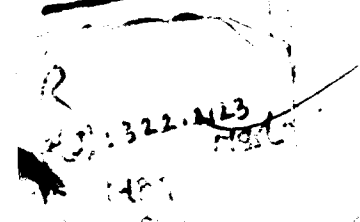


MADRAS:

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1887.

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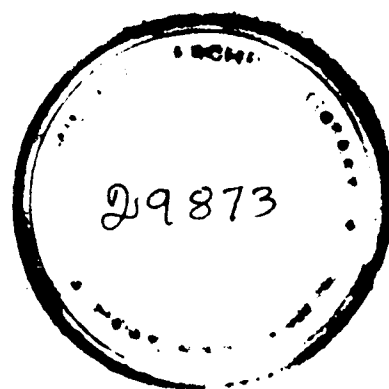
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To

THE CHIEF SECRETARY TO THE GOVERNMENT
OF MADRAS.

SIR,

We, the members of the committee appointed by G.O., Political Department, No. 650, dated 17th September 1885, have the honor to submit our Report, in continuation of the letters of the Hon'ble Mr. Master, our President, dated the 9th February and 16th March 1886, on the questions the consideration of which was referred to us by the above-mentioned Proceedings of Government.

2. Several changes have occurred in the constitution of the committee, some carried out under the orders of Government, and others under the power conferred on us to add to our number. As regards the first class of changes, Mr. Justice Muthuswami Aiyar, C.I.E., was appointed to take the place of Mr. Justice Hutchins, who proceeded on leave to Europe and was able only to record a short memorandum of his views; Mr. C. Ramachandra Aiyar, Mr. H. J. Stokes, C.S., and Mr. K. C. Manavedan Rájá were appointed to be members of the committee; and, finally, Mr. W. Wilson, who was present only at the first two meetings of the committee, left the Presidency before the conclusions arrived at were finally determined, and is not in any way responsible for the present report.

3. Our first duty, after considering the order of Government appointing us, was to take measures to ensure the full representation of all interests connected with the land in Malabar, by exercise of the power given us to add to our numbers. At a preliminary meeting, held on the 5th December 1885, it was decided to invite the following gentlemen to join the committee, as representatives of the landlord interest, namely, M.R.Ry. Kannambra Raman Unni Nair, representing the Calicut or central division of Malabar; the Manavikraman Elia Tirumalpád of Nilambur, representing the southern division of Malabar; and the Warnakota Krishnan Nambutiripád, representing the northern division. Each of these gentlemen joined the committee, but at a later stage the last mentioned, by his own desire, resigned in favour of Mr. T. V. Anantan Nair. At the first meeting of the committee, it was further resolved that an endeavour should be made to induce some representative of the cultivating class to join the committee, and in consequence of this resolution, after inquiry in Malabar, an invitation was sent to Mr. T. Gopalan Nair, who accordingly became a member. The committee received from time to time representations both from landlords and tenants in Malabar, each urging that their respective interests were under-represented; but we considered that our number, which reached 15, could not be conveniently increased, and we take this opportunity of recording our opinion that the representation of the several interests and classes in Malabar was as complete and as evenly divided as possible.

4. The committee held its first meeting (exclusive of the preliminary meeting) on the 16th January 1886, and its last Meetings. on the 3rd April. Between these two

dates, eight meetings were held, and the average number of members present at a meeting was eleven.

5. We attentively considered the character of the reference made to us in paragraph 4 of the Proceedings of Government, Public Department, No. 650, dated the 17th September 1885. The immediate cause of our appointment we understand to have been the strong dissent expressed by the Honorable the Judges of the High Court from the proposals for legislation made by the Commission presided over by Rájá Sir T. Madhava Ráo, K.C.S.I. We, therefore, examined the large amount of writing, which has grown up on the subject of Malabar land

tenures, embodying the results of the labours of Mr. Logan, of the Commission of 1884, and of Sir Charles Turner. But we did not think it either necessary or desirable to take up the inquiry exactly where our predecessors left off. The Proceedings of Government had referred to us the consideration "of the whole matter," and, when we had satisfied ourselves, as above stated, that sufficient provision had been made for the representation of the landlord interest among our number, we resolved to leave specific previous proposals for legislation unnoticed, and to discuss the question of the relations of tenant and landlord in Malabar in its general position, formulating our own proposals later.

6. The discussions of the committee then divided themselves into two main divisions: first, regarding the question of compensation payable for tenants' improvements on eviction, which lay apart and could be considered separately; secondly, regarding the more general question of creating on behalf of the tenant an occupancy right in the soil, or otherwise imposing a direct check on the power of eviction. The committee at its first meeting resolved to proceed at once and in advance with the question of compensation for improvements. As we shall have occasion to repeat later, some of our number, and other authorities outside the committee, believed that if the question of compensation for improvements was adequately dealt with, no further interference on the part of Government would be required. We were occupied with the discussion of this question at our first three and fifth meetings. Our fourth and last three meetings were devoted to a consideration of the more general question of occupancy rights. The present report will accordingly follow the same order of discussion.

7. As was stated in our President's letter of the 9th of February 1886, the committee were practically unanimous in considering that a resort to legislation was necessary, in order to secure to tenants, on eviction, the full value of their improvements. This right to compensation for improvements has been recognised by immemorial custom in Malabar, but has come to be associated with certain fixed schedules of rates for the ascertainment of the value of improvements, laid down at uncertain periods early in the century, and now both antiquated and inflexible. The Courts have themselves regretted their inability to separate the custom from the customary rates, and Mr. Logan, Sir Madhava Rao's Commission, and Sir Charles Turner agreed in recommending that something should be done to restore to the right its original significance, it being admitted that only by legislation can a change be effected. The committee, therefore, at once resolved on the preparation of a Bill. This was ultimately submitted to Government with the letter of the 9th February above referred to; and we consider it desirable to notice briefly the following points which were under discussion in its preparation.

8. In the first place, the committee resolved that the Bill should include all tenants. It was at first the opinion of some members that the proper object of the proposed legislation was to declare and not to amend the law,—to give full effect to the intention of existing customary rights, and not to extend those rights. But it was pointed out that the class of tenants, to whom at present the law has not definitely declared a right of compensation to accrue, are the verum-pattamdars or tenants on simple lease,—the very class who most need protection, because they are least able to protect themselves; and it was also suggested that the exclusion of tenants on simple lease from the benefits of the Bill might have the effect of inclining the landlords in Malabar to refuse to let their lands on any tenure other than verum-pattam, thus at once defeating the object of the present Bill and diminishing instead of increasing the stability of the tenants' position. The members who represented the landlord interest on the committee moreover declared that they had no objection to the right to claim compensation being extended, and it was accordingly resolved that this right should be declared to accrue to every tenant in Malabar of whatever class.

9. A second question of importance was that of allowing or disallowing the right of landlord and tenant to contract themselves out of the provisions of the

Bill. The committee was decidedly of opinion that this power should be disallowed. The most important effect which the committee ventures to hope may proceed from the proposed legislation is the imposition of a check on the arbitrary exercise of the power of eviction. It is believed that an improving tenant will find his best safeguard against eviction in his own improvements, when his landlord, to evict him, will have to pay in full what has been laid out on the land. To allow landlord and tenant at the commencement of a lease, to contract themselves altogether out of the Act would have the effect of destroying that check, which, the committee hope, will prove so useful. It was, however, determined that agreements made in restraint of improvements in existing contracts should be respected, and the committee therefore resolved to declare non-effectual only those contracts forbidding the right to improve which bore date later than the 31st December 1885.

10. This leads to the consideration of a third point, whether the provisions of the Bill should apply to existing contracts. It was unanimously determined that claims for compensation arising after the coming into force of the Bill, should be dealt with under the Bill, and it is provided in section 1 that the Bill shall come into force immediately upon the passing thereof. The committee here would take the opportunity of repeating their opinion that no time should be lost in passing the Bill into law.

11. The task of working out in detail the application of the foregoing principles was one of considerable difficulty, to which the committee has devoted much time and attention. The intention of each section and the obligations incurred to the Bengal Tenancy Act, VIII of 1885, of the Imperial Council, have been already traced in detail in the Statement of Objects and Reasons. We do not, therefore, propose to go over the same ground again, the more especially as the Bill has, since it was submitted by us to Government, undergone considerable alterations in arrangement and expression at the hands of the Advocate-General, and has been referred, we understand, to the consideration of a Select Committee of the Legislative Council. We believe, however, that, if passed, this measure will remove the most prominent grievance of the tenant class in Malabar, and that it is calculated

* Since this was drafted this Bill has been passed to exercise a beneficial effect on the relations of all agrarian classes in that district.*
into law as Madras Act No. 1 of 1887.

12. We pass on, therefore, to the second main division of our report referred to in paragraph 5 *supra*. On this subject there existed a good deal of difference of opinion among the several members of the committee, some considering that the Bill for Compensation for Improvements would prove a sufficient protection to the tenants and wishing to stop short thereat, others wishing to recommend the adoption of much stronger measures, including the creation of an occupancy right. We have not been able to agree entirely with the views of either section, and the measure which we have resolved to submit for the consideration of Government represents a point of view midway between two extremes. It seems desirable, however, that Government should be made acquainted not only with the results at which we arrived, but also with the steps by which those results were arrived at, and we, therefore, propose to sketch briefly each of the schemes which were considered by us.

13. The members who were opposed to any further legislative interference beyond the Compensation for Improvements Bill were a small minority † of the committee, and the general proposition, that that Bill was not a sufficient check against eviction and did not therefore render further legislation inexpedient, was affirmed by a substantial majority. At our first meeting certain members had put forward the theory, which was practically the basis of the proposals for legislation made by the Commission presided over by Rájá Sir T. Madhava Rao, K.C.S.I., in 1884, that the Sadr Court in 1852, by the ruling that the kánam was a redeemable mortgage for twelve years, had unintentionally revolutionarised the customary law

of Malabar, and that it was therefore equitable to restore the tenant to the position from which that ruling had ousted him. This view was embodied in a draft Bill, which is forwarded as Appendix A to this report, but the consideration of which was not pressed, as the Bill, to be below noticed, included in Appendix B, took its place. After a full examination of the arguments in support of the view, the committee by a majority came to the conclusion that it was untenable, and that there was evidence to show that so long as a century ago the kánam had been a renewable, and consequently, a terminable tenure; while it was admitted by the exponents of the theory that it was impossible to produce proof that the tenant was at that period legally entitled to a fixed share of the produce.

14. But a section of the committee were of opinion, that even after the abandonment of a claim to an historical right, there was still ground sufficient to give the tenant, or certain classes of tenants, some stability of tenure. It was proposed, by conferring an occupancy right on tenants and kánamkars of long standing to translate into legal obligation what was already the practice of good landlords in Malabar. With this object in view, the draft Bill which is included as Appendix B to this report, was framed. It provided (1) that the renewal fee payable by a tenant to a landlord should be fixed either by express agreement between them or in accordance with the custom of the country, provided that it should never exceed twenty per cent. of the kánam amount or one year's net produce less the land-revenue; (2) that the rent should be fixed by express agreement between the parties or by a reference to a Court to decide what is the customary rent; (3) that every tenant who has held the same land for sixty years, or, who, having held the same land for thirty years, is presumed, in the absence of proof to the contrary, to have held for sixty years, should, subject to payment of rent and renewal fees, as above, to a proper use of the land, and to abstention from denial of his landlord's title, have an indefeasible right to renewal of his tenure at the end of his contract or every twelve years. Against this Bill, it was urged that no reason, political necessity or otherwise, had been shown for so large a measure of expropriation of the landlords, and on the Bill being put to the vote, the committee was equally divided, the President not voting. It was, therefore, decided that the Bill was not carried.

15. The second scheme which was put before the committee was that which is embodied in Appendix C to this report. The authors of this proposal, while desirous of adopting some measure which might bring under control the practice of eviction, thought that this could best be done, not by the creation of an occupancy right, but by giving to the Courts an option to refuse to grant a decree for eviction, if they should be of opinion that it would be harsh and unfair to evict. The very existence of such a discretionary power in the Courts, it was said, would deprive the landlord of his threat of uncontrolled eviction, and would prevent disputes between landlord and tenant being brought into Court. Thus the freedom given to the Courts would be but rarely exercised. A majority of the committee, however, considered it impossible to leave such wide latitude of judgment to the judicial tribunals. The Bill imposed on every Munsif the duty of declaring what eviction was capricious, and what was not, although no attempt was made to provide the Courts with any test of how capricious eviction might be defined. The committee accordingly rejected the Bill.

16. There remains the fourth Bill, forming with Statement of Objects and Reasons, Appendix D to this report, which occupies an intermediate position, not going the length of creating an occupancy right, nor leaving a general discretion to refuse ejection to the Courts, but containing such provisions regarding notice prior to eviction, payment of rent into Court in avoidance of forfeiture, and grant of small allotments of land for cultivation as seemed to a majority of the committee to be most likely to restrain the indiscriminate exercise of eviction and to make land available for small tenancies, with the least amount of disturbance of existing rights. This Bill, the details of which are sufficiently explained in the Statement of Objects and Reasons, we have adopted, and forward it herewith to Government with the recommendation that it may be proceeded with in the Legislative Department, at an early date. It was further resolved to make the following report to

Government, namely, that after a consideration of the question of Malabar tenancy in all its bearings, and after a discussion of the various proposed measures for dealing with it, as detailed above, the committee would recommend that no further legislation should be undertaken beyond the Bill for Compensation for Tenants' Improve-

ments and that which is now forwarded.*

* Forming Appendix D. We do not consider that a case has been made out for more extensive interference. We have been unable to accept the proposals of the Commission of 1884, even though presented in a modified form. Still less the alternative proposals of Mr. Logan. It follows, therefore, that the result of our discussions is largely negative. If it should be said, however, that the result of our labours is of small importance, we should emphatically dissent. If we have succeeded in setting at rest the questions which have been in debate since Mr. Logan's first appointment as Special Commissioner in 1881, and have silenced the numerous disturbing plans and panaceas of reform which have been propounded in the last five years, our work will have been far from useless. The committee believe the best solution of agrarian questions to be that which involves least interference, and is of opinion that should Government declare its determination to decline further inquiries and its resolution not to go beyond the legislation now recommended, more will be done to quiet the public mind in Malabar than would be accomplished by any number of Acts.

17. In conclusion, it only remains for us to draw attention to the accompanying

letter,† dated 9th April 1886, from the

Elia Tirumalpád of Nilambur, in which he suggests that the committee's proceedings should be translated into Malayalam, and made available to the public. To this suggestion we have no opposition to offer. Complete copies of our proceedings are forwarded for the information of Government, and form Appendix F to this report, and in this Appendix we have included, as enclosures to the proceedings, to which they respectively belong, the several Minutes and Notes which were recorded from time to time by members of the committee. These Minutes will show the full consideration which each point of view received. In order that all the papers which were before us may be

available to Government, we also forward,‡ a volume containing a reprint of

previous orders and correspondence regarding Malabar; a reprint of a note recorded by the late Sir William Robinson, K.C.S.I., in 1884; Proceedings of the Board of Revenue, dated 21st October and 10th December 1885, Nos. 2939 and 3344; and copy of a précis of certain papers on Malabar land law comprising the reports of Mr. Logan, of the Commission of 1884, and the Minute of Sir Charles Turner.

We have the honor to be,

Sir,

Your most obedient Servants.

C. G. MASTER,
T. MADHAVA RAO,
T. MUTHUSWAMI AIYER,
H. H. SHEPHARD,
S. SUBRAMANYA AIYAR,
H. T. ROSS,
C. RAMACHANDRA AIYER,
C. SANKARAN NAIR,
T. GOPALAN NAIR,
T. V. ANANTAN NAIR,
H. J. STOKES,
K. C. MANAVEDAN RAJA,
K. RAMAN UNNI ELIA NAIR,
T. MANAVIKRAMAN, ELIA TIRU-
MALPAD OF NILAMBUR.

MADRAS,
22nd February 1887.

Members of the Malabar
Land Tenures Committee.

MINUTE OF DISSENT BY M.R.Ry. T. GOPALAN NAIR.

Though the proceedings of the meetings of the committee are pretty accurately described in the report, I feel myself unable to adopt unconditionally the draft report sent to me for approval. I shall briefly state my objections to the said report.

2. First, as stated towards the close of paragraph 3, I certainly cannot agree that the representation of the several interests and classes in Malabar was as complete and as evenly divided as possible. It is stated in the same paragraph that three members were invited respectively to represent the landlords' interest of the three great geographical divisions of Malabar, while there was only a single member to represent the cultivating classes, that is myself. I also stated at the meetings that I was completely ignorant of the wants and wishes of the tenant-class in North Malabar. I should think therefore that the representation of several classes and interest was not fair.

3. Secondly, with respect to legislation in restraint of eviction, it is stated that it was admitted that it was impossible to produce proof that the tenant was legally entitled to a fixed share of the produce. I do not understand who made the admission. I, for one, though I held the view referred to and do still hold it, never made any such admission, nor do I remember that any other members holding the same views as myself even made any such admission.

4. Thirdly, it being premised in paragraph 13 that the Compensation for Improvements Bill did not render further legislation inexpedient, I cannot agree with the recommendation contained in paragraph 16 of the report. I should think that the Bill (Appendix D) standing by itself would tend only further to complicate matters than at present, and thus to increase the strain on the relationship of landlord and tenant in Malabar. Further, the provisions contained in sections 1 and 2 of the Bill is the law even at present, and this piece of legislation is simply superfluous.

5. Then with respect to the recommendation that no further attempt be made at investigation or legislation, I should say that I most emphatically protest against it. No doubt the committee could not agree upon any one decided plan of legislation to check capricious evictions *which it was affirmed by a substantial majority to be necessary*, but it does not follow therefrom that nothing could be and ought to be done on this question hereafter. I concede that if the committee has set at rest the much-debated question, the work done by it will have been far from useless; but I think the major premise is faulty, for I do not think that the committee has in any shape or form set the question at rest. The committee have only decided that they are unable to suggest any practical remedy for the evils *admitted by them* to exist. I do not agree with the statement in the report that an announcement of the determination of Government not to do any thing further will tend in *any way* to quiet the public mind in Malabar. It *may*, on the other hand, have an effect quite the contrary.

T. GOPALAN NAIR.

MINUTE OF DISSENT BY M.R.Ry. C. SANKARAN NAIR.

After a very careful consideration, I still adhere to the view adopted by the Committee appointed by the G.O., dated 29th January 1884, No. 53 (see paragraphs 7 to 23 of their report).

The Committee are of opinion that the Improvement Bill is not a sufficient check upon eviction (see paragraph 13), and a Bill (Appendix D), containing provisions as seemed to be most likely to restrain the indiscriminate exercise of eviction, has been adopted.

This Bill, in my opinion, clearly does not go far enough, and the Committee too are of that opinion, for at a meeting held on the 27th March 1886, Mr. Justice Muthusawmy Iyer moved—

“That it is just and equitable to protect ancient tenants and kanomdars against capricious eviction so long as they are ready and willing to fulfil their customary obligations to their jenmies.”

Mr. Shephard seconded this resolution, and it was passed by a large majority, only one member voting against it.

This Bill (Appendix D) clearly does not protect the class of tenants who, according to the Committee, require protection. The first Committee, of course, were unanimous as to the necessity of legislation in favor of these old tenants.

Until, therefore, this object is carried out, it cannot be said that “we have succeeded in setting at rest the questions which have been in debate.”

C. SANKARAN NAIR.

MINUTE OF DISSENT BY MR. MANAVEDAN RAJA.

With reference to the report, I have only to state that, in my opinion, Mr. Shephard's Bill is quite uncalled for. The evil for which this is intended to be a remedy does not exist in reality.

K. C. MANAVEDAN RAJA.

MINUTE OF DISSENT BY KANNAMBRA RAMAN UNNI ELIA NAIR.

As regards the subject-matter of paragraphs 9 and 10 of the draft report, I am of opinion that the Bill is over-prohibitive, as the provisions apparently over-ride existing contracts made prior to December 1885. It is absolutely unnecessary and inadvisable to bring such contracts under the scope of the present Bill. Nor is it legislative wisdom to exclude the janmis from the benefits of the Contract Act.

In the face of paragraph 13, I cannot see the necessity for the second Bill (Appendix D to the draft report). As it is, the Compensation Bill gives tenants all safeguards against eviction, and it is needless to multiply legislation under the belief that it is a cure for agrarian discontent, which in reality does not exist. I would strongly urge the necessity for non-interference as set forth in the concluding part of paragraph 16, leave matters where they are with the Compensation Bill, and observe the effects of that law upon the country and people.

KANNAMBRA RAMAN UNNI ELIA NAIR.

MINUTE OF DISSENT BY T. MANAVIKRAMAN, ELIA TIRUMALPAD OF NILAMBUR.

With reference to the draft report, I beg to state that the Committee has not come to understand, that there does exist in reality any capricious eviction, from the papers brought to the notice of the Committee. The tenants' complaints which Mr. Logan received is rather one-sided and he has taken no evidence.

2. The landed properties of a jenmi are that can be used as his pocket-money. Therefore the interference of the Legislature in his enjoying them as he likes is quite unreasonable.

3. The object of receiving compensation for their labors in the soil by the tenants has been achieved by the “Improvements Bill.”

4. With regard to waste lands, Mr. Logan, in paragraphs 438—454 of his report, has remarked superfluously. Because, nobody complained to him anything about them, and no papers have been received by the two Committees to the same effect. Moreover, not a single member has moved any proposal regarding waste lands in any of the meetings of the last Committee. While such is the case, what does the Committee recommend to make a law for it is quite unlawful.

5. Under these circumstances, the Bill forming Appendix D of the report cannot be recommended to be passed into an Act.

T. MANAVIKRAMAN,
Elia Tirumalpad of Nilambur.

APPENDIX A.

A DRAFT BILL FOR THE CHECK OF
EVICITION.

1. "Tenant" means a person who holds lands under another person and is, or but for a special contract would be, liable to pay rent for that land to that person.

A Kanomdar is a "tenant."

2. "Landlord" means a person immediately under whom a tenant holds.

3. "Rent," means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of land held by tenant.

4. A "customary tenant" means any tenant who has held the same land continuously for not less than fifteen years.

See page 67, Sir Charles Turner's minute, para. 11, and page 66, para. 9. See also section 10 of this draft.

5. No "customary tenant" shall be evicted except on the grounds—

(a) That he has used such land in a manner which renders it unfit for the purposes of the tenancy.

Section 28, cl. (a), B.T.A.

(b) That he has wilfully denied his landlord's title so as to prejudice the landlord's interest.

Section 8, Ma-labar Commission Bill.

(c) That he has persistently neglected or refused to pay rent or renewal fees, if any, due under section 6.

Section 8, M.C.B.

A person shall be deemed, for the purpose of this section, to have held any land if held by a person whose heir or assign he is, and whether he retains it himself or mortgages or sublets it.

Section 20, clause 3, B.T.A.

Land held by a joint family shall be deemed, for the purpose of this section, to have been held by each member of such joint family.

Section 20, clause 4, B.T.A.

6. Where, by the custom of the country, the customary tenant is liable to pay

Section 9, M.C.B.

the renewal fees, he shall be liable to pay such fees on the expiry of the term of the contract, if any, existing on the day on which this Act comes into force, and thence-

forward at the end of every twelve years; renewal fees shall in no case exceed the value of one year's net produce less the land revenue. On payment of such fees,

the customary tenant shall be entitled to a receipt specifying—

Section 10, M.C.B.

- (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.

7. If the landlord *bonâ fide* requires any

Section 11, M.C.B.

portion of a customary tenant's holding (not being the site of a permanent building) for the purpose of building a permanent dwellinghouse 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 tenant's occupation, it shall be lawful for him to resume the same, provided that he gives 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 thinks that the application is made in good faith and the purpose for which the land is required is reasonable, fix the price, and may for this purpose take the opinion of assessors. The price to be paid shall include the full market-value of the tenant's interest in the land to be resumed. 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.

8. The customary tenant's right in his holding shall be

Section 12, M.C.B.

heritable and transferable, but every transfer shall be in writing, and no instrument of transfer shall be valid unless the landlord has given his previous consent to, or has subsequently ratified, the transaction in writing.

"Transfer" includes sale, gift, mortgage, and lease.

9. The holding of a customary tenant

Section 14, M.C.B.

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 tenant's right is sold in execution of a decree, the landlord shall be entitled to be paid, out of the sale proceeds, any rent or renewal fee which may be due to him by the tenant.

10. A customary tenant shall pay rent for his holding at fair and equitable rates.
Section 24, B.T.A.

11. The rent for the time being payable by a customary tenant shall be presumed to be fair and equitable until the contrary is proved.
Section 27, B.T.A.

12. The landlord may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds:—

(a) That the productive powers of the land held by the tenant has been increased by improvements effected by, or at the expense of, the landlord during the currency of the present rent.
Section 30, clause (c), B.T.A.

(1) When an enhancement is claimed on the ground of a landlord's improvement, in determining the amount of enhancement, the Court shall have regard to—

- (a) the increase in the productive powers of the land caused, or likely to be caused, by the improvement;
- (b) the cost of the improvement;
- (c) the cost of the cultivation required for utilizing the improvement; and
- (d) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing, or ceasing to produce, the estimated effect.

(b) (Where, under the terms of the contract between the landlord and the tenant, the landlord is

liable to pay any Government demand) that the Government demand has been increased.

(c) That the land in use in the tenant's possession is in excess of the area for which rent, if any, has been previously paid by him.
Sec. 52, cl. (1), B.T.A.

(1) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area.

(2) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

13. Notwithstanding anything contained in the foregoing sections, the Court shall not in any case decree any enhancement which is, under the circumstances of the case, unfair or inequitable.
Section (35), B.T.A.

14. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the tenant, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

• 15. (1) Every customary tenant shall be entitled to a reduction of rent.

(2) (a) On the ground that the soil of the holding has, without the fault of the tenant, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) (When under the terms of the contract the tenant is liable to pay any Government demand) such demand has been increased.

16. This Act shall not apply to any lease (1) for a term certain, (2) with a stipulation for surrender entered into before 1881, (3) to landlords the aggregate extent of whose lands does not exceed 100 acres, (4) to lands held by Anandravans from Karanavans: provided that this does not prejudicially affect the rights, if any, under this Act of third parties.

APPENDIX B.

DRAFT BILL.

1. "Tenant" means a person who holds lands under another person and is, or but for a special contract would be, liable to pay rent for that land to that person.

A Kanomdar is a "tenant."

2. "Landlord" means a person immediately under whom a tenant holds.

3. "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of land held by tenant.

4. "A Customary Tenant" means any tenant who has held the same land continuously for sixty years or more, provided that any tenant who has held the same land for thirty years shall be presumed to have been in possession for sixty years or more until the contrary is shown.

A person shall be deemed, for the purpose of this section, to have held any land if held by a person whose heir or assign he is, and whether he retains it himself or mortgages or sublets it.

Land held by a joint family shall be deemed, for the purpose of this section, to have been held by each member of such joint family.

5. The customary tenant shall be entitled to obtain a renewal of his tenancy on the expiry of the term of contract, if any, existing on the day on which this Act comes into force, and thenceforward at the end of every twelve years. Where by the custom of the country the tenant is bound to pay any renewal fees, he shall pay the renewal fees before claiming such renewal.

6. The renewal fee shall be the fee fixed by the parties by express agreement between them, if any, or in accordance with the custom of the country;

Provided that the renewal fee shall in no case exceed 20 per cent. of the kanom amount, or in cases other than those of kanom, the renewal fee shall in no case exceed one year's net produce less the land revenue.

7. The rent shall be the amount fixed by the parties by express agreement

between them, or in the manner prescribed in the next paragraph, namely :—

That in the event of any dispute as to the amount of the customary rent, the landlord or tenant shall be at liberty to apply to have the amount fixed by a Court of Justice. In fixing such amount the court shall have regard to—

- (1) the letting value of the land ;
- (2) the rent payable by the tenant under the contract subsisting at the date of renewal.

Provided that where the land has been improved by the tenant, the letting value shall be the value of the land before it was so improved by the tenant and for which compensation has not been paid :

- (3) to the amount of renewal fee paid.

8. A customary tenant may be ejected by a landlord from his holding in execution of a decree for ejectment passed on the ground—

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of his tenancy ;
- (b) that he has renounced the character of tenant by setting up a title in a third person or by claiming title in himself ; or
- (c) that he has refused to pay the rent due to his landlord.

9. In a suit for ejectment against a customary tenant on the ground that the rent or renewal fee has not been paid, the decree shall specify the amount of rent, or renewal fees, the tenant is liable to pay for a renewal of the tenancy and shall not be executed if that amount and the cost of the suit are paid into court within fifteen days from the date of the decree, or when the court is closed on the fifteenth day, on the day upon which the court reopens.

APPENDIX C.

A Bill to bring under control the practice of eviction in Malabar so as to prevent an undue or capricious exercise of that power.

WHEREAS it is expedient to bring under control the practice of eviction in Malabar so as to prevent an undue or capricious exercise of that power ; It is hereby enacted as follows :—

1. The term “landlord” in this Act shall include trustees of religious and charitable institutions.

2. In any case in which a landlord seeks to evict a tenant, the court shall take into consideration all the circumstances of the case, and if it shall be of opinion that it would be unfair and harsh to give a decree for eviction, it may refuse to do so, notwithstanding any agreement to surrender entered into after the date on which this Act comes into force.

Illustration.—A sues to evict B who has been his tenant for many years, on the ground that C is ready to pay a higher rent ; it would be harsh and unfair to evict B unless it is proved that (a) he was offered the land at the enhanced rent and refused, and (b) that the enhancement is fair and equitable.

3. When the court refuses to evict, its decree shall be to the effect that whatever sums are due to the landlord by the tenant shall be paid into court within six months from the date of the decree, or in default of payment, that the tenant shall be evicted. If the sums due are paid, a new period of tenancy of the same length as the term which has expired and at a rate of rent and renewal fee, to be fixed by the court, shall be constituted by the decree.

4. Where the tenant is a kanomdar and the landlord has sued to redeem the kanom, the court may, on payment of the kanom by the landlord to the tenant, determine the rent or renewal fee payable for such further term by such tenant.

5. The rate of rent or renewal fee heretofore paid shall be presumed to be fair and equitable until the contrary is shown.

6. This Act shall not apply to leases, for a term certain; with a stipulation for surrender entered into before the year 1881; nor to simple tenancies which have not lasted for at least 12 years; nor to kanoms granted by karanavers to anandravers; nor to such kanoms as are merely mortgages.

7. Decrees under this Act shall be subject to appeal in the same way as other decrees.

APPENDIX D.

A Bill to control evictions and the monopoly of land in the district of Malabar.

NOTWITHSTANDING any custom or contract to the contrary, no tenant shall be ejected by his landlord from his holding except at the end of the agricultural year, and unless he shall previously have been called upon to quit the same by a notice complying with the following conditions:

- (a) The notice must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.
- (b) The notice must require the tenant to quit his holding at the end of the current agricultural year.
- (c) The notice must be served as hereinbefore provided at least six months before the end of the same year.

Provided that without notice any tenant may be ejected by his landlord from his holding in execution of a decree for ejectment passed on the ground—

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of his tenancy;
- (b) that he has renounced the character of tenant by setting up a title in a third person or by claiming title in himself; or
- (c) that he has refused to pay the rent or renewal fees due and payable to his landlord.

2. In a suit for ejectment for non-payment of rent or renewal fees, a decree shall specify the amount of rent or renewal fees due, and shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree or, when the Court is closed on the fifteenth day, on the day upon which the Court reopens.

3. (1) On any application being made to the Collector for the grant of waste land for cultivation, the Collector shall give notice thereof to all persons known or believed to be interested in the land in respect of which the application is made, and shall appoint a day on which the said persons may state their claims and objections, if any.

(2) If after hearing such statement the Collector shall be of opinion that the objections offered by persons found to be interested in the land are reasonable, he shall dismiss the application.

(3) If no objections are offered by any person found to be interested in the land, or if the Collector shall find that no reasonable objections are offered to the application, the Collector shall grant the application in whole or in part as he may think fit.

(4) In deciding upon the reasonableness of the objections offered by any person under this section, the Collector shall have regard to the following matters:—

(a) Personal or social inconvenience to any person interested in the land.

(b) The existence of valuable minerals, timber trees or firewood reserves on the land.

(c) Offer on the part of any person interested in the land to pay an annual assessment fixed by the Collector.

(5) If the Collector grants the application he shall cause the land intended to be comprised in the puttah to be permanently demarcated at the expense of the applicant, and shall grant him a permanent puttah for the same.

(6) No puttah for land exceeding 25 acres shall be granted under this section.

4. The holder of a puttah granted under this section shall be liable to pay land revenue to Government at such rate and from such time as the Governor in Council may prescribe, and he shall be liable to pay from the same date an equal amount by way of rent to the person found to be owner of the land comprised in the puttah, provided that such person shall not be entitled to such payment unless he shall, within 12 years from the day when otherwise the first payment would become due, call upon the holder of the puttah by notice in writing to make the same, and shall in no case be entitled to the payment of renewal fees.

5. No holder of a puttah granted under the last preceding section and, in the absence of an express contract to the contrary, no holder of a cowle or puttah for waste land granted by Government before the passing of this Act, being in possession of the land comprised in such puttah, shall be ejected from the same, otherwise than in execution of a decree for ejectment passed on one or other of the grounds mentioned in section 1 so far as the same is applicable, and the provisions of section 2 shall apply to any such decree.

6. In the absence of any express contract the holder of a cowle or puttah, granted by Government before the passing of this Act, shall be liable to pay by way of rent to the owner of the land comprised in the cowle or puttah an amount equal to that payable by him to Government by way of land revenue, provided that he shall, within 12 years from the date when otherwise the first payment would become due, call upon the holder by notice in writing to make the same.

DRAFT STATEMENT OF OBJECTS AND REASONS.

The object which the Committee has had in view, in the adoption of the provisions of this Bill, has been the check of capricious evictions and the control of the monopoly of land at present enjoyed by the landlords of Malabar. The majority of the Committee were of opinion that the legislative recognition of an occupancy right in the tenants of Malabar was not justified either by historical considerations or in view of any political necessity. And so the question arose by what means short of conferring an occupancy right that protection could be given to tenants which, as is generally admitted, their circumstances demand. It is hoped that this Bill, taken with the Compensation for Tenants' Improvements Bill, while involving a minimum of interference with the substantial rights of landlords, may, in some measure, achieve the desired object. The first section of the Bill, which is based on sections 154 and 155 of the Bengal Tenancy Act, 1885, provides that, except in cases where the tenant has refused to pay his rent or renewal fees, has denied his landlord's title, or has misused the lands he holds, no landlord shall eject any tenant except at the end of the agricultural year, and, then, after having given six months' notice in writing, duly served on the tenant, of his intention to eject. The object of this section is to protect tenants, specially those holding at yearly leases or at will, from being suddenly evicted when their crops are ripe. Complaints of the hardship arising from such evictions, carried out immediately or shortly before harvest, were made to Mr. Logan, when Special Commissioner in 1881, and it is believed that the provisions of this section will afford a protection against these grievances, and may have an indirect effect in checking the practice of eviction. The second section is based on sections 112 and 114 of the Transfer of Property Act, 1882. By it a relief is provided against forfeiture of tenancy for non-payment of rent or renewal fees, if the amount due is paid into court within fifteen days from the date of the decree. The remainder of the Bill, sections 3 to 6, arose out of a suggestion made by Sir Charles Turner in his Minute on Malabar Land Tenures, and similar provisions occur in the Bengal Regulation VII of 1892, section 8. In adopting them, the Committee has also had in view the proposals made by Mr. Logan in paras. 438—454 of his report. It has seemed to the Committee that the power at present enjoyed by landlords in Malabar of locking up and keeping out of cultivation all the waste land in their ownership should be curtailed. It is accordingly provided that, upon application being made to the Collector for waste land for cultivation, he shall, in the absence of reasonable objection, grant to the applicant a putta for land not exceeding 25 acres in extent, subject to the payment of a fixed revenue to Government, and of an equal sum as rent to the owner of the land. Finally, by the last section of the Bill, the holder of a putta granted by Government before the passing of this Act shall be liable to pay to the landlord as rent an amount equal to the Government assessment, if called on by the landlord to make such payment within twelve years from the date when the first payment would have become due.

APPENDIX E.

From M.R.Ry. MANAVIKRAMAN ELIA TIRUMALPAD of Nilambúr, to the Secretary, Malabar Land Tenure Committee, dated Triplicane, 9th April 1886.

The jenmies of Malabar request that the proceedings and notes of the present Malabar Land Tenure Committee be given to them translated in Malayalam.

2. The discussions of the committee not being of so very confidential a nature as Mr. Logan, who was the Special Commissioner of the Committee, took it to be, I am therefore of opinion that the proceedings, &c., of this committee should be given to jenmies translated at their own expense.

3. I need not state here that the jenmies, as well as the tenants of Malabar, are quite discontented, as the Government were of opinion, until the appointment of the present committee, that the papers of the said committee were strictly confidential according to the statement submitted by Mr. Logan. There was no reason why jenmies and tenants should not have been informed of these proceedings, &c., as this committee was solely intended for the benefit of the public by the Government.

APPENDIX F (a).

PROCEEDINGS OF THE COMMITTEE ON THE MALABAR LAND LAW.

Saturday, 16th January 1886.

PRESENT:

The Honorable the President.

Members.

Rája Sir Madhava Ráo, K.C.S.I.

Hon. Mr. Justice Muthuswami Aiyar, C.I.E.

Hon. Mr. Wilson.

Hon. Mr. H. H. Shephard.

Hon. Mr. S. Subrahmaniya Aiyar.

Mr. C. Sankara Nair.

Mr. K. C. Manavedan Rája.

Mr. H. J. Stokes.

The Elliah Tirumalpád of Nilambúr.

The Warnakota Krishnan Nambutripád.

Mr. H. T. Ross.

Mr. C. Ramachandra Aiyar.

Mr. Kannumbra Raman Unni Nair.

Mr. Cardew, *Secretary.*

Rája Sir Madhava Ráo opened the discussion by some preliminary observations, in which he insisted on the grounds which gave the tenant in Malabar a claim to exceptional treatment.

After some general discussion, Mr. S. Subrahmaniya Aiyar proposed the following question for the Committee's consideration:—

“Whether the ruling of the Sadr Court in 1852, that the kánam was a redeemable mortgage for 12 years, effected a modification of the customary law of Malabar; and whether the customary law of the country in respect of the relations of landlord and tenant was further affected by the ruling of the Sadr Court in that year.”

The Committee decided that Mr. Subrahmaniya Aiyar and Mr. C. Sankara Nair should be asked to lay before the Committee at its next or following meeting their views on this point in writing.

The Committee then proceeded to discuss the question of compensation for improvements. Mr. Justice Muthuswami Aiyar suggested two preliminary questions—

- (1) Whether sufficient urgency exists to justify piecemeal legislation regarding the rates of compensation for tenants' improvements.
- (2) Whether such legislation, if considered necessary, should apply to existing as well as to future contracts.

Mr. Shephard pointed out that the decision of the second question would assist the Committee in answering the first.

Mr. Justice Muthuswami Aiyar said that it was only just that the tenant should be paid the fair value of his improvements, but thought that this right was limited by the custom of the country which was to follow a scale of rates compiled early in the century and no longer adequate. The actual valuation of improvements was usually entrusted by the Courts to Commissioners, who, in arriving at the value of the particular items, followed the customary rates prevailing in the neighbourhood.

Mr. Sankara Nair drew attention to Mr. Justice Hutchins' recorded opinion to the same effect.

It was then decided that both the above questions should be answered in the affirmative, and a Sub-Committee composed of—

Rája Sir Madhava Ráo,
Hon. Mr. S. Subrahmaniya Aiyar,
Mr. C. Sankara Nair,
Mr. H. J. Stokes,
Mr. K. C. Manavedan Rája,

was appointed to draft a Bill, together with a letter to Government, on the following principle:—that in the absence of any special agreement to the contrary in every future eviction, the market value of the tenants' improvements shall be paid to the tenant.

On the motion of the President, it was decided that an endeavour should be made to induce some representative of the cultivating class to join the Committee.

The Committee then adjourned to Saturday the 23rd instant.

(True Extract.)

A. G. CARDEW,
Secretary.

ENCLOSURE TO APPENDIX F (a).

Note recorded by Mr. Justice HUTCHINS on the Malabar Land question.

I take this opportunity of communicating my views on the principal point which the Committee has to consider, as far as I have been able to form an opinion. My former letter, I see, is printed, though I have not had time to look at it. To the best of my recollection I expressed doubts if any violent interference with the freedom of contract was necessary, and suggested that the landlords and tenants might safely be left to adjust their own differences, if only fair compensation were required in case of eviction. At all events that is my present conviction.

2. That compensation must be paid for improvements is a recognized condition of all tenures in Malabar which go beyond mere tenancy-at-will, and herein, I think, is the real safeguard. The present difficulties may very probably have arisen in consequence of the value of land greatly increasing on the one hand, while on the other the Courts have adhered to some antiquated schedule of rates of compensation instead of giving those to which the tenant is really entitled. The true measure of the tenant's improvements seems to be the difference between the present market value of the land in its improved condition, and what would have been its present value if it had remained in its former condition. He seems entitled to this difference, less any deductions established by usage in particular localities.

3. The High Court has recognized the principle that the Courts should allow fair rates according to the existing state of things, and nothing can be more unfair, unreasonable, and absurd than to go by a stereotyped schedule, compiled early in the century, and give the same rate for every tree of a particular class, whether young, in full bearing, or beginning to decay. I have constantly impressed this view on every one connected with Malabar whom I have come across, for it seems to me that no landlord, who has to pay full compensation, will evict without very good reason, and that, even if the landlord can afford to act arbitrarily, the tenant will have nothing to complain of if he gets full compensation—he has known all along that he is subject to be turned out on those terms.

4. Another point I have constantly urged on Malayalis is the grand opening which exists for professional valuers and surveyors. No Court would entrust a commission to a mere clerk when a professional man of experience is available. If a reliable firm established itself in any taluk or munsifi, with a sufficient number of assistants, and the principals properly revised the work actually done in the first instance by their assistants, they would not only get all commissions from the Courts, but numerous cases, in which the only real dispute is the value of improvements, would be brought to them for amicable settlement, and much heart-burning and bitterness avoided.

5. I should like to have put these views before the Committee for discussion, but as it is I have no time even to draw up a formal memorandum. I can only dash off this letter and send it on for what it is worth.

MADRAS,
22nd November 1885.

P. P. HUTCHINS.

APPENDIX F (b).

PROCEEDINGS OF THE COMMITTEE ON THE MALABAR LAND LAW.

Saturday, 23rd January 1886.

PRESENT.

The Honorable the President.

Members.

Raja Sir Madhava Rao, K.C.S.I.	Mr. H. T. Ross.
Hon. Mr. Justice Muthuswami Aiyar, C.I.E.	The Elliah Krumalpád of Nilambúr.
Hon. Mr. Wilson.	The Warnakota Krishnan Nambutripad.
Hon. Mr. S. Subrahmaniya Aiyar.	Mr. C. Ramachandra Aiyar.
Mr. C. Sankara Nair.	Mr. K. C. Manavedan Raja.
Mr. H. J. Stokes.	Mr. Kannumbra Raman Unni Nair.

Mr. Cardew, *Secretary.*

The Secretary read the minutes of the last meeting.

The Committee then proceeded to deal with the draft Bill for Compensation for Tenants' Improvements prepared by the Sub-Committee.

Mr. Ramachandra Aiyar opposed section 4 of the Bill on the ground that the intention of the Committee—in directing the drafting of a Bill by the Sub-Committee—was to preserve the now existing relations between landlord and tenant pending the future disposal of the general question of land-tenure by the Committee and not to effect an alteration of the existing law. He proposed that section 4 should read:—

“All tenants and sub-tenants who hold land on kánam, kuli kánam, otti, or any superior tenure of the same nature, or on any tenure which, by the custom of the country, entitles them to receive compensation for improvements, are, when ejected from their holdings, entitled to be compensated for existing improvements made by them or their predecessors in interest, and for which compensation has not already been paid.”

After some discussion of the amendment,

Mr. Justice Muthuswami Aiyar said that he should take objection to section 8, on the same grounds as those on which Mr. Ramachandra Aiyar based his present amendment, namely, that under the existing law tenants on verompáttam or simple lease were not entitled to compensation, and that the draft Bill went too far.

Mr. Ramachandra Aiyar then agreed to withdraw his amendment to section 4 until section 8 had been dealt with.

He moved that section 8 be omitted from the Bill.

Mr. Subrahmaniya Aiyar pointed out that the doctrine of free contract applied to land had been abandoned by the English legislature, which had classified improvements into those which raised a claim to compensation whether executed with or without the landlord's consent; and those for which compensation could not be claimed unless the landlord had consented to their execution.

Mr. Ramachandra Aiyar then withdrew his first amendment to omit section 8, and moved instead to insert in line 5 of section 8, after the word “improvements,” the words, “except in the case of tenants on verompáttam or simple tenants.”

Mr. Justice Muthuswami Aiyar said he should second the amendment, because the present law gave no compensation for improvements to the verompáttam tenant, and he feared the effect of the present Bill might be to enable a tenant to improve his janmi out of the holding altogether. He therefore would preserve to the janmi the right to contract himself out of the operation of the Act.

Mr. H. J. Stokes strongly opposed the amendment on the following grounds :—

- (1) that it would exclude from the benefit of the Act the very classes of tenants which it was most desired to protect, namely, the small tenants at will, Moplas and others;
- (2) that it would be contrary to the principle on which the whole Act rests, namely, that every tenant is entitled to the value of his own improvements;
- (3) that it would induce all landlords to use simple leases only instead of giving their land on kánam;
- (4) that a tenant on simple lease is the one least able to protect himself;
- (5) that a tenant on simple lease is the one least able to prove custom.

Mr. Ross observed that Mr. Stokes' 3rd objection, namely, that landlords would in future use only simple lease, would be sufficiently met if the section invalidated only future contracts in restraint of improvements: he thought existing contracts forbidding improvements should not be interfered with: he accordingly moved to amend section 8, by omitting the words "whether" and "before or" in line 7.

The amendment was seconded by the Hon. Mr. Wilson.

Mr. H. J. Stokes and Mr. Sankara Nair declared themselves opposed to the amendment.

The amendment was put and carried by nine votes.

Mr. Manavedan Raja stated that he and the janmi representatives of Southern and Central Malabar did not object to the section as now amended, but that the Warnakota Nambutripad, representing North Malabar, did object.

Mr. Ramachandra Aiyar said that, as the majority of the janmi representatives did not object to section 8, he should not press his amendment.

The amendment to that section proposed by him and seconded by Mr. Justice Muthuswami Aiyar was accordingly withdrawn, and the Committee resolved that section 8, as amended, should stand part of the Bill.

Hon. Mr. Subrahmaniya Aiyar moved that, in section 3, the words "shall include" be omitted, and that the section run :—

"Until the contrary is shown, the following shall be presumed to be 'improvements within the meaning of this Act.'"

He drew attention to clause (2) of section 76 of the Bengal Tenancy Act which was so worded, and said that it would meet the case of a work, which though classed as an improvement, might, under special circumstances, actually damage the holding.

The amendment was agreed to *nemine contradicente*.

Hon. Mr. Subrahmaniya Aiyar then proposed that the provisions of the Bengal Tenancy Act, section 78, clause (b), should be adopted.

Hon. Mr. Wilson thought that a dual control should not be established, and proposed that the words "the Court" be substituted for "the Collector."

Mr. Stokes and Mr. Ross thought the introduction of the provision unnecessary, and this being the general opinion of the Committee, Mr. Subrahmaniya Aiyar withdrew the suggestion.

Mr. Ross proposed that the word "tenant" be defined.

Mr. Justice Muthuswami Aiyar thought it was unnecessary, and the proposition was therefore abandoned.

Mr. Ross then proposed that in section 3 (e) the words "grown or allowed to spring up spontaneously" be omitted. He referred to Sir Charles Turner's opinion that compensation for spontaneous growth should not be paid at the same rates as for trees and plants which the tenant had himself planted.

Mr. Stokes opposed the amendment, and said its effect would be to drive the tenant to cut down every tree of spontaneous growth in order to secure its value before he was evicted.

Mr. Sankara Nair said that the tenant had allowed the spontaneous growth to remain on his land and had fenced it, and should therefore be compensated.

Mr. Manavedan Raja seconded the amendment.

The amendment was put and carried by eight votes.

Hon. Mr. Wilson moved that, at the beginning of section 5, the following words should be inserted :—

"In all cases of dispute as to the value of improvements."

The amendment was agreed to *nemine contradicente*.

Mr. Ross moved that section 4 should read :—

"All tenants and sub-tenants who may be ejected from their holdings shall be entitled," &c.

The amendment was agreed to *nemine contradicente*.

Hon. Mr. Wilson moved that the preamble should read :—

"Whereas it is expedient to regulate the mode by which compensation for tenants' improvements shall be given."

Mr. Ross suggested that the words should run :—

"Whereas it is expedient to secure to the tenants in the Malabar district the full market value of their improvements."

The latter form was then adopted.

The President moved that the following words be added to clause (i) :—

"It shall be applicable to the Malabar district and shall come into force at once."

The proposal was agreed to *nemine contradicente*.

Mr. Stokes then read a communication from Mr. Shephard, in which he proposed to read "the Collector," instead of "the Governor in Council" in line 2 of clause 2, section 7.

Mr. Ross moved that clause 2 of section 7 be omitted.

Mr. Justice Muthuswami Aiyar seconded the amendment, and said he was apprehensive, if fixed schedules of rates were laid down, that the Courts might find themselves bound to follow the schedules, although evidence was forthcoming that the rates of compensation fixed in the schedules were excessive.

The amendment was put and lost, three only voting for it.

The Hon. Mr. Wilson then moved that section 7 should run as follows :—

"In the case of fruit-trees and plants in bearing, the Governor in Council may, in communication with the High Court, from time to time but never at intervals greater than five years, order schedules of values to be prepared and rates of compensation to be fixed for the whole or any part of the district, which rates shall, until altered, be binding on the Civil Courts."

Mr. Raman Unni Nair moved that "ten years" be substituted for "five years" in the above amendment.

This was agreed to and the amendment, thus altered, was then adopted by the Committee.

The Hon. Mr. Wilson next proposed in section 6, line 4, to read "market value" instead of "estimated value."

The amendment was agreed to *nemine contradicente*.

The Hon. Mr. Wilson said that section 9, as at present worded, in effect repealed all the previous provisions of the Act by allowing the customary rates of compensation to be still adhered to in the cases of all persons "who may be entitled by law or custom to claim compensation for any improvements."

The Hon. Mr. Subrahmaniya Aiyar then moved that, at the end of section 9, the following words be added :—

"Other than those dealt with by this Act."

The amendment was agreed to *nemine contradicente*.

The President then proposed that the Sub-Committee be requested to prepare a Statement of Objects and Reasons, which might be printed and circulated before the next meeting.

The Committee adjourned to Saturday the 6th of February.

(True Extract.)

A. G. CARDEW,
Secretary.

APPENDIX F (c).

PROCEEDINGS OF THE COMMITTEE ON THE MALABAR LAND LAW.

Saturday, 6th February 1886.

PRESENT :

The Honorable the President.

Members.

Hon. Mr. Justice Muthuswami Aiyar, C.I.E.	Mr. H. T. Ross.
Hon. Mr. H. H. Shephard.	Mr. C. Sankara Nair.
Hon. Mr. S. Subrahmaniya Aiyar.	Mr. K. C. Manavedan Rája.
Mr. C. Ramachandra Aiyar.	The Warnakota Krishnan Nambutripad.
Mr. H. J. Stokes.	

Mr. Cardew, Secretary.

The minutes of the last meeting were approved.

Mr. Stokes read a note from Rája Sir T. Madhava Ráo, suggesting certain alterations in the draft Bill for compensation for Tenants' Improvements; and Mr. Stokes then moved, on behalf of Rája Sir Madhava Rao, that the words, "1st January 1886," be substituted for the words "this Act comes into force" in section 8.

The amendment was seconded by Mr. Sankara Nair, and opposed by Mr. Ross.

On a division, the amendment was carried.

Mr. Stokes then moved that the following proviso be added to section 8 :—

"Provided that in any case in which a contract not to make improvements, entered into before the 1st January 1886, is established, any right which the tenant may have according to custom to remove his improvements, shall not be affected."

Mr. Ross said that there was nothing in the draft Bill to interfere with this right, and thought the proposed proviso was unnecessary.

This being the general sense of the Committee, the amendment was dropped.

The Hon. Mr. Subrahmaniya Aiyar said that the Act throughout, and section 8 in particular, assumed that every tenant has a right to make improvements; but this, though assumed, was nowhere expressly laid down in the Act: and he thought it should be inserted.

The Committee considered that this right was well understood to exist in Malabar, and that the insertion of a clause to declare it was therefore unnecessary.

Mr. Ross said that in the preamble to the Bill the words "full market value" were used, whereas section 7 contemplated a departure from the market value: he therefore proposed to substitute the words "adequate value" for "full market value" in the preamble.

Mr. Ramachandra Aiyar seconded the amendment.

Mr. Stokes said he was opposed to the proposed change, as he thought the words "market value" gave a more definite standard.

The Committee then decided to strike out the word "full" in the preamble.

The Committee then proceeded to consider the draft Statement of Objects and Reasons which was read by the Secretary.

In paragraph 3, line 2, Mr. Justice Muthuswami Aiyar took exception to the sentence, "there is no prospect of the desired adjustment of rates taking place through the action of the courts;" and the following sentence was substituted, "the desired adjustment of rates cannot be secured otherwise than by legislative action."

In paragraph 8, line 5, the words "which are to last for at least ten years," were substituted for the words "which are not to last for more than ten years," a corresponding alteration being made in the draft Bill (*vide infra*).

In paragraph 10, verbal alterations in the first sentence were introduced.

In the last paragraph, last line, the words "not be recognised" were substituted for "be ignored."

The Committee then further considered the draft Bill.

The Hon. Mr. Shephard moved to amend section 7, clause (2), so that it should read :—

"In the case of fruit trees and plants in bearing, the Governor in Council may, in communication with the High Court, order schedules of values to be prepared and rates of compensation to be fixed for the whole or any part of the district, and may cancel or alter the same from time to time, provided that no alteration or cancelment shall be made at intervals shorter than ten years. The rates, so fixed, shall be binding on the Civil Courts."

After some discussion, this amendment was adopted.

The Hon. Mr. Shephard proposed to add to section 6 the following words, "and notwithstanding any custom to the contrary."

Mr. Ross seconded the amendment.

Mr. Manavedan Rája said he was opposed to the amendment.

The amendment was carried.

The Committee then agreed to the draft Bill and the Statement of Objects and Reasons, and it was proposed by Mr. Ross, seconded by Mr. Justice Muthuswami Aiyar, and carried *unanimously*, that the Bill and Statement be forwarded to Government without delay.

A draft letter, forwarding the above to Government, was then read, but Mr. Sankara Nair objected to the words "it is possible that by its effects the necessity for further legislative action may be obviated;" the words were struck out, and the draft letter agreed to, as amended.

The note recorded by Rája Sir Madhava Ráo, on the subject of the exceptional conditions of landed property in Malabar, was then considered, and some remarks recorded thereon by the Hon. Mr. Wilson were read.

The Committee then adjourned to Saturday, the 13th instant.

(True Extract.)

A. G. CARDEW,
Secretary.

ENCLOSURE TO APPENDIX F (c).

NOTE by Rajah Sir T. MADAVA ROW, being a brief statement of the exceptional circumstances of the Malabar district, demanding exceptional treatment.

1. Almost all the land of Malabar, whether forest or waste, agricultural or residential, is claimed by the janmis as their absolute property.
2. It follows that all the land must be got and held from the janmis only, and on terms of their own.
3. Even the smallest parcel of land for a *house* or *cottage* must be so got and held.
4. In short, it is an extraordinary *monopoly* of land by the janmis.
5. The janmis form only a small fraction of the general population of the district.
6. Small in number, and homogeneous as regards ideas and traditions, the janmis, as a class, are close monopolists of land.
7. There is little or no competition among them in the granting of land to others.
8. The janmi is not himself a *cultivator*. He must get his land cultivated by others.
9. Nor is he a *capitalist* benefiting the land.

10. While he monopolises the land, he fulfils *no useful duty* towards it.
11. He simply *draws rent from the land*, and this rent he spends in his own peculiar way which seldom benefits the cultivator.
12. All the land of the fertile district of Malabar has thus become *tied up* in the hands of such a class.
13. Again, the *natural* and *economic* processes which tend to *disintegrate* or *relax* a land monopoly and to bring about a *distribution* or *diffusion* of landed property among the rest of the population, have become extraordinarily inoperative in the district of Malabar.
14. *Selling* land is one of those natural and economic processes which make it available to others. But the janmi has a strong traditional aversion to sell land. It is with him a point of honor not to sell land—not even *waste* or *jungle* land.
15. If ever, rarely, the janmi is compelled to sell land, he will sell it to no other than *another janmi like himself*.
16. Thus the land is *systematically* kept tied up closely and continuously.
17. *Partition of landed property among the members of a family* on the death of the proprietor is another process by which land gets *distributed* or *diffused* in the community. But this process, too, is inoperative in Malabar owing to the maintenance of the *law of primogeniture* and the system of *joint families*.
18. Land lapsing to the State as an escheat is also a process instrumental to diffusion. But no janmi's land can become an escheat owing to the failure of heirs, so long as the adoption of an heir to the janmi's family is so easy.
19. The possession and exercise of the power of *making gifts* of land constitute *another instrumentality* for the dispersion of landed property. But this also is inoperative in Malabar, for the law debars the janmi from making any gift of land while alive or after death.
20. It will thus be seen what a stringent and systematic monopoly of land practically exists in Malabar, and how well fortified by law on all sides.
21. On the other hand, there is a large agricultural population who must live by land and who include the hardy, industrious, thrifty, and, sometimes, fanatical Moplas.
22. This agricultural population has become tied up to Malabar by residence therein from time immemorial, by acclimatization, and by the adoption of the distinct language, manners, habits, and customs of Malabar. It is unable to emigrate to, and seek employment in, foreign countries.
23. Nor are there any *manufactures* in Malabar as a source of employment *alternative* to agriculture.
24. Again, the population is rapidly increasing.
25. On the whole, a more disadvantageous state of things for any agricultural population, it would be difficult to imagine.
26. The agricultural population is practically *at the mercy of the janmis*.
27. These several facts and their *cumulative* effect should be fully comprehended and weighed by those who deprecate *State interference* and who talk of the desirableness of maintaining *freedom of contract*.
28. How can freedom of contract exist in the circumstances above stated?
29. General grounds for the deprecation of State interference and for the maintenance of freedom of contract appear to me quite inapplicable to the exceptional state of things in Malabar.
30. The getting of lands for agricultural purposes is becoming increasingly difficult.
31. So does also the getting of even *plots of lands for building houses and cottages* on, for the residence of the inhabitants. The agricultural laborer, the artisan, the bazaar-man, the tradesman, the public servant, the railway servant, the well-to-do people, the merchant, and the general laborer,—one and all, *must have houses to live in*. But they cannot obtain permanent sites for houses or cottages.

32. It has become impossible for the cultivating classes to obtain land with any security against arbitrary eviction and against arbitrary increase of rent tantamount to eviction.
33. Every holder of land, every owner of a house, every occupant of a cottage, has the sword of Damocles hanging over his head!!
34. None can hope to become the individual and independent proprietor of cultivating land, or of planting land, or of building land.
35. None can extricate himself from his state of *dependence on the janmi* and elevate himself to a state of independence and fearlessness.
36. This cheerless state of things cannot but greatly weaken the motives for industry, thrift, independence, and good behaviour whether towards *the janmi himself* or towards the *general government*.
37. Instances are not wanting of such evils causing serious difficulties or embarrassments to powerful governments.
38. It appears to me that the evils are great and real, and demand a remedy.
39. The longer a remedy is delayed, the more difficult must it grow.
40. A remedy may be difficult, but we must not try to escape from the difficulty on some *narrow* or *technical* ground, such as—
 - (a) That Mr. Logan is the complainant, that the onus of proof rests on that gentleman, and that he has not quite proved his case.
 - (b) That the Mopla riots are not judicially proved to be the effect of the evils aforesaid.
 - (c) That the Sadr Court's ruling of 1856 A.D. is not responsible to the extent represented. And so forth.
41. The main practical question before us seems to me to be, "Do the evils aforesaid exist? And, if so, what is the best mode of remedying or mitigating them?"
42. It matters little how the evils exactly arose.
43. It matters little what exactly caused the Mopla riots.
44. It matters little whether the Sadr Court's ruling did or did not alter the pre-existing or any ancient customs.
45. It matters little what the historical origin and development of land tenures in Malabar have been.
46. We should deal with the practical question as it confronts us at present.
47. With this view, I feel bound to say that I believe in the existence of the evils described by Mr. Logan.
48. I believe also that the tendency of the judicial tribunals has been too much to *solidify*—to *strengthen* the land monopoly in Malabar.
49. I mention this merely as a *matter of fact*—not of *fault-finding*.
50. For example, those causes which prevent the dispersion of landed property and which concentrate landed property, and which *tie it up* in the hands of the janmis, have been *too rigidly maintained or conserved* by the courts. A *strictness or rigidity* has been imparted to them which they *formerly did not possess*. The general characteristic or tendency of native life and feeling was *laxity or elasticity*. Natives formerly were not in the habit of strictly exercising rights or enforcing obligations. They acted in adaptation to the exigency or convenience of the moment. On the other hand, the characteristic or tendency of the British courts is *to define rights and obligations sharply* and to *give effect to them strictly*. A continued process of sharply defining rights and obligations, of repeated recognition of the ascertained or defined rights and obligations, of constant enforcement of them, with all the power of the State, has necessarily—perhaps *unavoidably*—imparted that rigidity which has been mentioned above.
51. A bad land system could formerly work without much evil because it was *loosely* worked. Now, when *strictly* worked, it cannot but develop its evils to their full extent.

52. The courts will naturally and technically justify themselves by saying that they cannot help themselves. They will say, if the system is found bad, it is for the legislature to intervene and amend it.

53. I believe with Mr. Logan in concurrence with popular opinion that the Sadr Court's ruling of 1856 did materially prejudice the interests of the kanom-pattum, tenant in Malabar.

54. I will here try to state how it did so.

55. Not being trained in law, my explanation can be only in general or popular language.

56. The state of things in the period prior to the Sadr Court ruling was this. There was a *theory* of the rights of the janmi, but there was a *practice* according to which the janmi and kanom tenant got on. I have known many instances in India *this phase of matters*. Former times abounded in such instances. But the present times are not wholly wanting in such. Here is one just to illustrate what I mean.

In *theory*, the Government has the right of dispensing with the services of a public servant whenever it likes. But, in *practice*, Government retain the public servant so long as he performs his duties fairly.

Now, ask the Government or the public servant, and, surely, *both* will admit the *theory*. Nevertheless, the *practice* of retaining a good public servant is strong enough to raise the *expectation of continuance* in most good servants.

57. Just so was the state of things in the period prior to the Sadr Court ruling in question. There was a *theory* of the rights of the janmi, but there was a *practice* according to which the janmi and the kanom tenant got on.

58. If the janmi were questioned, he would assert the *theory*, and the tenant would admit it—would not venture to *deny* it, lest he should give offence to the janmi.

59. According to the *theory*, the janmi could dispense with the tenant whenever he liked.

But in *practice* the janmi retained the tenant so long as he fairly discharged his duties. The practice was strong enough to raise the *expectation of continuance* in most good tenants.

60. The janmi continued the kanom tenant by means of a system known in Malabar as *renewing the kanom deed*.

61. The kanom deed was renewed from time to time at certain intervals of time or on certain known occasions.

62. Be it noted that matters had so beautifully adjusted themselves that it was the *interest* of the janmi to *grant a renewal*, and it was also the *interest* of the kanom tenant to *seek a renewal* of the kanom deed.

63. For, by the *renewal* the tenant was continued in the possession of the land; and for the renewal, the janmi got special payments which were very welcome to him.

64. Be it noted that the janmi, though he may have practised exactions at the time of renewal of the kanom deed, *never refused the renewal itself*. And *absolute* and *arbitrary* refusal to renew would have been so opposed to practice and to public opinion that the janmi would have found it difficult to carry out the eviction of the tenant from the land he had long held and which he had originally cleared and cultivated and planted and perhaps built upon.

65. Thus, the practice was one of repeated renewal of the deed.

66. A refusal to renew may have been *threatened* to get more money or presents for the renewal. But there was no absolute refusal.

67. There was no arbitrary eviction *merely on the plea of expiry of twelve years*.

68. The tenant could be evicted for only certain recognised and good reasons—such as that he refused to pay the rent, or was in considerable arrears, or behaved insultingly, and so forth.

69. So, whatever the pure *theory*, the *practice* was as I have described.

70. What I wish to press is that—

- (a) The janmi did not claim the right, nor did he exercise the right, to evict the kanom tenant *simply on the ground of expiry of twelve years*.
- (b) It was the practice for the janmi to *renew the kanom deed* at the end of twelve years on payment of money and presents by the tenant.
- (c) It was, thus, in the power of the tenant to continue in possession by good behaviour and by yielding to some exaction at the time of renewal.
- (d) The tenant had reason to *expect* to be continued in possession. The expectation was sanctioned by very long practice, and was so strong that he built *his plan of life thereon*.
- (e) The kanom tenant had *no fear* that the janmi would arbitrarily refuse renewal of deed, or that he would arbitrarily evict merely because the twelve years had expired and brought on the time for renewal.

71. Such, to the best of my belief, was the state of things prior to the Sadr Court's ruling in question.

72. Assume this, I say, and it would stand one important *test* of truth. It will consist with the main facts and circumstances of the case, and farther it will account for the various phenomena observable, and it will reconcile or explain apparent conflicts or apparent perplexities. My hypothesis has also a high degree of probability in its favor; for, *continuity* was the general rule of life in former times and *change* was the exception. Even the most temporary arrangements had a tendency to continue and to become hereditary.

73. I can adduce any number of instances in proof of this tendency.

Offices, salaries, allowances, pensions, services, rewards, honors, privileges, immunities, and many such benefits were continued and become hereditary.

An allowance was given to a *robber* to abstain from plunder and murder. The allowance was continued to his son and then to his grandson. *It became hereditary!!*

The British Government itself has recognized the hereditary character of the robbers' allowance. It is called *Giras* in the Bombay Presidency. In thousands of instances, *Giras* is to this day paid from the public treasury to the descendants of robbers.

74. In view of the great prevailing tendency of former times to continue benefits and to allow them to become hereditary, I can easily imagine how the kanom tenure became continuable and hereditary in the old district of Malabar.

75. I am sure that the janmi in those days had every inducement to continue the kanom tenant, and no inducement to turn him out. This alone would account for the kanom tenure becoming continuous and hereditary.

76. It was the result of a natural process which has its analogy in different parts of India and in different parts of the world in general. I may here instance the Ulster custom in Ireland.

77. My conviction as to what the kanom tenure was before the Sadr Court's ruling is as strong as conviction can be.

78. Sir Charles Turner himself admits that the kanom tenure used to be *generally renewed*.

79. My view of the kanom tenure is largely borne out by inquiries I made in Travancore where there are janmis just like those of Malabar. Indeed, the two sets of janmis are often related by family connections.

80. My view is also borne out by the still existing practice of old and honorable janmi families or janmi institutions.

81. I now proceed to note the effects of the Sadr Court's ruling.

82. Instead of declaring that the kanom tenure was *renewable* at the end of every twelve years, it declared it to be *terminable*. This was an enormous change.

83. If the court had not so ruled, the janmi would have gone on renewing the kanom deed every twelve years as had been his practice. The court's ruling, in fact, said to the janmi—

“ Though you have been *renewing* the kanom deed, you *need not do so hereafter*.
 “ When the time for renewal comes, you may consider the *tenancy terminated*, you may *refuse renewal*, and *turn out* the kanom tenant at your pleasure.”

84. This *shook the foundations* of kanom properties which had been held from generation to generation, which had been greatly improved, which had been built upon, and on which thousands of poor and industrious families had formed their plans of life.

85. The earth which had for ages been deemed firm, was subjected to a *periodical earthquake* ! the period being twelve years.

86. Evictions are increasing and *must go on increasing* and so must hardship, and discontent.

87. Can the legislature devise a cure or palliative ?

88. This is the main question before us.

T. MADAVA ROW.

APPENDIX F (d).

PROCEEDINGS OF THE COMMITTEE ON THE MALABAR LAND LAW.

Saturday, 27th February 1886.

PRESENT :

The Honorable the President.

Members.

Rája Sir T. Madhava Ráo, K.C.S.I.
 Hon. Mr. H. H. Shephard.
 Mr. H. J. Stokes.
 Mr. H. T. Ross.
 Mr. C. Sankaran Nair.

Mr. T. Gopala Nair.
 Mr. C. Ramachandra Aiyar.
 Mr. T. V. Anantan Nair.
 Mr. Raman Unni Nair.
 Mr. K. C. Manavedan Rája.

Mr. Cardew, *Secretary*.

The minutes of the last meeting were approved.

Two notes prepared by Mr. C. Sankaran Nair were considered by the Committee.

Rája Sir Madhava Ráo said that the discussion of the former relations of the classes interested in the land must always leave much open to debate, and the practical question before the Committee was whether the present state of those relations was such as to call for interference.

Mr. Sankaran Nair observed that it would doubtless be difficult to point to any definite enactment of the Legislature a century hence entitling a tenant to a fixed share of the produce, for there was no Legislature ; but that, if long-continued custom was accepted as evidence, the tenant's right to such a share must be admitted.

Mr. Anantan Nair, on the other hand, denied that there was any custom giving a tenant a claim to the fixed share, and he produced decrees of dates ranging from 1828 to 1843, which showed that eviction was again and again ordered at that period simply on the ground that the kanam period had determined. He contended that Mr. Sankaran Nair's assertion that the High Court ruling of 1852 had effected a change in the law had entirely failed.

Mr. H. J. Stokes then read a short Bill which he had drafted on the general principle that the courts should have power to grant eviction only when it considered it equitable and fair, and he proposed that it should be taken into consideration.

Rája Sir Madhava Ráo thought that the general question—whether the janmi's power to evict ought or ought not to be restricted—should first be considered.

This was agreed to.

The Hon. Mr. Shephard said that if the question, stated by Sir Madhava Ráo, were decided in the negative, the tenant in Malabar would be left in a position such as no other tenant in India now occupied. The doctrine of freedom of contract as to land had been abandoned even more completely in India than in any other country, and in Malabar, where the existence of such freedom was known to be impossible between tenant and landlord, there was the less reason to maintain the theory.

Rája Sir Madhava Ráo then moved, and Mr. Stokes seconded, the following resolution :—

“That it is necessary in Malabar, on account of existing circumstances, to control and regulate the jenmi's power of eviction.”

On the resolution being put to the vote, it was declared carried by six votes against four.

The Hon. Mr. Shephard then suggested that the case of Malabar should be included in the general legislation regarding landlord and tenant now under preparation.

Mr. Stokes thought that this course would be very difficult, because the principle on which legislation touching the zemindar rested was different from that which must regulate the treatment of janmis.

Mr. Sankaran Nair proposed that the late Commission's draft Bill should be considered.

After some general discussion, the Hon. Mr. Shephard proposed that a Sub-Committee should be appointed to draw up a draft Bill.

Mr. Raman Unni Nair then moved, and Mr. Manavedan Rája seconded, that an instruction to the Sub-Committee to the following effect should be issued :—

“that all persons holding on kanam tenure shall be excluded from the scope of the proposed Bill.”

The Hon. Mr. Shephard pointed out that this would effect the exclusion of a majority of the tenants in Malabar, and he accordingly moved as an amendment—

“that those kanamkars who are in reality mortgagees be excluded from all benefits under the proposed Bill, and that where the share of the produce which the kanamkar enjoys is merely equivalent to interest on the money advanced, the kanam shall be assumed to be mortgage.”

Mr. Ramachandra Iyer seconded the amendment.

Mr. Sankaran Nair opposed both amendment and original motion.

The original motion was then withdrawn by Mr. Raman Unni Nair, who said he accepted the amendment.

The amendment was then put to the vote and carried by five to four.

Mr. Stokes then proposed that the above instruction to the Sub-Committee be not issued, but that the Sub-Committee be merely appointed to consider the Bill framed by Mr. Stokes.

Mr. Sankaran Nair seconded this proposal.

The proposal was carried, and the appointment of a Sub-Committee composed of—

Mr. Anantan Nair,
Mr. Stokes,
Mr. Sankaran Nair,

was agreed to.

The Committee then considered the following communications :—

- (1) a petition from Puthanvettil Sankaran Nair and others, of Kothakurushi Amshom, Walawanád taluk, Malabar, dated 12th February 1886 ;
- (2) a letter from Mr. T. Gopalan Nair, dated 15th February 1886 ;
- (3) a letter from the Editor of the *Kerala Pathrika* and others, dated Calicut, the 19th February ;

each of which suggested that additional members to represent the tenants' interests should be added to the Committee.

The Committee resolved that it was unnecessary at that stage of the inquiry to add to the members of the Committee.

The Committee then adjourned *sine die*.

(True Extract.)

A. G. CARDEW,
Secretary.

ENCLOSURE No. 1 TO APPENDIX F(d).

NOTE BY MR. C. SANKARAN NAIR.

1. As it appears to me to be difficult to convey an accurate idea of the relation of landlord and tenant without a clear definition of certain terms in general use, I shall briefly explain those terms, and, in doing so, I shall draw particular attention now to that part of the explanation which to me appears to favor the suggestion of the Committee about the kanom tenure. First, I shall take verumpattom—a bare lease as it is called by Sir C. A. Turner. The verumpattom deed of course shows the pattom payable to the janmi. I proceed to show that the pattom was determined not by competition but by custom. I shall first refer to the early inquirers on the subject, and it may at once be stated that I do not attach much importance to the opinions of those gentlemen on disputed points when they derive their information from men interested in deceiving them, and I only allude to them on this point because their information, as some of them admit, and as was pointed out by the Court of Directors in 1821, was derived from janmis who certainly were not likely to give any information prejudicial to their own interests.

2. The pattomkar is only required to pay that part of the produce which the assessors have judged to the janmkar as pattom, and he is allowed to reap the entire benefits that may afterwards arise from improvements.

“The following example will show clearly the appropriation of the produce of the land and the shares that belong to the kanakar and pattomkar respectively :—Suppose a piece of land in a state of cultivation to be let that will receive 10 paras of seed. On looking at the soil, the people who are appointed to judge the matter estimate its fold at ninefold or 90 paras. The quantity of seed sown or 10 paras is at first deducted : a little less than a fourth or 20 paras is deducted for the expenses of cultivation. The remainder of the gross produce or 60 paras will remain to be disposed of. *This is divided into three parts, two of which belong to the janmkar and one to the pattomkar.* Thus is this circumstance determined by the quantity of seed sown and its estimated produce. It may be observed that the first care is to repay the expenses of cultivation. The profits afterwards depend on a favorable season or fruitful soil. *After the first expenses are deducted, the two-thirds that remain are called the pattom, and it is the amount which appears in the deed or karanam executed between the proprietor and the renter.*”—(Major Walker's Report).

3. Walker is clear that the pattom is not fixed by competition and is limited to two-thirds of what remains after deducting all the expenses of cultivation. It is also important to bear in mind that what appears as pattom in the deed is only the janmkars' limited share.

4. Where the *kudian* has to pay this entire share to the janmi his tenure was called *verumpattom*.

5. Where the *kudian* advances any sum of money to the janmi less than two-thirds its value, *i.e.*, any sum the interest on which would be less than the pattom, he is said to hold on *kanompattom*.

6. And I may here state, what appears to be borne out by most of the deeds I have come across, that the *kanompattom* is found to be generally half the *verumpattom* (see the deed translated later on, para. 13).

7. When the pattom is equal to the interest on the sum advanced, or when the amount advanced is two-thirds the value of the land, the *kudian* is said to be on *otti* tenure.

8. When a further sum, amounting to 20 per cent. of the amount, *i.e.*, two-thirds its value, is advanced, the *otti* is converted into *ottikumpuram*.

9. When another 20 per cent. is advanced it is converted into *nirmudal*.

10. Everything is fixed by custom. The janmi is not allowed to fix his own price. He is allowed only to take a certain definite sum for his janm right and has to advance through all these stages before he has to part with his janm, so much so indeed that, as Walker says, the janmi has to execute all these deeds simultaneously finally to convey his janm.

11. Now I shall consider how far back we are able to trace this division of produce. Farmer, one of the joint commissioners, found this division of produce existing in his day. "Of this produce, one-third was allowed to the farmer (kanamkar) for his maintenance, profit, &c., one-third for the expense of Tiers, Cherumars, and other cultivators attached to the soil, one-third went as rent to the janmkar or landlord."

12. Farmer wrote in 1793, Walker in 1801, and, of course, considering the date of the English conquest, it is impossible to find any earlier English inquirer. We have other evidence to show that the division of produce existed still earlier. Writing in 1822, Sir Thomas Munro came to the conclusion:—"The rice lands of that country have, for ages past, reached that degree of improvement beyond which they cannot be carried, and the landlord's rent has, in consequence, been ascertained and fixed for a remote period. As the produce cannot be increased by the cultivation or the rent by the landlord, the whole of the inequality must arise from the original disparity of assessment, and no part of it from improvement;" and, later, the revision of rice lands is not so urgently required as that of the garden, because the rent of rice land is in general steady through a long period of years. *A comparison of old and modern deeds shows that at the distance of centuries it is often the same.* I am not able to show at present, to the satisfaction of the Committee, from ancient deeds, that long before the British conquest there was this division of produce, but I have got deeds so old as 970 (1795) which show this division of produce.

13. A translation of the kanom deed of 970, so far as it is material to the question, is as follows:—Ubbayapattom deed executed from beneath Chemmuka Kammav in medam 970, when Vyayam was in Makaram. Udayanur Raman Sreedharan received 2,400 new fanams from Kiyapurath Kombiakappan; consideration for the same is as follows:—My janm in Thekkumpuram 48 paras and Nadupok sowing 40 paras, both together yielding a pattom at eightfold of 352 paras, &c.

14. This deed shows that the kanampattom was only half and not two-thirds of the verumpattom. As to the period subsequent, "Dr. Buchanan seems to have found very well and generally recognized usage as to the division of the produce between the landlord and kanamkar or cultivator, though the shares varied in different places, and doubtless according to the productiveness of the land."—(Sir Charles Turner's Minute).

15. In 1803, with the approbation of the Revenue Board and the Governor in Council, the Principal Collector, Mr. Rickards, *with the consent of the janmis*, adopted this principle for the purpose of assessment—

"On rice grounds, after deducting from the gross produce the seed, and exactly the same quantity for expenses of cultivation, then allotting one-third of what remains as koroolabhom to the kudian, the residue or pattom is to be divided in the proportion of six-tenths to the Company and four-tenths to the Janmkar."

It is no doubt open to the janmi advocates now to say, as was once said, that they admitted the kudian's claim to one-third in order to defraud the Government; but taking it in connection with what I have stated already and with the opinions of the Revenue officers of the period, it is impossible to deny that the kudian's share was allowed as it was found to be in accordance with custom.

16. Lord William Bentinck in 1804 certainly so regarded it—"The right of landed property and the division of the produce of the soil between the landlord and tenant are in Malabar perfectly defined and confirmed by immemorial usage."

17. And (paragraph 272, Board's Proceedings, 16th January 1815) the Board of Revenue were of opinion—

"It seems evident that the janm property is not now so much in the land as in the income derived from it; the land is much more the property of the kanamkar or cultivator than that of the janmkar, for the Board have not been able to discover that the proprietor has the power to raise the pattom or janmkar's income; if it was so, the circar land-tax (which is so much of the pattom) would vary with every variation of the janmkar's rent and could never be fixed."

18. Sir William Robinson found the division of produce has not been lost sight of. Mr. Logan was "surprised to find how familiar even the most illiterate of the agriculturists are with the shares due respectively to the kanakaran and the janmis."

"They can usually say, 'he considers,' at once, what the shares of any particular bit of land, though they know nothing very often of how these shares were arrived at." Mr. Logan notices the cases of three janmis in whose cases he has found the tenant even now receives the old customary share. In all the cases of other janmis, I am sure that inquiry will show that the tenant was receiving his customary share.

19. In my own individual case, with respect to the lands of which I am the janmi, kanamkar, or verumpattom tenant, I am able to show that a distinct share of the produce is enjoyed by the kudian, and in the case of the majority of the janmis, a comparison of the leases by the janmi to the tenant, and by the tenant to the sub-tenant, will show a very valuable share of the produce set apart for the kudian.

20. If this customary division of produce is doubted, I challenge an inquiry.

21. The renewal fee is customary and admits of no difference. It has no reference to the produce but is levied on the kanom amount.

22. Against all this evidence as to this division of produce Sir Charles Turner brings forward a report of Mr. Warden that there is no established division of the share of the produce, though Warden himself, on another occasion, testified to the existence of such a division, and a vague statement of Mr. Græme which may or may not refer to this contention.

23. I shall therefore take it to be proved that the produce was divided between the janmi and the kudian in accordance with certain customary rules.

24. Mr. Rickards observed that it was not usual to turn out a tenant so long as he continued to pay his rent, and, as Mr. Rickards states, considering that it was the janmis' interest to treat them well, we can easily believe that evictions, unless for non-payment of rent or renewal fees, were not common. If not common in his time and the state of society so forcibly described by Sir William Robinson preclude the supposition that it was common, the kudians must have continued undisturbed till some time after 1850 as the assessment were very high.

25. I would ask the Committee not to accept the statement of Sir Charles Turner that old tenancies cannot now be found, as I believe he has been misled by the frequent renewals—the latest renewal alone generally attracting the notice of the court as determining the condition of the tenancy.

26. I shall take the case of a kudian as it must have appeared to the courts in 1854.

27. If a kudian in possession of land for a long time pays rent at a uniform rate, does it not strongly indicate that the receipt of them is no evidence of title to the land in the receiver?

28. And if the rent payable is much less than what the lands yielded, it seems to be impossible to resist such conclusion.

29. This limitation of rent is forcibly dwelt upon by Mr. Logan and by many of the gentlemen to whom it was referred for consideration. It was admitted by the first Committee; yet Sir Charles Turner makes only a passing allusion to it. He certainly does not seem to have apprehended the full force of the argument.

30. He quotes, with approbation, from a Bombay High Court judgment:—"The conclusive argument is, that the king's share being limited to one-sixth, and, at most, to one-fourth, there must have been another proprietor for the remaining five-sixths or three-fourths, who must obviously have had the greater interest of the two in the property shared."

31. Similarly, it is a fair inference that, while a janmi is the proprietor of his share of the produce, the kudian is equally the proprietor of his share.

32. And in connection with this I would draw particular attention to the position of the janmi. I take the description of Sir Thomas Munro, paragraph 7:—

"The village in Malabar is called the desam, the term by which it is still more commonly known. The headman was called the desway or the jelmiwar, according as he enjoyed the whole or only a part of the rights which were supposed necessary to the constituting the complete chief of the desam."

Those rights were as follow :—

- (1) The Ambalpuddi, or the direction of the religious ceremonies of the village pagoda ;
- (2) Uraima, or the management of the pagoda lands and servants ;
- (3) The Desmi, or the control of marriages and all village ceremonies, none of which could be performed without his leave ;
- (4) Desadiput, or the general superintendence of all affairs of the desam or village.

When the headman of the village possessed all these rights, he was the desway. When he wanted the Ambalpuddi and the Uraima, but had the other two, he was the jelmiwar of the village."

Briefly stated in the pregnant words of Mr. Logan—"These chiefs were evidently fragments of a Government which had at one time levied a land revenue (pattom) on every cultivated acre." And this conclusion receives strong corroboration from the circumstance that there were admittedly no janmis for the lands which paid pattom to the rajas and the ruling chieftains.

33. At any rate this division of produce shows conclusively that the janmi could not turn out a kudian out of his land on the ground that he does not pay higher rent or something equivalent to higher rent, and probably it is not necessary for me, for the purposes of this discussion, to go further.

34. The same argument was used by Mr. Seebohn in favor of the Irish tenant and it is now recently put forward by the advocate of the crofters in the Scotch highlands.

35. I only allude to these instances to show the belief that limitation of rent generally co-exists with co-proprietorship in land. The courts, by declaring the absolute power of a janmi to turn out a tenant, have set aside this customary rule.

How was it, then, the courts paid no attention to the reasons set forth above ?

There is a practice, to which I shall advert later on, of taking renewal fee, at the end of 12 years, and on such occasions the old deed is generally superseded by a fresh one. It was the opinion once entertained by the courts that "the renewal of a deed is not a continuation of an old contract, but the making of a new one, and it must be concluded that all rights accruing to the tenant under the former contract were then disposed of," and, later on in the same judgment, "That (the renewal) is, in fact, so far as a court can appreciate it, the commencement of the tenancy."

On this ground the tenant was denied the value of improvements made by him before the renewal, as otherwise there would be "the varying of a contract reduced to writing by evidence of extrinsic matter."

C. SANKARAN NAIR.

ENCLOSURE No. 2 TO APPENDIX F (d).

NOTE BY MR. C. SANKARAN NAIR.

I shall now proceed to consider the objections of Sir Charles Turner to the views put forward by the committee. Chapters II and III are the most important.

In considering Chapter II of his report, it is necessary to bear in mind the state of society in those days. As Sir Charles Turner himself has remarked, there was the desam with its ruler, the Desavali, and the nad or district with its ruler, the Naduvali. The Desavali is not generally subordinate to the Nuadvali as assumed by him. The janm right was vested in these rulers and in their Superior Rajahs. Sir Charles Turner thinks that none but a Brahmin could in those days be a Desavali or Nadavali. These ruling chieftains divided the janm of Malabar with the Nambudri grammoms. Let us consider the state of the agricultural classes who enjoyed a share of the produce of the lands of which the ancient rulers of the country were the janmies. If I have understood Chapter II correctly, then Sir Charles Turner aims to prove therein

that according to Hindu Law (and in this respect he thinks there is nothing to show that Malabar law is indifferent), the ruler's share of the produce being limited, "there must have been another proprietor for the remaining share." And he contends that the janmi was such co-proprietor. I do not dispute the first part of the proposition that the ruler has only a limited interest in the soil, but I submit that the co-proprietor with whom the ruler shared the produce of the land in Malabar is not the janmi, but the kudian. If Sir Charles Turner is correct, is it not clear that those who held the land under the Zamorin and the other rulers had really an interest in the property which it was not in the power of the King to determine? For with respect to such lands, there were none who claimed generally any interest in the land between the ruler and the kudian. And therefore if this kudian was not the co-sharer with the ruler who was also the janmi, then who else was the individual who had such co-proprietorship? In support of my statement that there was no janmi to share the produce with the ruler, I have only to refer to a statement in the Kerala-Ulpatti :—

(a) "കൊയ്യയിൽ കാണമകപ്പെട്ടാൽ ജന്മം കഴിഞ്ഞുപോകുന്നത അതിന്നു പ്രസ്താവം കിട്ടുന്നതുമാത്രം ഉണ്ടു്."

In considering the above passage, it must be remembered that the interest in the land which the Nambudri had, alone was originally allowed to be called janm, and that the Zamorin and the other rulers who were not Nambudris were refused the title of janmies, so that in the case of a large portion of the lands in Malabar there were no janmies, and that it was only in later days that the title was extended to these rulers.

The arguments adduced, therefore, to prove private ownership in the lands are only consistent with the theory that the kudian was the owner of the lands.

If Sir Thomas Munro may be relied upon (and his report shows he was a most careful inquirer), the only distinction between a Desavali or Nadavali and a Janmi is that, while the former has superintendence over religious worship, the latter has it not.

In connection with this argument, I invite special attention to the report of Sir William Robinson. He was a long time in Malabar, and his conclusion is that the kanakaran, kudian, is the real owner of the land.

"The theory that the janm signifies absolute property in the soil rests mainly on the basis that a Brahmanical government or theocracy existed in Malabar, that the Brahmins claimed to be absolute owners of the land," and the committee were of opinion that there is no evidence to show that the janmi first acquired a title by occupation and then let the kudian into possession.

Sir Charles Turner argues that there is no evidence produced against the native tradition that the Brahmin was the earlier colonist, and that therefore there is no presumption that the Nair, as the earlier settler, had any occupancy right.

I must admit that the tradition that Malabar was created for the Brahmins who obtained a gift of the whole country supports the view taken by Sir Charles Turner, and the statement in the Kerala-Ulpatti, quoted in the committee's report, that Sudras were sent for after the settlement of the Brahmins, also favors the theory.

But the creation of Keralam for a special purpose and class is, of course, a fable intended to support this extraordinary claim, and a careful consideration of the tradition as recorded in the same chronicle would show that tradition in this respect is not in conflict with the conclusions arrived at from other circumstances.

This is the story told in the Kerala-Ulpatti :—

Sree Parasurama brought Brahmins from many places and settled them in Keralam. They did not remain there. All went to their native place. The reason was, the serpents came and settled in the country. Nobody remained on account of the fear entertained of them. After that the Nagas governed the country for some time. That his efforts might not turn out fruitless, Parasurama then brought the 64 grammoms * * * *

Afterwards Parasurama brought them together, ordered that a share of the Brahmin's property must be given to the serpents who frightened the Brahmins before, "and they must be your Sthana Daivam." To them was given a share of the Brahmin's property and they were conciliated.

The Nagas, whose opposition compelled the early Brahmin colonists to retire from the country, were in all probability the ancestors of those classes of Nairs who still retain the serpent worship in its primitive simplicity. The subsequent return of the Brahmins and their amicable colonization points to a settlement which probably recognized a divided ownership in the land. Such settlements are not unknown elsewhere in India (Tod's Rajasthan, pp.). Simultaneously with their colonization, they introduced a body of dependents into the country whom it is impossible now to distinguish from those whom I may perhaps be allowed to call the earlier inhabitants. Sir Charles Turner agrees with Mr. Logan in considering that the peculiarity of the dwelling of the Nair—"a small fort"—suggests that the Nair came amongst a hostile population. It would, of course, be absurd to suppose for a moment that the hostile population, afterwards apparently reduced to slavery, as is suggested by him, were the Brahmins. Is this not a fact then strongly in favor of the suggestion that the Nambudri was not there when the Nair came? And considering that only one member of the Nambudri illom was in the old days allowed to contract marriage, I cannot help thinking that the Nair was already there.

Why should we suppose, then, that in Malabar events took a different course from what took place elsewhere under similar circumstances? The Nambudri, a non-cultivating class, finds a race of men already in the country. There is no trace of colonization by conquest and the reduction of the conquered into slavery. The position of the Nairs entirely precludes such a supposition. The Nambudris themselves had occasionally to adopt the customs and manners of the Nairs. They had to adopt the Nair law of inheritance in some cases. Their family law was influenced by the joint family system as it prevailed among the Nairs. No such barrier separates the Nambudri from the Nair as that between the Brahmin and the Sudra in the other districts. There is absolutely nothing to show that there was at any time a Nambudri government throughout the country.

If, therefore, any inference could be drawn from the past, it is not certainly in favor of a complete ownership acquired by the Nambudri by occupation. Assuming, however, as Sir Charles Turner has done, that the Nambudri, either by conquest or occupation, was originally the full owner of the land, and remembering that the Nambudri was a non-cultivating class, is it not likely that by force of custom the other classes would be allowed to acquire an interest in the soil with which, for obvious reasons, the Nambudri would not capriciously interfere?

The next argument brought forward in support of the theory that the janmi is the complete owner of the land has reference to the words in the Malayalam deeds. Sir Charles Turner thinks that "if these words had any meaning—and we may presume they had—they point to an ownership in the soil as complete as was ever enjoyed by a freeholder in England," and he refers to the admission of Mr. Logan that some of these deeds he has collected "express, with exaggerated force, the completeness of the relinquishment and the acquisition of the rights conveyed." The committee had anticipated this objection, and answered it in paragraph 15 of their report.

"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 Parasurama 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 Kerala-Ulpatti quoted in paragraph 13, and that he could not dispose of the kudian's rights. In some cases he did in fact convey only the pattom."

The assertion of Sir Charles Turner that the janm deeds show a complete ownership in the land, I can only meet with a direct denial. He has not unfortunately

referred to the particular documents which support his statement, and I cannot do better than refer to the conclusions arrived at by Sir William Robinson after a thorough examination of these deeds:—

"Viewed as whole, this useful collection—meagre and open to countervailing supplement by those interested, though it be—testifies to the presence, from earliest times, of all those unrestricted dispositions (of all the ordinary kinds known to Hindu agrarian law amongst South Indian populations) of land in Malabar such as could only co-exist with the prescriptive existence of 'private property in the soil' in its completest sense and that property widely distributed amongst the many and varied land-holding classes of the country. In this respect there was almost entire identity. Its absence, had it existed, would have been difficult to explain between the rural conditions of Malabar and those of the sister populations of Canara and Tamil countries; and the collection of almost contemporary documents appended to Mr. Ellis' paper on Mirasi rights (M. P. pages 262 to 344) may be compared with advantage and interest. The collection thus corroborates the statements of Sir Thomas Munro.

(Passim), Mr. Ellis and other reliable authorities of earlier and clearer times as to the ryotwari character of all landed property throughout the West Coast and more especially in Malabar; and its distributions incomplete and recognised ownership amongst the mass of the village land-holders. Again the collection indicates that the multitude of agrarian 'proprietors' (*vide* Glossary) in Malabar were in possession of a moderate, fixed, and mutually recognized legal land right—call it pattom (with its many adjuncts) shist, rekhu-shist or beriz (Canara) or teruva, &c., (Tamil) as we will—which was payable to the ruler or his representative in that interest: a land-rate which was not subject to indiscriminate and unauthorized charge or enhancement; advances on account being treated as loans to the rent charger, whatever his political or social position. In this respect also the proprietors of Malabar were in precisely the same condition as those of Canara. In both districts casual additions (*shamilet*) were made by the rulers to meet special contingencies—*e.g.*, in Chenkal in 1732 to meet warlike menaces from the north—but the ancient prescriptive pattom remained the recognized basis of all transactions and settlements with the land-holders, and only alterable by authority. I have avoided the use of the word 'rent,' although this term is exclusively and invariably employed by Sir Thomas Munro and all early official writers to describe the state revenue charge wherever under consideration. I do so because its misapprehension has, I believe, contributed in no small degree to the confusion which has risen in Malabar as to the true nature of pattom, and because in no instance does it occur in these documents except as describing the specific charge—the old legal Hindu revenue claim of the ruler on party representing his interest—the pattamandu (annual fixed charge) against (pattamai or patapet) assessable proprietary land.

It may be further observed that none of those documents afford any ground for inferring the existence of a claim to oust a prescriptive ryotwari proprietor from his property under any circumstance; indeed, the nature and incidents of proprietary right, such as no abeyance almost could annihilate, on the West Coast (*vide* Munro and M. P. Passin) and the moderation of the fixed revenue demand precluded its inception. There is no trace of what is now termed 'tenant right'—an anglicanism without expression in any native language or its converse,—*viz.*, confiscation and expropriation of hereditary industry and outlay on prescriptive property under the pretence of paying off improvements. No rationale for renewals (*polachilt*) and other (*alwa*) exactions is to be found in these legal transactions."

After such a full investigation, it is unnecessary for me to refer to these deeds more particularly. There is no answer in the long minute by Sir Charles Turner to the arguments either of the committee or Sir William Robinson. Sir William Robinson was there a long time and he was not on any special commission, had no preconceived notions, no theories of his own to support, and not interested in finding arguments in defence of a system of law he was pledged to defend.

The extraordinary rights conveyed by these deeds were really rights which belonged to a ruler as such, and not the rights which a ryot, if I may use that term, has in the land. Apart from the conveyance of these royal rights, there is no deed in this collection which shows ownership in the land in the janmi as against the kudian, and I may allude to a fact which appears to me to show conclusively that Sir Charles Turner is wrong. Even in sales of janm right in lands, which the tenant in possession has a right to hold permanently, the words used, so far as I am aware, are not different, and it has never been suggested yet that such janm deeds ignored the existence of any other interest in the land.

I have assumed throughout that the janmis were only the ruling chieftains or the Brahmin village communities.

An appeal is then made by Sir Charles Turner to the opinions of the early inquirers, and here again there is no answer to suggestion made by the committee in paragraph 16 of their report:—

“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.”

Why the opinions of early revenue officials under such circumstances should be preferred to that of Mr. Logan, who commenced the inquiry under the impression that the kanomdar had no permanent right of occupancy (see p. 20), it is not very clear. Why Sir William Robinson's opinion is to have no weight is not clear either. The Court of Directors have pointed out the unreliable nature of the old reports in 1821, and no reason is suggested to show why the conclusion they arrived at is wrong.

An English traveller in 1801, who derived his information mainly from the landlords, is not likely to have arrived at a correct conclusion respecting the rights of the janmi and the kudian in Malabar. To me there is nothing surprising in the mistake committed by the revenue officials. Sir Charles Turner now thinks that kanom is only a lease, while the courts have hitherto treated it as a mortgage. Hundreds of cases have been decided by the courts on that assumption. In many of these cases, it is probable the decision would have been the other way if kanom had been regarded as a lease; and I believe it would only be a waste of time for me to show how the courts have declared the rules established by a long course of decisions to be wrong.

I now come to Chapter III, which is really the most important part of the whole minute, wherein Sir Charles Turner attempts to show that kanom is only a lease with security, and that, under the Malabar law, those whom the committee call customary tenants had really no such interest in the soil or the produce of the soil as is claimed on their behalf by their advocates.

Though at the risk of prolixity, I repeat here what I have already stated respecting the social position of the classes.

It is perhaps unnecessary to go back beyond the date of the disappearance of the last Perumal.

Under the great Rajas were the Naduvalis or Desavalis, the Nair of the nad or desam. The nad or the desam consisted of so many *Taras* or Nair village communities. The *Nair* was the Yejman of so many Nairs whom he is obliged to bring into the field when so required by his Raja.

Scattered through these nads and desams were the Nambudri grammoms, each grammom having his own devasom.

Generally the whole land under grain cultivation was held by these taras. They paid the customary share of the produce to the ruler of the nad or desam, or to the Nambudri grammom.

Originally the interest the Nambudri had in the lands alone was called the janm. The interest which the Naduvali or Desavali had in the lands was *not* called janm. When, however, the word *janm* came to indicate the ownership in the land or the produce of the land, which ownership acknowledged no superior, the term janmi was applied, not only to the Nambudris, but also to these rulers.

As illustrating the original signification of the term, I may point out that the fees paid to the village barber, astrologer, were called their *janm* rights (see Græme's Glossary).

That the *janm* right vested in the Nambudri grammom and not in the *manas*, or *illoms*, into which the grammom subsequently disintegrated, is borne out by the Kerala-Ulpatti. The modern Sabhayogam is probably only a survival of the original grammom. That the nad or the desam consisted of taras is also borne out by tradition. The treaties and other engagements between the East India Company's repre-

sentatives and these ruling chieftains fully support my statement, and if I may draw any inference from the nature of the very few taras that exist at the present day, they are not unlike the eastern villages.

The share of the produce paid to the Nambudri community or the ruler is (what is now called) pattom.

According to Sir Madava Rao, these Nair taras originally were in serfdom under the rulers or the Brahmin grammoms.

According to the other members of the Malabar committee, the dawn of history reveals to us free communities (taras) which disintegrated into the modern tarwads and degenerated gradually into serfdom under the English Government.

But all of us were agreed in the view that towards the middle of the last century, the Nair communities were really free.

It is impossible in this paper to discuss the question, but to me, so much of the history of Nairs as we know, the strong influence even now wielded by the representatives of the village communities, the relations that exist between the Naduvali and the nad, between the Nambudri and the Nair communities, totally preclude the supposition that the Nair communities were ever in serfdom under the Nambudries or the Naduvalis. With these preliminary observations, I shall now proceed to consider this chapter of the report.

The preliminary observations in the chapter itself hardly require any explanation. I do not accept the statement that the tenant was liable to ouster for denial of his janmi's title. This proposition is not, of course, now denied, but it was laid down, it appears to me, in accordance with rules of English law, and I am not aware of any native authority in support of that proposition.

Mr. Logan says that till recently, it was considered perfectly legitimate for one kanomdar to disown a janmi and accept another as his janmi. The passage from the Kerala-Ulpatti already quoted by me shows the belief that the janmi lost his janm if the kanomkar attorned (if I may use that term) to the ruler.

Every Malayalee knows that, even now, instances occur where an *adiyan* repudiates his lord and becomes *adima* to another. I have no doubt that in the old days *adima* and *kudima* (*kudian* now called a tenant) generally went together. *Adima* and *kudima* are not the names of tenures.

Of all the tenures defined, I propose to consider in detail only two—verumpattom and kanom.

Verumpattom.—“A simple lease is termed in Malabar verumpattom, a bare lease, that is unaccompanied by an advance; where no term is specified, it enures for a single year” (paragraph 9).

This definition is simply begging the whole question. There is no explanation given; no authority is cited for this statement.

This term is liable to be misunderstood. The committee state in their report—and that statement is supported by many of the gentlemen whose opinions were invited—that there were two classes interested in the land—the janmi and the kudian.

The old kudiyan, the representatives of the old taras, holding under the janmis, are also called verumpattomkars if they have not advanced any sum to the janmi.

A modern tenant-at-will is also called a verumpattom holder.

The term is vague and is applied, not only to those who have a right to hold only at the pleasure of the landlord, but applies also to those who have a right to hold for ever.

Mr. Logan, Sir William Robinson and the committee that considered Mr. Logan's report were unanimous in their opinion that, so far as the security of tenure was concerned, there was not much difference between the old verumpattomkar and the kanomkar, yet this statement is entirely ignored, and the verumpattom, not less important than the kanom, is disposed of thus summarily by Sir Charles Turner.

It is also clear that he has failed to grasp this distinction, as he denies in another part of his minute the existence of tenures which are neither kanom or kuikanom or those having their origin in kanom which confer on the tenant a right to hold for twelve years.—*Vide* page

I shall now show that where no term is specified, a verumpattom tenure does not necessarily enure only for a single year, but that in many cases the right of a verumpattom tenant to hold for twelve years has been distinctly recognized by the courts, and in some cases the courts have gone so far as to hold that a verumpattom tenant is entitled to hold for ever.

The first part of Sir Charles Turner's definition is accurate. Where there is pattom to be paid and there is no advance, the kudian is said to hold on verumpattom.

Sir Charles Turner's view was the one which prevailed before the appearance of Mr. Logan's report, but the courts have now found, after a careful inquiry, that the old view is not accurate.

In S. A. 636 of 1884, it was found that some verumpattom leases are renewed, and that such renewal was evidence of the right of the tenant to hold for twelve years. This result was arrived at after an inquiry into the usage of the district, and it overruled at least one previous decision of the High Court which refused to recognize the right of a verumpattom holder to the undisturbed possession of the lands for twelve years after renewal. This is the class of cases the existence of which he denied in his report, though, strange to say, he himself took part in the decision above referred to which recognized such tenures.

The verumpattom leases under the Rajas, Naduvalis, &c., are of this class.

Thus a large class of verumpattom leases is not simply a lease for a year or from year to year, and these tenants are in exactly the same position as kanom tenants, so far as any legislative interference is needed. In second Appeal 627 of 1882, the janmi relied upon a verumpattom lease, and yet the High Court held that, regard being had to the other circumstances of the case, the tenure was one which it was not in the power of the janmi to put an end to at his will. This case is important as showing that the deeds which admittedly confer a right to hold the lands for ever do not in any way differ from the ordinary verumpattom deeds which have hitherto been construed as conferring only a right to hold the land from year to year.

The case referred to was decided by Sir Charles Turner and Mr. Justice Innes upholding the view entertained by the munsif and reversing the judgment of the sub-judge.

The principle involved in these decisions was accepted in another case when it was held that where the janmi's power to recover is denied, though the Janmom title may be admitted and there is no evidence to prove the nature of the tenancy, there is no presumption of law against the tenant that the tenure was determinable at the will of the janmi S.A. followed in

In this latter case the kudian was not able even to prove long possession.

All these were held admittedly on verumpattom.

Where therefore there is nothing to show the nature of the tenancy, the janmi is not entitled to recover the land from the tenant, though payment of rent is admitted.

The ordinary verumpattom deed (pattola karanam), as Sir William Robinson has so forcibly pointed out, does not show that a janmi is entitled to turn out a tenant, and S.A. 627 of 1882 proves that an ordinary verumpattom deed does not necessarily imply in the janmi the right of resumption.

Does the renewal then make any difference? It was once the impression that a renewal is, so far as the courts were concerned, the renewal of a tenancy.

() but this case has been now overruled.

The renewal fee undoubtedly originated in the succession fee, and considering that in renewal of perpetual tenures even this succession or renewal fee is paid, I

cannot help thinking that a renewal does not alter the original status of the parties (see S.A.).

It appears to me, therefore, that there is nothing inconsistent with the decisions of the courts in holding that, in the case of the old verumpattomkars, the janmi has no power of eviction.

Enhancement of rent under ordinary circumstances would, no doubt, be strong evidence of the janmi's power of ouster, but the tenant consents to the enhancement of his rent only through his fear of the courts.

I would go further and add that a verumpattom tenant under an ordinary lease, in which there is nothing to show that the janmi is entitled to recover, is, according to the principle followed in these decisions, entitled to hold the land.

At any rate, Sir Charles Turner is not correct in the view.

I shall now proceed to consider the nature of kanom tenure. Sir Charles Turner is of opinion that the kanom is only security for rent taken from the tenant, and he believes this view is supported, "not only by the opinions of earliest inquirers, but by the ancient name of the instrument by which the tenure was created and by the purpose which it is represented as serving in the Malayalam treatise."

So far as the ancient name of the instrument is concerned, he assumes that the name was *Abhayapattom*, and proceeds to argue in favor of his suggestion. This, of course, is a blunder, as no tenure is known, so far as I am aware, by such a name. Probably it was a mistake for *Ubhayapattom*, which has quite a different meaning, and which will not support the inference drawn in favor of the janmi by Sir Charles Turner.

Allusion is then made to the statements of Farmer, Walker and Græme in support of the view that kanom is only security for the rent payable. The objections to this view have been so fully stated by Mr. Logan in his report (p), that it appears to me unnecessary to consider this proposition in detail. I may state that the courts have taken another view.

If kanoms were only security for rent, it is curious that we find comparatively few kanoms on the lands of the Zamorin and the great stanom-holders like him who stand as much in security for rent as the Nambudri janmi, whose moral influence alone in those days would have secured payment of his dues. The suggestion that the kanoms were mortgages raised on the Janmapattom derives support from the fact that the janmis, like the Zamorin, were not very much in want of money.

Sir Charles Turner also states, in support of his suggestion, that it affords the real explanation of the existence of kanoms without any present possession of land being delivered to the kanomkar. One would have thought that this argument supports the suggestion of the kanom being a mortgage, not a lease with security of rent. However, the statement itself is not correct. On account of the janmi's inability to deliver present possession of land, it may on rare occasion happen that possession is not delivered, but generally kanomkar is in possession. I am sure Mr. Wigram alludes to an entirely different state of things. He refers, not to a kanom, but to a panayam. The difference, of course, is very great, as in one case the interest of the kanom is deducted from the customary share, and in the other from the net produce available as rent.

I have assumed throughout that kanom means the money advanced by the tenant, and that is a kanom deed which secures such advance. This is the view now generally accepted.

It must also be borne in mind that a kanom is raised generally from a tenant in possession, who is entitled to the privileges of a customary verumpattom tenant. (Græme).

Sir Charles Turner also argues that the kanom was resumable, as it was usual to remit a portion of the kanom amount on the occasion of the renewal, and that therefore the kanom amount would have entirely disappeared unless it had been, from time to time, augmented by payment of renewal fee. "There attached to it, as was observed by the Board of Revenue in 1818, an inherent principle of self-redemption."

The whole argument rests on the assumption that when there is no kanom charge on the lands, the kudian is bound to surrender to the janmi, at the latter's demand, which it is, by no means, clear is the case, as I have already stated when discussing the incidents of verumpattom tenure. The discharge of the kanom only renders the kudian liable to pay the full janm pattom, but leaves him his customary share of the produce. So far therefore as the discharge of the kanom is concerned, it does not alter the relation of the parties which existed independently of the kanom. The true explanation of the remission of a portion of the kanom amount referred to in Warden's report appears to be different. If the kanom is regarded either as a mortgage or as a security for payment of rent, it is hardly likely the tenant would renounce a portion of his claim. The renewal fee, and therefore the remission of the kanom amount, is regulated by custom, and it bore no proportion whatever to the profit derived by kudian. When there was a kanom amount on the lands, the renewal fee is ascertained with reference to the kanom amount. The argument of Sir Charles Turner that the renewal fee is only a substitution of the kanom remission referred to is contradicted by the fact that verumpattom tenures (where there is no kanom advance) are also renewed, and there is the evidence of Major Walker, if any evidence is necessary, to show that such renewals were known before him. Sir Charles Turner's statement is probably true in a certain class of cases to which I shall now refer.

We know as a matter of fact that when a kudian is in possession of lands on Kuzhikanam (Improvement Lease) it is usual for the janmi and the kudian after a certain interval to readjust their right by

See papers, page 32.

valuing the improvements and constituting such value a kanom on the land. It is conceivable that in such cases after the lapse of years on account of deterioration of the improvements and the kudian's long enjoyment the janmi might fairly claim a reduction in the amount of the kanom. The whole of the kanom amount is, I believe, never discharged because there will always be new improvements to be valued at the time of renewal, but even assuming that the whole kanom discharged by this remission the tenant would still be liable to pay only the pattom which appears to me to be fixed by custom. This fact would also account for the conflicting statement made by the early inquirers as to the intervals of renewal periods; for, in such cases the duration of such intervals would depend upon various local circumstances. I believe Mr. Wigram is right in his opinion that "it was certainly never contemplated that the tenant should be evicted on payment of the customary rates for improvements:" page 32.

I have already stated that all arable land was in the occupation of the Nairs of the taras, and so far as the parambas were concerned, the owner probably who was the janmi ruler of the village with whose knowledge it was apparently open to anybody belonging to that village to take possession of such lands for the purpose of improving them. (In the Laccadives) at the present day anybody can go and plant trees on the pandaram lands after giving information to the local officer, and the kudian's ownership in the trees so planted is acknowledged so long as the tree itself remains on the lands.

This explanation of the remission of the kanom amount appears to me to be the only view consistent with all the known facts. The renewal did not imply the creation of any new right as already stated (see Sir William Robinson's report).

I have no doubt whatever that Sir Charles Turner's theory of the old renewal fee being only a substitution of the kanom amount is absolutely wrong, not only is it contradicted by the fact of the ordinary verumpattom leases being renewed, but as being opposed entirely to all tradition.

Renewal, (lit. Polith Ayattu) is supposed to have had its origin in the practice which prevailed at the Maha-magha ceremony which took place at the installation of the Perumal at Tirunavay. It appears to have been usual then to take out fresh grants from each Perumal on payment of a small fee called "Tuchi" (iron style). After the disappearance of the Perumal, the janmis began to insist upon kudians taking out fresh grants on the death of the stani (ruler) and this is the origin of Purushan-

taram. It certainly is not on account of fresh renewals that the kudian acquires right to hold his land, for, as I have said, these renewals were common even in the case of kudians who admittedly held on irredeemable tenure (see Major Walker as to renewals). These renewals, which took place on the death of the janmi, now take place at the end of each 12 years. It was probably found that in the case of kuzhikanom there was no period fixed by custom for the readjustment of their rights by renewal when the rent payable may have to be ascertained with reference to the produce and the value of improvements; and in the case of kanom, the uncertain period of a janmi's life (see Major Walker, p.).

In the interests of the tenant, therefore, it was ruled that a tenant cannot be forced to renew for 12 years from the date of last renewal, but the error lay in adding that it is not compulsory on the janmi to renew, but he may refuse such renewal and turn out the tenant.

It is true, no doubt, that all the earlier inquirers have admitted the ownership of the janmi, and Sir Charles Turner alludes to the proclamation of the Joint Commissioners in 1793 showing that the janmi enjoyed the right to redeem. Mr. Farmer, one of the Joint Commissioners, candidly admits that he derived his information from land-holders who seemed much interested in his inquiries, that they differed very much, and he believed few told the truth (see page 3 of the appendix to Sir Charles Turner's report). A proclamation, based upon an inquiry of this sort, is hardly likely to convey an accurate idea of the state of things then existing.

But with all respect to Sir Charles Turner, it appears to me that the proclamation does not recognise in the janmis such a right to redeem as is now put forward on their behalf. Clause 5 of the proclamation only states that janmis may claim *the share they received* prior to the year 963 or 964, and if the kanomdars do not consent to pay this, they may then sue in the Adalat cutcherry and obtain repossession of their janm lands when the period of their lease expires. This advice or consent to recover the land at the expiration of the term in the case of tenants who refused to pay their pattom was hardly necessary if the unconditional right to recover was otherwise admitted. So far as the earlier writers are concerned, they derived their information from the janmis and its unreliability was pointed out as early as 1821 by the Court of Directors. Mr. Logan's note to deed No. 19 in his collection where he points out by that instrument a kanom right for a term of years is converted into a karaima right (that is, a holding in perpetuity), is referred to apparently to prove that kanom has no such incident attached to it as is now suggested by the Committee. On reading the document it is impossible to infer therefrom that the tenure was originally a kanom.

In concluding this part of the argument, I may notice the statement that the tenant might be ousted if he denies the landlord's title, or if he committed waste. It is true this proposition is not now denied, but I would like to see the proposition supported by proof of usage or some native authority before accepting it as a part of the old law.

Sir Charles Turner advises the Government not to trust the statement of the Committee that against the wishes of the kuttam of the tara no kudian could be turned out. It is true, no doubt, no direct evidence is offered in support of this statement, but circumstances appear to me strongly to support the view taken by the Committee.

The power of the janmi depended on these kudians who belonged to the tara. To turn out a kudian against the will of the tara implies a power in the janmi to disregard the wishes of the karanavers of the tara. Now the most powerful janmi, perhaps, was the Zamorin in his days of power:—

"The English factors at Tellicherry had been apprised of certain disturbances having occurred at Calicut, the head-quarters of the Zamorin, the most powerful of all the chieftains in Malabar. They accordingly wrote to their linguist at Calicut to explain the cause of the disturbances and whether it would affect the Honorable Company's trade at that place. His reply was couched in the following significant words:—'These Nayars being heads of the Calicut people, resemble the Parliament, and do not obey the king's dictates in all things, but chastise his ministers when they do unwarrantable acts.' The same spirit breathed in the words used 350 years previously (1498, A.D.) by the Nayar hostages on board Vasco De Gama's ships. On being told of the breach of faith which the Zamorin had committed in detaining Vasco De Gama

on shore, and of the fate which awaited them, if he were injured, the hostages replied: 'yes, that there they were and if any harm were done to the Ambassador on shore, the Portuguese might cut off their heads if they pleased, for they were men who had brothers and relations on shore, who would revenge their deaths even upon the person of the king.' "

These Nairs were of course the Zamorin's kudians, and the Government are asked by Sir Charles Turner to believe that against such men the janmi of the nad or desam would have dared to do anything contrary to their interests.

No Malayalee, unbiassed by special considerations, requires any evidence to believe that the karanavers of the tara, the chief men of the desam, were men who could be treated by the janmi of the desam in matters affecting their interests without any deference to their wishes.

On whom did he rely to carry out his order? A janmi attempting to turn out an old kudian without any reason must have relied upon force.

When, therefore, a janmi wants to turn out a kudian living in the midst of his own tribe or clan connected in various ways with one another having the same interest to watch over the same dangers to apprehend, I cannot believe that they would have viewed with indifference any harsh treatment towards one of their own body to which it is possible they themselves might any time be subjected. And considering the independent spirit which they have always displayed, I must refuse to believe that they were mere tenants-at-will or tenants from year to year tamely submitting to any high-handed proceeding.

It is contended that Committee's admission of the inability of kudian to advance further sums of money to his janmi being considered an adequate ground for future "involves a surrender of their case." This argument ignores the two facts that the janmapattam is limited by custom, and that when the amount advanced amounts to two-thirds of the value, the tenure is converted from a kanom into an otti, and any further advance implies a surrender of a certain portion of janmom right till it entirely disappears.

There is one so-called tenure, melkanom, which is next referred to in the minute of Sir Charles Turner. He is of opinion that it is wrong to say, as Mr. Krishna Menon has said, that it was unknown before the British rule. He relies upon the statements of the early inquirers that the janmi is entitled to redeem the kanom on the expiration of the period to show that he has the right to empower another individual to pay off the kanom and recover the land.

But he concedes that on this point the ruling of the courts may be at variance with the usage. He says, however, no proof has ever been produced that the decision is inconsistent with ancient law or existing usage, and it is in accord with the general law reported by the earlier authorities that the janmi may, at the expiry of the term, resume the land. In fact, the argument is that as the janmi is the owner of the land he has the right to grant a melkanom. Whereas in my opinion the fact that a janmi has no power to grant a melkanom goes far to show that the janmi has no right to pay off the kanom, unless under certain circumstances, which it is unnecessary here to set forth. There is considerable evidence to prove that a melkanom was considered invalid. The proceedings of the Sadar Adalat of the 5th August 1856, to which reference is so often made by Sir Charles Turner, says that the kanomdar has the option of advancing the required sum and remaining in possession if he pleases. In a reported case, it was conceded that the kanomdar had the option to advance the required sum, and that otherwise a melkanom would not be valid. Mr. Justice Holloway, while in Malabar, was of the same opinion (A.S. 84/60), and I know numerous decisions of the local courts in which it was assumed that a melkanom was invalid. And in second appeal, 752 of 1881, referred to in Sir Charles Turner's minute, though an issue was referred to determine this very point, no evidence was adduced on either side, and the court held, in accordance with the views now held, that the janmi has the power. In considering the point, it must be borne in mind that the power of the janmi to demand additional sums is not unlimited, and at a certain stage a kanom is converted into an otti, and any further sum borrowed converts the otti to ottikumpuran till after two more stages, the Janmom attiper has to be executed. In conceding the invalidity of melkanom, the informants of the earlier inquirers probably did not see the admission of the nature of the kanom tenure involved therein. And I believe that is

the only explanation why the view was allowed to prevail till this late period—a view absolutely inconsistent with the unqualified power the janmi is alleged to have to redeem. And in this connection I may state that the pre-emption right which the ottidar admittedly has requires an explanation. If the janmi has the power of demanding any exorbitant sum, or if he has the power of turning out the ottidar whenever he pleases, it is really difficult to see how generally the right of pre-emption could be useful to a tenant. This right of pre-emption, as well as the pre-emption which, I believe, existed in the kanom, is only consistent with the theory advocated by Sir William Robinson, Logan, Wigram and Krishna Menon.

To show the intensity of the sentiments of ownership in the kudian, the Committee asked "how are we to account to private family temples and houses belonging to kudians being built on lands held by them on kanom tenure?"

Sir Charles Turner's answer is, "the scarcity of the land in the land market compels a person who is desirous of building to take the land on whatever tenure he can attain it."

A Malayalee builds his tarwad house on kanom land, calls his tarwad by the name of the land; and surely if he ever expected to be turned out of his land within a few years his tarwad would have, for obvious reasons, never assumed that name—a name by which the tarwad would be represented in all legal and other transactions. A tarwad cannot shift its residence in a day. For every ceremony to be properly performed in the tarwad house the co-operation of the village (desam) is even now required; an intruder from another village is looked upon with the greatest suspicion and the difficulties he has to surmount to get a place in the tara are innumerable. This close connection between the Nair and his desam can only be accounted for by the circumstance that he has powers and obligations to perform in the village which it is not in the power of anybody to put an end to, or to dispense with capriciously. If a drama is performed at night in any house in a desam, the right to light the lamp is vested in a certain tarwad in the desam: so too if an utsavam has to be celebrated in the temple of the desam. In a feast, the right to begin the preparation of the curry, by cutting the plantain fruit, is vested in a certain tarwad in the desam. Do not these facts indicate such a close connection between the tarwad and the desam as is incompatible with the now-accepted notions of the rights of these tarwads to live and maintain themselves in the desam?

I make no apology in reproducing here what Mr. Place has written long ago on the subject:—

"Hereditary residence, however, and a precarious subsistence, do not well coincide. A man continues to live, where his fathers lived before him, only because he succeeds to certain rights and privileges which constitute his estate and of which he cannot be deprived, but under the circumstances which by the laws of his country amount to a forfeiture, he has so well-grounded a confidence in the justice of those laws that the forfeiture is made to be his own act, if it takes place."

The allegation that it is the scarcity of land that compels a tenant to take up lands on whatever tenure he can attain it, is a reckless statement and supported by no evidence. In the majority of these cases it will be impossible to prove the circumstances under which the janmi first parted with possession. I believe of course the land was never in his possession originally to pass out of his hand. But if it ever were, it passed out so many centuries ago that a positive assertion like that made by Sir Charles Turner to explain away the argument cannot be accepted by any dispassionate inquirer.

If this is the true explanation, how is it we do not find any family temples and houses built on lands held on a yearly tenancy of the modern day? It is argued that the landlord can recover the land only on payment of the full value of the building. But I would like to know what proof there is of any customary law requiring a landlord to pay the full value of the buildings. I find in the vernacular books the customary law as to the value of kuqi korr and trees, &c., explained. Such valuation was absolutely necessary for the adjustment of rights between the parties in order to determine the pattom, because the pattom would vary with the produce; but I have not been able to find any authority for the proposition that the landlord must pay the full value of the building before he recovers land from a kudian. Such an authority will not be found if, as I believe, the janmi could not turn out a kudian from his house, and

the absence of any such proof is a strong argument in favor of the theory supported by the Committee. The comparison of family temples to English private chapels is absurd so far as this discussion is concerned. The extreme difficulty in every case to remove the family god or gods—the absolute impossibility in some cases—makes all the difference. Sir Charles Turner is in error in saying, that there are many instances of the sales of such temples. The temples referred to in some of the deeds have no resemblance whatever to the temples the Committee referred to. The Committee next inquire how are we to account for the practice of Nairs purchasing land in the name of some Nambudri and taking kanom demise from him.

Sir Charles Turner replies that he has not seen such a case, and very probably the particular circumstances of the case would explain the reason of the transaction. Some classes of Nairs are dependent adiyans (slaves as it is wrongly translated) of the Nambudris, Zamorin, &c., and in their case there is the authority of the Kerala lpathi to justify the assertion of the Committee (who, through mistake perhaps, have confined the argument to the case of Nambudris) that the janm deeds may be executed in the name of the Nambudris, Zamorin, &c.

Sir Charles Turner says, “the Committee inquire how are we to account for the fact that kanom deed specifies no time for redemption and contains no provision to surrender while their details are almost invariably to be found in panyam deed, which is the only word in common use in Malabar whenever real mortgage of land is intended.” He answers that, by the custom of the country, the kanom deed enures for the term, while the panyam deed is redeemable at pleasure.

No authority is cited for the proposition that the kanom deed enures only for a term of 12 years; and this assumption is begging the whole question. The kanom deed is only renewable after a term.

It is stated by Sir Charles Turner that deeds Nos. 17, 22, 23, 31, 32 and 34, which are kanom deeds, do not contain any provision as to the liability to surrender, nor as to the term, because it was understood that the contract is made in reference to the well-established custom in the same way as a kanom tenant is entitled to value of improvements, though such deeds do not contain any express condition for the payment of such improvements. I deny that the right to receive compensation for improvements is established by proof of usage. All that is established in my view is, that the tenant is entitled to it if the land is let on improvement lease. The suggestion that all the kanom-holders would be converted to tenants for year to year if it were held that no incident is to be recognized as attaching to kanom tenure, except such are expressly mentioned in the deed, is based on a presumption which is not warranted by any principle of Malabar law.

The fact of the old kanom interests being sold in the market for prices far in excess of any sum which the purchaser would get from janmi if evicted, was brought forward as an argument by the Committee in favor of their suggestion respecting the kanom tenure. To this it is answered that it may be explained by the scarcity of land in the market. Mr. Logan's report shows that there is land available for cultivation and I shall feel very much surprised indeed if, in ordinary circumstances, a kanom interest is sold for the amount demandable from the janmi. The suggestion the purchaser may be willing to take the chance that the janmi has lost sight of his interest is absurd because in such cases it would ostensibly be the janm that would be purchased.

The general practice that exists, in the opinion of the Committee, of praying for redemption in a suit, not on the ground the term is expired, but on the ground that forfeiture has risen for non-payment of rent or renewal fees, is disposed of with the remark that no such general practice exists. To this I can only answer that every mittee (see page). Then two arguments are brought forward by Sir Charles Turner wrong. He alludes to the fact that a kanom is occasionally granted without any delivery of possession to the kanomdar. “Can it be asserted,” he asks, “that such rule, kanom implies possession and it must be an extraordinary case where the kanomdar is not put in possession of the lands by the janmis.

It is then argued that no kanom-holder has ever claimed a right to hold over after expiry of the term, and that this one fact outweighs all the inferences of the Committee. Mr. Logan asserts that “the tenant had no opportunity of pleading such a title; but it is clear he had, whenever suit was brought against him for ejectment.” Assuming that suits were brought for ejectment only on the ground that a forfeiture has risen for non-payment of rent or renewal fees, it is clear that Mr. Logan was right, and this, as I have already stated, will not be denied by anybody acquainted with the practice in the mofussil courts. It is true the Committee mention no instance in which such a claim was set up by a kanomdar, but neither does Sir Charles Turner mention any instance in which a janmi claimed and was held entitled to redeem on the only ground that the kanom period had expired.

So few decisions are reported that it is impossible to say that it was not pleaded, and I am not prepared to admit it was never pleaded.

It was finally decided only in 1885 that the kanom was resumable after 12 years, and even if it appears that no such claim was ever advanced after that period, there is no reason to feel any surprise.

But it appears pretty certain such a claim was advanced before that date. In Malabar Auxiliary Court, 43 (1843), the tenant contended “that it is not customary to resume parambas when no injury or arrear of rent is sustained.” I believe this was the case of a kuli kanom.

To conclude, the evidence in favor of kudian's enjoyment of a share of the produce fixed by custom is overwhelming. The only evidence the other way consists of the statements of Warden in 1815 and Commissioner Græme. Warden was of a different opinion in 1801 (see his report of 1801). The statements made by the proprietors in 1805 apparently induced him to alter his opinion. Mr. Græme was most unfortunately prevented (paragraph 1131 of his report) from pursuing detailed inquiries into the ratios which the verumpattom (actual rent) bore to gross produce or to net produce.

He was consequently obliged to have recourse to the statements submitted to Mr. Warden, the principal Collector, by proprietors in the year (981) 1805-6. These statements were found by him, on examination, to give, in most cases, *grossly false* accounts of the rent (pattom) receivable by proprietors, so they served very little purpose beyond furnishing facts to show how false they were on this point.

These two statements are therefore worthless.

Sir Charles Turner concedes, “although then a right of occupancy was generally unknown to the law of Malabar, it practically, to some extent, existed,” and it will scarcely be denied that there are many tenants long in possession who have enjoyed their customary share. I am glad to find that one of the janmi members in a paper laid before the Committee admits it is not usual for the janmis to turn out their kudians.

It will also be admitted that there is a tendency now shown to disregard these customary rules. It may be that the facts stated before Mr. Logan by the petitioners have not been proved, and many of them are incapable of proof. But the evidence adduced before him I believe is strictly true in color or kind. That the power of ouster, if it existed, was never exercised, at least in such a form as to call forth the protest of the suffering classes, I believe we are perfectly justified in assuming.

Now, I would invite the particular attention of the Committee to the state of the members of a tarwad when evicted from their ancient tarwad home. The tarwad very often consist, not of two or three members, who may easily sustain themselves by their labor, but often of a comparatively large number, who find living under such circumstances a hard task. In such cases often the ties of affections are disregarded, the tarwad circle is abandoned; and the males, converted to Muhammadanism, swell the flood of fanaticism, already so menacing, and the females are left to lead a life of misery and crime which few will contemplate without real pain.

Many tarwads manage to live on their old lands by bowing to the yoke of slavery imposed on them by the janmis and the courts.

The English Government are responsible for this. Such a state of things was impossible under the old native rule.

Healthy progress in such a state of society is impossible. The janmis are, as a class, uneducated and incapable of taking part in any movement of progress.

(Signed) C. SANKARAN NAIR.

There is a passage in the Vyavahara Samudram referred to in Sir Charles Turner's minute. I have not been able to find it in the copies I have read.

APPENDIX F (c).

PROCEEDINGS OF THE COMMITTEE ON MALABAR LAND LAW.

Saturday, the 13th March 1886.

PRESENT :

The Honorable the President.

Members.

Raja Sir T. Madhava Rao, K.C.S.I.	Hon. Mr. S. Subrahmaniya Aiyar.
Hon. Mr. H. H. Shephard.	Mr. H. J. Stokes.
Mr. C. Sankaran Nair.	Mr. T. Gopalan Nair.
Mr. K. C. Manavedan Raja.	

Mr. Cardew, *Secretary.*

The Minutes of the last Meeting were approved.

The Committee proceeded to consider G.O., 8th March 1886, No. 42, Legislative, returning to the Committee for its remarks the draft Bill for the securing to tenants in Malabar the market value of their improvements on eviction, as amended by the Advocate-General.

Mr. Stokes drew attention to section 3 of the amended Bill and especially to clause (g) of Part (2), and objected strongly to the words "planting, protecting and maintenance." He said that the valuation of fruit trees was the most important part of the Bill, and that the form of words which the Advocate-General had adopted tended to lead the Court to estimate the value of the trees, not by their own present market value, but by the outlay which might have been incurred on their planting, protection and maintenance. He said that he had himself been called on by the High Court to ascertain what the cost of the planting, protection and maintenance of a cocoanut tree was, and that it was not only impossible to ascertain it, but also, when an approximation to the cost was ascertained, it did not represent the market value of the tree, which it had been the desire of the Committee to give the tenant.

After some discussion—

The Hon. Mr. Shephard said that the draft Bill, as amended by him, was intended to give the tenant the market value of the tree considered with regard to the holding, and he considered that the amended Bill could be construed only in that sense. To remove any objection, however, he would propose to strengthen the words of section 6 (1). He accordingly moved, that section 6 (1) should run thus:—

"6 (1) In estimating the compensation to be awarded for an improvement, regard shall be had to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement.

Explanation.—In ascertaining such amount, the following matters shall be taken into consideration:—

- (a) the condition of the improvement, and the probable duration of its effects;
- (b) the labor and capital required for the making of the improvement;
- (c) any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement."

The Hon. Mr. S. Subrahmaniya Aiyar seconded the proposal.

Mr. H. J. Stokes strongly objected, and said he would be content with nothing else but the restoration of the original words in section 3.

Mr. Sankaran Nair suggested that the words "the measure shall be" should be substituted for the words "regard shall be had" in section 6 (1).

The Hon. Mr. Shephard was unwilling to accept this proposal.

Mr. Sankaran Nair then proposed that the section should run thus :—

"6 (1) The compensation to be awarded for an improvement shall be the amount by which the value, or the produce," etc., (as above).

The Hon. Mr. Shephard accepted this proposal, and, in substitution of his first motion, moved that section 6 (1) run as above.

This proposal was put to the meeting and carried, 5 voting for it.

Mr. H. J. Stokes then said that he wished to adhere to the original Bill, as sent up by the Committee. He objected *in toto* to section 3 of the amended draft, because the object of the Committee was to give to the tenant the full market value of the tree, whereas the result of defining "improvement" as in section 3, and of the sense in which the word "work" was there used, might be to make the measure of the value of the tree to be the cost of planting, protecting and maintaining it.

Rāja Sir Madhava Rao said he agreed with Mr. Stokes.

All the members of the Committee were agreed that the object stated by Mr. Stokes was the object to be kept in view, but they were divided as to the question whether the draft, as amended by the Advocate-General, with the modification of section 6 (1) above resolved on, secured that object.

Mr. Gopalan Nair then moved, in section 3 (2) (g), line 1, to read "or" for "and." Mr. Sankaran Nair seconded, and the proposal was agreed to *nem. con.*

Mr. Stokes proposed in section 3 (1), line 4, to add the word "letting" before "value." Rāja Sir Madhava Rao seconded, and the proposal was agreed to *nem. con.*

The Hon. Mr. Shephard drew attention to section 3 (2) (c), and said that "the conversion of one-crop into two-crop land" was not necessarily an improvement.

The Committee thought that the words should remain.

Mr. Stokes proposed that the same clause [section 3, (2) (c)] should run :—

"the conversion of dry land into wet land and of one-crop into two-crop land."

The Committee decided that the section should stand unaltered.

Mr. Sankaran Nair proposed in section 3 (1), line 4, to read "land" instead of "holding."

The Hon. Mr. Shephard said that "holding" would mean the land held.

The Committee decided to leave the section unchanged.

Mr. T. Gopalan Nair proposed in section 6 (2), lines 1 and 2, to omit the word "fruit" before "trees," and the words "in bearing" after the word "plants."

Mr. Sankaran Nair seconded the proposal, which was put to the meeting and carried, 5 voting for it.

The Committee then decided that the Bill should be returned to the Government with the above recorded remarks and suggestions.

The Committee then proceeded to consider the draft Bill to check eviction which had been prepared by the Sub-Committee appointed at the last meeting.

The draft Bill was read by the Secretary.

Mr. Stokes said that this Bill could not be adopted, if the Committee determined to create an occupancy right.

Mr. Sankaran Nair said that the first question to be decided was whether the Committee were ready to create an occupancy right.

Mr. Stokes read the following sketch of a Bill prepared by Sir Madhava Rao :

"I would proceed somewhat on the following lines :—

"A short Act to be passed.

"The court to be authorized to stay eviction on the application of either janmi or tenant, or of its own motion.

"The stay to be for a period not exceeding one year.

"During this period, the parties may come to a settlement by a compromise or by arbitration, or by accepting "the Fair tenure" of Act 1886 (a Statutory tenure).

"The Act to lay down the terms of such tenure.

"During the stay of eviction, the court to take fit steps to secure all payments by either party.

"If, in that interval allowed, the parties do not settle as above or accept the Fair or Statutory tenure,

"The court will proceed to consider the whole case, and may order that the holding be brought under the Fair or Statutory tenure.

"In passing such order, it may be guided by, or may have regard to, the following considerations. (Specify).

"The Act may declare that such and such acts by the janmi or tenant shall bring the holding under the Fair tenure. *Example.*—Tenant or janmi accepting an increase of rent, and so on; janmi promising renewal for a lump sum to be paid, and so forth.

"The Act to hold out inducements to the parties to accept the Fair tenure by voluntary action.

"Finally, the Fair or Statutory tenure should be perfectly fair to both the parties and be mutually beneficial, and also should be in conformity with the principle admitted—that a good janmi does not desire to evict a good tenant."

Mr. Sankaran Nair said that the question which the Committee must first decide was whether the decision of a claim to evict should be left to the discretion of the Court or whether some statutory tenure should be expressly created. He said that the ultimate effect of any Bill like that of Sir Madhava Rao would be to create a statutory tenure, and the Committee must decide whether it would accept that principle or the principle of leaving the discretion wholly to the Court as proposed by the Bill of the Sub-Committee.

Mr. Shephard said he thought that the Sub-Committee's Bill left too much to the Court and that some guiding rules should be given.

Mr. Stokes said that he supported the Bill of the Sub-Committee, and was not prepared to go beyond it or to create any occupancy right.

Mr. Sankaran Nair then said that he would propose that before the Bill now framed by the Sub-Committee be considered, the Bill drawn up by the late Commission be taken into consideration and modified in the light of Sir Charles Turner's criticism. He said, if the Bill of the late Commission were not adopted, he should then be ready to consider the draft prepared by the Sub-Committee.

The Hon. Mr. Shephard seconded the proposal.

The proposal was carried.

Mr. Sankaran Nair said he had prepared a Bill based on the Bill of the late Commission, and modified in the light of Sir Charles Turner's criticism.

The Committee determined that Mr. Sankaran Nair be requested to send this Bill to the Secretary, and that it should be printed and circulated, and that a meeting to consider it be held on the following Saturday.

The Committee then adjourned.

(True Extract.)

A. G. CARDEW,
Secretary.

APPENDIX F (f).

PROCEEDINGS OF THE COMMITTEE ON MALABAR LAND LAW.

Saturday, the 20th March 1886.

PRESENT :

The Honorable the President.

Members.

Hon. Mr. Justice Muthuswami Aiyar, C.I.E.	Hon. Mr. H. H. Shephard.
Rája Sir T. Madhava Ráo, K.C.S.I.	Hon. Mr. S. Subrahmaniya Aiyar.
H. J. Stokes, Esq.	Mr. C. Sankaran Nair.
H. T. Ross, Esq.	Mr. T. Gopalan Nair.
Mr. T. V. Anantan Nair.	The Nilambur Tirumalpád.
Mr. Ramachandra Aiyar.	

Mr. Cardew, *Secretary*.

The Minutes of the last Meeting were approved.

The Tirumalpád of Nilambur said that before the Bill, prepared by Mr. C. Sankaran Nair, was discussed, he wished to make some remarks. If it was proved that the janmi was the absolute owner of the land, and if it was not proved that there were grounds of public policy for limiting his rights, there was no necessity for legislation. The janmis, he said, who oppress their tenants, are few in number, and the whole law should not be changed on account of these few. If the janmis complained against in the petitions presented to Mr. Logan were counted, they would not exceed 1 per cent. of the total : and all these petitions were sent in only after Mr. Logan's appointment as Special Commissioner, and many never verified. Nor were the janmis afforded by Mr. Logan the opportunity of explanation. Mr. Logan did not take the janmis into the inquiry, but kept it confidential and quiet among the tenants. A paper had been prepared by Mr. Anantan Nair, to meet and refute the statements of Mr. Sankaran Nair, and before the Bill prepared by the latter was discussed, he wished Mr. Anantan Nair's paper to be considered. No ground for further legislation had been shown.

The Hon. Mr. Justice Muthuswami Aiyar said that if the statement were true that the janmis complained against to Mr. Logan were but 1 per cent. of the total, that was an important fact.

Rája Sir T. Madhava Ráo said that the remedy of the tenants' grievances was in the janmis' own hands, if they would but observe their own old custom.

Mr. Justice Muthuswami Aiyar said the question was whether the old established custom had been made out : it was *prima facie* inconsistent to say that the kanom was renewable, and at the same time to say that it was a fixed tenure. When he had been sitting with Sir Charles Turner, kanom documents of 1760 and 1780 had been produced before them, which expressly provided for renewal, and Sir Charles Turner in open court drew Mr. Sankaran Nair's attention thereto. If the majority of the Committee were satisfied that there was an imperious political necessity to interfere with the rights of property, then the case would be different.

Rája Sir Madhava Ráo said that he believed Mr. Justice Muthuswami Aiyar would not oppose any reasonable measure to check arbitrary eviction : would he say what measure he would suggest ?

Mr. Justice Muthuswami Aiyar suggested that the compensation for Improvements Bill would suffice.

The Hon. Mr. Subrahmaniya Aiyar said that an "arbitrary eviction" was a contradiction in terms, and really introduced the principle of expediency ; the object to be kept in view was to prevent the bigger janmis, living at ease like zemindars, from evicting their tenants at the instigation of their agents, without interfering with the smaller janmis.

Mr. Justice Muthuswami Aiyar asked, "why should you substitute the kanomdar for the janmi ?" There were two questions for consideration—first, whether further legislation was necessary, and secondly, what form it should best take.

The Honorable the President said he thought that the first question had been decided at the meeting of the 27th February and could hardly be reopened.

The Hon. Mr. Shephard said the point was this, how—there existing no right of occupancy—can eviction be checked, but by creating a form of occupancy right.

After general discussion—

The Hon. Mr. Shephard proposed that the Bill drafted by Mr. Sankaran Nair should be amended in section 5 by the addition of a clause prohibiting ejection without notice.

Mr. Justice Muthuswami Aiyar asked what there was to show that capricious or arbitrary evictions are numerous.

Mr. Ross then moved and Mr. Anantan Nair seconded "that this Committee do advise His Excellency the Governor in Council that no legislative interference between landlord and tenant in Malabar is at present expedient, beyond the Bill already forwarded to secure to tenants the market-value of their improvements."

The Hon. Mr. Shephard then moved the following amendment :—"First that a statutory right to notice be created ; second, that the provisions of section 114 of the Transfer of Property Act be adopted ; third, that the proposal of Sir Charles Turner to adopt the provisions of Bengal Regulation VII of 1822, section 8, be adopted."

The amendment being put to the Committee, was carried by 8 to 3.

The Committee then resolved that a Sub-Committee composed of—

The Hon. Mr. Shephard,
Mr. H. J. Stokes,
Mr. Anantan Nair,

should be requested to draw up a Bill on the lines of this resolution.

The Committee then adjourned until Saturday the 27th March.

(True Extract.)

A. G. CARDEW,
Secretary.

ENCLOSURE No. 1 TO APPENDIX F (f).

NOTE BY VARANAKKOTT KRISHNAN NAMPUTIRIPAD.

I beg to submit my opinion as follows with reference to the cardinal distinction which exists in the rules of land tenure between North and South Malabar, and my justification for the course is the fact that, owing to my ignorance of English, I have not been able to express my views in the Committee in the course of discussions carried on from time to time. I may at the very outset say that, had correct information been received as regards the agrarian usages and rules of land tenure of North Malabar, it would have been found that there was no necessity to attempt any legislative action so far as that part of the district is concerned. Nobody can deny that there exists immense difference between the tenures of the two places. Without a due recognition of this difference, no legislation which provides the same rules and arrangements for both alike can work in practice and do any good to the people.

The most important difference between North and South Malabar consists in (1) Kánajanna Maryáda or rules of landlord and tenant; (2) tenancy-right and right of improvement; (3) the relation between janmi and the kudian and their circumstances.

First, as regards the kanom tenure. The nature and incidents of this tenure differ very much in South and North Malabar; the only point of similarity is in name. Throughout the greater part of North Malabar, kanom is the same as otti. No rent is payable to the janmi. The transaction is regarded purely as one between lender and borrower, and not between the janmi and the tenant. The object of a North Malabar kanomdar in getting possession of the land is not to cultivate it as kudian, but is simply to keep it as security for the money advanced. No rent is payable, as the interest on the large amount advanced as kanom (nearly two-thirds the full janma-bhogam) quite covers the value of the produce. The transaction is not regarded as one between janmi and kudian. There is no *asatya* or notion of tenancy attached to a North Malabar kanom. A North Malabar kanomdar is by no means regarded as a kudian under the janmi, and he will resent the very idea of his being called such. This is evident from the fact that even big janmis there are mostly kanomdars of the lands belonging to inferior janmis. This is so because the notion of being a tenant is wholly foreign to the idea of kanom. Not so in the South. There, kanom is emphatically a cultivation-lease. The money advanced as "kanom" is generally a mere trifle compared with the extent of the holding, and the rent reserved is a substantial amount, and the transaction is always regarded as one between landlord and tenant. A kanomdar in South Malabar is always called a kudian or tenant, and this accounts for the fact that, unlike the case in North Malabar, an aristocratic janmi in South Malabar will scorn the very idea of taking a kanom on lands belonging to an ordinary landlord. All that early English revenue officials and administrators have said and written about kanom tenants can properly apply only to South Malabar kanom-tenants but not to North Malabar kanom-holders, for they are, as above shown, not tenants in any sense, but mortgagee capitalists. But in South Malabar, there is a broad distinction between the janmi class and the class of kudian, the big Nampútiri Tarwáds, Rajas, &c., being janmis, and the Sudra castes the tenants, but no such distinction exists in North Malabar. Further, in regard to kanom, scrupulous adherence to the twelve years' term and the exaction of renewal fees every twelve years is the exception, and not the rule, in North Malabar. There all transactions between the janmis and inferior holders are founded upon and regulated by contract.

In my opinion, the outcry now raised for the first time against the janmis of South Malabar has little foundation in fact. Equally unfounded is the notion that Mopla outbreaks, which are of a local origin and which are the outcome, pure and simple, of the fanaticism of that class of religionists, are in any real sense attributable to the oppressive proceedings of the janmis.

So far as North Malabar is concerned, the great majority of the janmis are small proprietors whose land is their all. The tenants there are mostly verumpattom tenants who held from year to year in the absence of a contract to the contrary. These tenants, not being possessed of capital and having no means of cultivating their holding, borrow money, and, as soon as the crops are harvested, the creditors fleece them of all the produce payable to the janmi. The janmi has therefore to wait for the tenant's convenience. In many cases, the tenant, taking advantage of the leniency of the janmi, does not pay rent at all for years, and the janmi has often to sue him for ejectment with arrears of rent. Having obtained a decree for rent, his difficulties begin. There is no means of realizing anything from the tenant, for he has no properties, and, even if he should have any, the moment an attachment is placed on it, a score of claims are brought forward by the members of the tenant's tarwad in collusion with him. Add to this the heavy expense and enormous trouble that the janmi has to undergo in finding out, as required by recent rules, all previous claims on the property from the Registry office. After all this, supposing he at last succeeds in getting any amount realized from the tenant, it will in most cases barely cover his expenses of litigation, and the janmi is thus no gainer by a suit for rent. As regards the condition of the janmis of South Malabar and the relation subsisting between them and their tenants, it is to be observed that the majority of the janmis there are Nambudry Brahmins, who are generally very pious and inoffensive. Being

unable by reason of their priestly exalted functions to hold and cultivate the properties, their estates have immemorially been in occupation of Sudra kanom tenants, who are bound to render personal service. These kanom-kudians, who in progress of time have become rich and influential, instead of cultivating lands themselves, lease them out to verumpattom tenants, who are generally poor. If there is any oppression at all, it is on the part of these Sudra kanomdars as against their verumpattom kudians. The wealthy Nambudry janmis are naturally very averse to disturbing their old tenants, and it is considered a point of traditionary honor with them not to do so. The cases in which they in rare instances turn out their old tenants will, on close examination, be found to be cases where some influence is brought to bear upon them from outside—in many cases by the pushing class of Sudra officials.

These Sudra official classes in South Malabar who want to get fine estates on kanom generally apply to a big janmi, offering him a competition premium. The simple-hearted janmi, with his proverbial dread of official authority, has no other alternative than to suit himself to their desire. He is thus obliged, sometimes much against his will, to evict his old tenants. The sin of this can hardly with justice be visited upon the head of the poor janmi. This being the normal condition of things in North Malabar, it will be clear to any unprejudiced mind that it is the poor janmi's interest that requires most support. He is quite powerless against the thousand and one subterfuges of the tenant. To confer fixity of tenure upon a tenant of the above description is tantamount to dealing a death-blow to the poor proprietors of North Malabar. It is greatly to be regretted that correct information as regards the actual working of the law of land-tenure in the different divisions of Malabar has not yet been placed before the Government. Any legislation which ignores actual facts and proceeds upon mere theoretical assumptions must, to a certainty, be a leap in the dark. If any reform is to conduce to the good of the people, it must have been come to after a careful consideration of the actual working of existing rules and usages in the various localities, which differ considerably from each other. For this purpose, it will be necessary to appoint a Commission to take evidence from the various centres of Malabar, and, after collecting all available materials, it may be necessary to constitute a Committee of representative gentlemen representing North and South Malabar equally. Except by some such arrangement as this, I do not think that this knotty problem can be adequately and fairly solved. If, on the other hand, the *modus operandi* is to be as now contemplated and the proposed Tenancy Bill, which, based on assumed theories, has the glorious distinction of having ignored existing facts, immemorial customs and usages, is to be promulgated into law, I may confidently predict that, from the day the Act comes into force, the sun will set upon the agrarian prosperity of Malabar, which is its only prosperity, and there will be a colossal revolution fraught with danger to the best interests of society.

VARANAKKOTT KRISHNAN NAMPUTIRIPAD.

REMARKS ON "THE COMPENSATION FOR IMPROVEMENTS BILL."

My opinion, with regard to the Bill framed for the purpose of giving full value of their improvements to the tenants of Malabar, is as follows:—

I don't think there is any necessity at all at present to meddle with the question of improvement, so far as North Malabar is concerned, because among the tenants there will be hardly any who can *bona fide* assert that an alteration as to the value of improvements which Courts now direct according to the custom of each locality is necessary. There is no reason for altering the present mode of assessing the value of improvements, because, so far as I am aware, there is no class of tenants who complain that the present remunerations are not sufficient to meet their expenses and labor. No tenant in North Malabar will say that he is entitled to get more value than he now usually gets for his improvements, for he is very often both janmi and tenant at the same time, and consequently he will not wish to have raised the value of improvements. Besides these, the present mode of settling the value of improvements is beneficial to both parties, and it is evidently an ancient custom. I don't think it

would be proper and just to interfere unnecessarily with the present custom while nobody wants a change. Those who have any the least experience of Malabar can know full well that there was not at any time in North Malabar the custom of tenants getting full market value of their improvements. I doubt very much whether there has been a custom like this at any time in any part of Malabar. There is no foundation for the argument adduced on behalf of the tenants, that they are entitled to get the full value of their improvements, because it is from the janmis they get the lands and it is upon them they spend their labor and money. Without lands, they cannot do anything. Therefore it is an old custom in Malabar to deduct a part of the value of improvement for janmi in consideration for his claim. In deducting the value in some part, it is usually half and in others a third and so on. This is the present mode of settling the janmi's claim as to the improvements, and this can be known by inquiry. From the very beginning up to this day, there has been a settled rule for ascertaining the value of improvements according to the custom and usage of each locality. Though the rate for improvements usual in North Malabar is not exorbitant when compared with that of South Malabar, yet, when we consider the peculiar usage of land tenure, there is no room for complaint. The difference which existed between these two countries in regard to the rates of improvements is not without a special cause, and without taking this special cause into careful consideration, it would be very impolitic to frame a rule for both countries alike. The undisputed rate of the value of improvements which tenants used to recover very long since is below that which obtains in South Malabar. The cause of the differences that existed as to this point is as follows:—

In North Malabar, the Sudras and other inferior castes are not the slaves of the Brahmins and have not therefore any claim to the lands of the janmis for services rendered, and they don't depend for their livelihood upon any service tenure under the janmis, as do the Sudras in South Malabar.

These latter in South Malabar have been in the possession of the janmi's land as the reward for menial services, and their tenure is known by the various names, such as kanom, atema, kutema, &c. As these tenants have been for several years enjoying their properties and spending their labor and money upon them, thinking that they have by long possession come to have a sort of recognised tenancy right, janmis used to waive in favor of such tenants a good proportion of this janmbhogam claim of the improvements. This is the only cause that I can assign as to tenants in South Malabar getting more value for their improvements than North Malabar, where custom is quite contrary. Janmis have full and unqualified right over the properties without any participation by others. There the tenants have no hereditary tenancy-claim for service on the lands of the janmis. Their claims on the properties are all the creature of contract, and not based on any service. Therefore janmis are entitled to get in the way of janmbhogam their undoubted claim, a third of the profit from the tenant's improvement, and thus caused the reduction of the value of improvements in North Malabar. The tenants have no right in any way to get the full remuneration for their labor and expense, for a proportionate share will be deducted from the whole amount in the way of janmbhogam in consideration for janmi's undisputed claim. According to the 7th section of the Bill, the contract (whatever may be its nature) between landlord and tenant with regard to effecting improvements, is invalid against the tenant. This is very hard upon the poor janmis who cannot afford to pay the full value of the improvements when their tenants happen to be very rich, and it is a good opportunity for such tenants to make the properties their janm by means of improvements, for the poor janmis are unable to recover the lands by paying such a large sum. It is evidently an unjust and impolitic act to allow one party to break the contract which was entered into solemnly and with earnestness.

This arrangement will simply break the ties of friendship which have existed between landlords and tenants for a long time, and will force them to become the greatest enemies and thereby destroy their happiness.

I therefore beg to conclude, for the above reasons, that this Bill is quite unnecessary, so far as North Malabar is now concerned.

VARANAKKOTT KRISHNAN NAMPUTIRIPAD.

ENCLOSURE No. 2 TO APPENDIX F (f).

NOTE BY MR. T. V. ANANTAN NAIR.

Before entering upon a consideration and refutation of the note prepared by Mr. Sankaran Nair, I beg leave to point out what, in my opinion, are two fundamental mistakes in the view propounded by the tenant advocates. One of them I need hardly say is the misconception as to the true theory of "Jenmom," which pervades the whole of their arguments, and the other is the want of due discrimination between the wholly dissimilar conditions of land tenure of North and South Malabar. To take the last first:—No man, who pretends to a knowledge of the district as a whole, can deny for a moment that there is in certain important respects a well-marked distinction between North and South Malabar in regard to the relation of landlord and tenant, the tenures of land, their usages and incidents. This divergence in the tenures of land, the outcome of a difference in early social and political organization, has continued from the remotest times and is now too well known to be denied. But, strange to say, neither the late Committee nor the advocates of the tenant who have put forward their views seem to have recognized the existence of any such difference. The land tenures of Malabar are treated by them as being uniform throughout the entire district, and the proposal for indiscriminate legislation affecting the whole district is based on the erroneous assumption of uniformity—an assumption which simply ignores the variety of customary rules and usages which obtain in different parts of the district. This state of things, which is in a great measure due to the absence from the late Committee of anything like an adequate representation of the interests of North Malabar, is much to be regretted. Nobody conversant with the state of society in North Malabar can venture to assert that the alleged evils of "Landlordism," of which so much has been made, exist there to any extent justifying legislation. The reason of this is not far to seek. One has only to consider for a moment the position and status of the landlords and tenants there. In North Malabar there is not, properly speaking, such a broad distinction between the two classes of landlord and tenant as exist in South Malabar. There, with the exception of the few Rajahs, Naduvazhies, and a small number of big jenmis, all others are more or less both landlords and tenants at the same time. In other words, the great bulk of the population is a body of peasant proprietors. Even the poorest tenant there is a jenmi in the sense that he owns at least one paramba as his jenmom. Quite different is the case in South Malabar. There the class of landlords is, as a rule, distinct from the class of tenants. The Rajahs, Stanies, and Nambudries, of whom there is a very large number, constitute in South Malabar the class of jenmis, and the great body of the Nayers form the tenantry of the country, a class distinct in itself. This latter class seldom figures as jenmis, and is invariably known as the "Kudian" class, however wealthy and influential it may be. One important outcome of this difference in the condition of the two places is that in North Malabar there is little or no scope for any evils of "Landlordism" of which so much has been made recently. There the average jenmi is but a peasant proprietor, and by reason of his limited possessions he is not in a position to cause any oppression to any class. The condition of the jenmi there being closely bound up with that of the "Kudian," the sympathy between the classes of jenmis and kudians is always unimpaired. I can speak from personal experience of the great cordiality and smoothness which obtains generally in the relation between the jenmi and kudian of North Malabar. That there is no agrarian discontent worth notice, and no instances of oppressive evictions there, is clear from the fact, admitted by Mr. Logan himself, that the petitions which come from that part of the district are almost *nil* compared with the number that come from South Malabar. As to the tenures of land in North Malabar, all of them are purely matters of contract between the jenmi and the kudian. Old kanoms and similar tenures governed by customary usages and not by contract are there very rare. Commercial principles, based upon freedom of contract, have completely superseded custom, of which every trace is now all but obliterated, owing probably to the frequent foreign inroads part of the district has been subject to from very early times. Throughout the greater part

of North Malabar "Kanom" is merely a usufructuary mortgage without any of the customary incidents, such as renewal attaching to a South Malabar kanom. There are other points of difference too numerous to be treated of in detail here. Any legislation which ignores this vast difference must to a certainty produce results most disastrous.

Next, as regards the theory of "Jenmom," the view propounded by some of the tenant advocates is that the jenmi is a mere rent-charger, his tenure having, as they allege, come into existence at a later stage than other tenures in the socio-political history of the country. In other words, what this view amounts to is that when the jenmis first began their connexion with the country, they found a body of tenure-holders with recognised rights to the soil, and all that a jenmi was entitled to therefore was to receive a share of the produce of the land subject to the right of those already in occupation. This novel theory, a fine specimen of speculative ingenuity, gives a shock to all that has from time out of mind been known about "Jenmom," and is opposed, not only to past history and tradition, but also to the consensus of opinion of early British investigators of the subject. So long as this fine theory is confined to the region of speculation, it is of course harmless; but to make it the basis of legislation, contrary to the prescriptive notion of centuries, is in the highest degree inexpedient. The true theory of "Jenmom," which consists with history and tradition and has been in practice acted upon from the remotest times, is one which is furnished by a careful consideration of the origin and progress of society in the country now known as Malabar. On this theory, which has in its favor the weight of authorities, European as well as Native, I shall be able to show that "Jenmom," far from being the tenure of a mere rent-charger as it is now represented, is the supreme, absolute and unqualified proprietorship to the soil, and is the highest and most complete type of private property in land.

It is a fact established by the most indisputable evidence that the country known as "Keralam," of which Malabar is a part, had a very peculiar origin wholly different from that of other provinces of India. The history of its foundation by Sri Parasurama is now admitted to be true by all competent scholars. According to this account, this great hero, the devastator of the Kshetrias, reclaimed from the ocean the country known as Keralam by the exercise of some superhuman effort, and for the purpose of expiating the sins attaching to him by his many sanguinary wars, he made a gift of the whole country to a body of Brahmins, as that was supposed to be a highly meritorious act.

This fact is established by Puranic works of undoubted authenticity, by local chronicles and immemorial traditions. Making due allowance for exaggerations in the history handed down to us, all competent scholars are of opinion that the above account of Parasurama is substantially true. The existence of this great hero and the many eminent deeds of his prowess are mentioned in all the leading Puranas and Epic poems, and that with a fulness of detail and amplitude of description which negative all idea of a concoction. There is no reason to think that all these ancient and time-honored chronicles are the result of interested forgery, and on that ground to refuse our belief to the account they furnish. If we can believe as a matter of history the existence of heroes like Hannibal and Alexander, surely it needs no greater effect of imagination to conceive of Parasurama as a historic personage. In support of this story of Parasurama we have the weighty argument that this theory of "gift" is the only theory on which we can satisfactorily account for the superior rights, power, and influence possessed by the true Brahmins of Malabar from time immemorial. Unless this theory of a free gift, by one who was absolute owner, is accepted, it is difficult to understand how the Brahmins came to have that superior right to the soil and its attendant privileges which we find thereon, exercising from the remotest times of which we have authentic record. Nobody, I presume, will maintain for a moment that this superiority is the outcome of any right of conquest, for it is absurd to suppose that these ascetic and unwarlike Brahmins were at any time in a position to secure by force of arms these superior rights and privileges as against the rest of the inhabitants stronger and manlier than they. If, on the other hand, the above theory of a gift is once accepted, the matter becomes perfectly intelligible, and a true explanation is found for the Brahminical ascendancy above pointed out. It is well known that according

to the fundamental principles of Hindu law a gift to Brahmins must be a gift outright, involving a complete divestiture of all the rights of the donor, and it is therefore nothing but natural that the Brahmin colonists, in whose favor Parasurama made his gift out of religious motive, became the full and absolute proprietor of the soil in Keralam. According to the Smrithies the property of a Brahmin cannot be interfered with even by the king, and thus the Brahmin proprietors of Keralam continued to have absolute and undisputed dominion over their properties. Their jenm was their birthright over which they could exercise every conceivable right. The institution of subordinate tenures was their own creation subject to their own convenience, because, by reason of their priestly functions, they were not in a position to personally look after and cultivate their "jenmom" holdings. That the kudian's right to the land was derived from the "jenmi," and not in spite of him, is clear from Keralolpathi itself which is so often quoted by the tenant advocate. The passage in it bearing on this point runs thus:—

“തറയും സമുദ്രവും ഉറപ്പിച്ചതുകൊണ്ടുതന്നെ കല്പിച്ചു. അവരെക്കൊണ്ടു ഭാരതകണ്ഠം കയും കല്പനയും കല്പിച്ചു. അവർക്കുതന്നെ തട്ടയും വീഴ്ചയും വാങ്ങി പരിപാലിച്ചു. കുടിയാൻ കീഴാശ്വര്യം തങ്ങൾക്കു (ബ്രാഹ്മണർക്കു) മേലാശ്വര്യം കുടിയാൻ കണവും തങ്ങൾക്കു ജന്മവും കല്പിച്ച കണ ജന്മമുമായും നടത്തി.”

This shows that the kudian's inferior right to the property was granted by, and derived from, the jenmis, and that the Nayars (the kudians) were enjoined to do various services under them. That the Nayars were men introduced into the country by the Brahmins for their protection and convenience is clear from this and other passages in Keralolpathi, and that this view is correct is admitted by all who have studied the ancient history of Malabar. For a long time after Parasurama the province of Keralam was under the political sway of the Brahminical hierarchy, and during this period, of course, the Brahmins who constituted the exclusive proprietors of the lands engaged the most complete dominion and private property in their lands, having nobody to acknowledge as their overlord. The early native rulers who administered the affairs of Keralam were creatures of Brahminical hierarchy, and during their period also the Brahmin jenmis enjoyed their tenure as of old unfettered by any restriction. The State had then not a shadow of right to the lands held on jenm by the Brahmins, and the very assertion of any right on the part of the ruling authority was inadmissible. The State had not even the right of levying tax on jenm lands. It held its royal domains just like a jenmi and in common with him, and could exercise no right of suzerainty over the jenmis who were absolute proprietors. This fact is proved by the 23rd paragraph of the Minute of the Board of Revenue, dated 5th January 1818. Prior to British conquest, there was no tax imposed upon jenm holdings. All that the jenmis were bound to do was to render certain services, spiritual and temporal, for the benefit of the State. The idea of organizing an impost upon land was for the first time introduced by Hyder Ali, who commuted into a fixed payment the military service which the jenmis were bound to render before. It is remarkable that not even Tippu, the author of mighty revolutions, did think it expedient to interfere with the allodial tenure of the jenmis, and this shows how complete must have been the idea of private property and absolute dominion in lands enjoyed by the jenmis. Owing to the fact that the institution of private property preceded the organization of Government, Malabar has from time immemorial enjoyed the unique position of a country in which the subject and not the State is the proprietor of the soil. In support of this position I may refer to the following authorities:—

- (1) 10th paragraph of the Joint Commissioner's Report of 1793.
- (2) Minute of the Board of Revenue, dated 5th January 1818.
- (3) Fifth Report from the Select Committee of the East India Company, page 130, "Landed tenures."
- (4) General report of the Board of Revenue of Fort St. George, dated 31st January 1803, paragraph 178.

The following extracts from some of the valuable authorities will, I hope, show that the view I have put forth above is correct:—

“It is a remarkable circumstance that until the conquest of Malabar by the Muhammadan Prince of Mysore, this right seems to have been held by the jenmakars free from any condition of a payment in money or produce to the Government; for until that period a land revenue

appears to have been altogether unknown to the people * * *”—22nd paragraph of the Minute of the Board of Revenue, dated 5th January 1818.

“Nothing could be more complete than the property in the soil thus vested in the jenmakars. After defraying the expenses of cultivation, the produce of the land or its value was then free from tax.

“Hence in Malabar there were none of those hereditary registrars who under the denomination of Caranums, Kanakkapillays or Shanbhogues were elsewhere invariably found necessary by the Government to keep detailed accounts of the occupation and cultivation of land. The non-existence of a land revenue in that province rendered the employment of such unnecessary, and the jenmakars, free from any interference of the kind, were the independent owners of the land. They held by right of birth and not of the Prince but in common with him, and therefore may be considered as having possessed a property in the soil more absolute than even that of a landlord in Europe—Paragraph 23, Minute of the Board of Revenue, 1818.

“The lands in general appear to have constituted a clear private property more ancient and probably more perfect than that of England * * In Malabar, where private property has existed from the most ancient times, it is distinguished by the word jenmi, signifying birth-right * * * In Malabar, with the exception of a few estates forfeited by rebellion, there appear to be no sircar or Government lands, individual proprietary right prevailing throughout the district.”—Fifth report from the Select Committee of the East India Company, “Landed Tenures.”

The view of jenm tenure declared by these authorities is of the utmost weight to prove the jenmis' case, because it is the result of inquiry conducted by British officials in the interest of the Government, when they were not likely to over-rate the claims of the jenmis. It is also important to note that the suppliers of the information and materials on which the above opinion of early British investigators in favor of the jenmis is based were generally the leading native officials of the day, who being tenants themselves were certainly not in the interest of the jenmi. The jenm tenure of Malabar has more than once been cited with approval before the Judicial Committee of the Privy Council as an instance of the highest private property in land. In addition to the above authorities, we have the etymological meaning of the word *Attiper*, which shows conclusively the absolute character of the jenm tenure. This word *Attiper*, which in formal deeds we always find used as synonymous with jenm, is a compound of two words *att* and *per* which when put together signify a tap-root. Now the notion of a tap-root shows that the word denotes a right which is the most original and essential of all rights to the soil, and it directly contradicts the theory now advanced for the first time that jenm tenure is of a later growth subject to the right of those already in occupation of the soil. If further evidence were wanted of the absolute character of jenm tenure, we have it in the language of ancient deeds and the symbolism of *Attiper* transfer, all of which unmistakeably show that jenm is the highest and *completest* private property in land.

The alleged necessity for legislation and its probable effect.—One of the fundamental maxims of civilized legislation is, as pointed out in the trenchant minute of Sir Charles Turner, to interfere with the existing order of things only in so far as there is clearly-proved necessity for it, and nowhere is this salutary principle more applicable than in India, where people have been for the last quarter of a century worried by over-legislation and its attendant evils. In the stage of civilization and advancement to which the people of Malabar have now attained, it is of the utmost importance to preserve and develop freedom of contract, which is at the present day universally admitted to be a great factor in social well-being. The proposed legislation which seeks to resuscitate an imagined order of things which, if it ever existed in the country, existed long before the growth of modern ideas—and of which every trace is now all but obliterated—seems to me to be a suicidal measure opposed to the genius of the present age. I shall now consider the grounds on which the necessity and justification for the proposed legislation is vested.

It is said that legislative interference is necessary for the purpose of removing agrarian discontent and to prevent the lawless Moplah outbreaks, which are of frequent occurrence. As to the Moplah outbreaks, their true cause is to be found in the ignorance and fanaticism of this class of people aided by the influence wielded over their uneducated minds by an unrefined priesthood laboring under a false sense of their religion. It is, in my opinion, a mistake to suppose that these local disturbances are in any real sense the outcome of a defect in the law of land-tenure. This is evident from the very history of these outbreaks, as also from the fact that such out-

breaks are always confined to particular taluks which are the stronghold of religious fanaticism. I am glad to find that an article in the *Madras Mail* of the 13th February supports me in this view. Moreover, it appears to me that the proposed legislation, the professed object of which is among others to find a panacea for this evil, is, as it stands, far from affecting any amelioration in the condition of the Moplahs. The great bulk of the Moplahs of Malabar are traders by profession, and the few in South Malabar who are agricultural tenants are those who have become so in quite recent times and who are not in a position to claim the benefit of the occupancy rights sought to be created. To this, it may be said that though they cannot get the benefit of occupancy right, they get by the Bill comparative immunity from arbitrary eviction by the jenmi. But on this point I must say, with all deference for the framers of the Bill, that in my opinion the provisions relating to ouster of ordinary tenants tends more to favor arbitrary eviction than otherwise. I content myself with simply stating my opinion here, as I shall have occasion to discuss this point more at length in my observations on the Bill. The next ground relied on as affording a justification for the proposed legislation is the existence of agrarian discontent generally.

As to this, the first observation that suggests itself to me is, that if it exists at all in any sensible degree, it is purely of a local nature. With the exception of the tenantry under a few of the big nambudries and other jenmis of South Malabar, I know of no class of tenants in Malabar who are dissatisfied with the present state of land-tenure and who have any real cause for complaint in regard to their treatment by the jenmi. No doubt, in recent times when it was noised abroad that the Government was going to legislate for the tenant, complaints against the jenmi became the order of the day. This, however, does not represent the real feelings of the tenant class, but was merely put forward by way of strengthening a cause which they knew the Government was gratuitously going to advocate in their interests. In regard to North Malabar, with which district I may claim intimate acquaintance, I make bold to say that instances of remarkable oppression of the tenant by the jenmis are extremely rare, and this is accounted for mainly by the fact, above pointed out, that the relation of jenmi and kudian is closely bound up, the jenmi being often a kudian himself. In North Malabar, so far as I am aware, the existing land tenures work very smoothly to the advantage of all the parties concerned. The great bulk of the tenants are verumpattom tenants, whose holding is purely a matter of contract. Kanoms are all more or less mortgages, and governed accordingly. Heavy renewal fees and other exactions by the jenmi are not favored and the shrewd tenant is more than competent to protect himself against all attempts at over-reaching by his jenmi. Even as regards South Malabar, nobody who knows the real condition of the tenant class can venture to assert that agrarian discontent exists there in any degree justifying legislative interference. In the present day, when the tenant class as a rule is more intelligent and shrewd than the class of old-fashioned jenmis, it is difficult to understand how the jenmi can, in his dealing with the tenant, gain an unfair advantage against which the tenant is unable to protect himself. The so-called instances of arbitrary eviction of which so much has been made will be found on a close scrutiny to be nothing more than the assertion by the jenmi of his rights, which the wily tenant seeks to encroach upon by collusive proceedings behind the jenmi's back. From the very condition of the big jenmis of South Malabar, the Nambudri illoms, Devaswoms, Stanies and Rajahs, it is clear that they cannot enjoy their lands unless there is a body of tenants ready and willing to cultivate such lands. A strike among the class of tenants would mean the ruin of the jenmi's lands. It is impossible for the jenmis to cultivate their extensive landed estates by means of hired labor. While this is so, can it be imagined for a moment that the jenmi class will, if they can help it, drive their tenants to rebellion by unnecessary oppressive proceedings on their part? We thus see that there is thus ample safeguard to the tenant in the very nature of things themselves against all vexatious molestation on the part of the jenmi. Legislation as proposed by the late committee is wholly unnecessary, and it is little calculated to improve the position of the tenant class for whose benefit it is intended. The only effect it can possibly have is to produce a mighty revolution in the ranks of all classes; to cause greater discontent and heart-burning than exist at present; to introduce confusion, uncertainty and anomaly in the law of land tenure; to embitter the feelings of the jenmi against tenant; to impoverish the condition of the peasantry; to increase ruinous litigation—in fine, to darken the smiling agricultural prosperity of the country.

Observations on the Notes drawn up by Sankaran Nair.

Mr. Sankaran Nair starts with the assumption that there was in ancient times a customary division of produce between the jenmi and the kudian, independent of contract, and that the kudian was, in respect of the produce, a co-partner with the jenmi. On this ground he bases his theory that the jenmi could not turn out a kudian for non-payment of higher rent.

As to the alleged division of produce, he quotes certain passages which favor his view from the writings of early English officials, and as regards the overwhelming evidence to the contrary, furnished by a host of able and impartial British administrators, he dismisses it with the simple remark that he does not attach much weight to them. Why the valuable opinions of these early English writers, formed after full enquiry from all available sources, should not be accepted when they happen to contradict a particular theory, but should be assumed to be true when they favor that theory, is indeed not clear. Some of the authorities relied on by Sankaran Nair, no doubt, show that certain share of the produce after *Vittu and Valli* was allowed to the kudian in some cases as *Kozhulabam*; but what I maintain is that this was fixed, not by any custom, but by contract, and could endure only so long as, and subject to, the mutual stipulation between the parties. In every country a cultivating tenant is allowed to have some profits from his cultivation, and this was also the case in Malabar. The liberal jenmis, for the purpose of encouraging cultivation, used generally, in ancient times, to allow their tenants a decent share of the produce as *Kozhulabam*; but it was clearly competent to a jenmi in any particular case to fix his own terms as regards the pattom with the kudian. The view that pattom was, of old, determined by custom and not by competition, is one which is opposed to the past history and tradition and to the weight of available authorities on the subject. The jenmi being the full and absolute owner of the soil, as I shall show later on, there was nothing to prevent him from having his own terms. The kudian's right to the produce was in every case regulated by contract. Major Walker, who is quoted on the other side, himself admits that in Malabar from of old even the most common transactions used to be confirmed by written agreement, and this shows that nothing was left to be settled by blind custom. That the jenmi's right to the usufruct of the soil is absolute, and the kudian's right to a share of the produce was regulated by contract and not by custom, will be evident from any authorities.

Even if at one time the kudians used to get a certain share of the produce as ~~they used~~ how does this mere fact show that they were entitled to it as a matter of right and that the jenmi could not exclude its operation by express contract. No authorities have been cited for the position that this share of the produce was of right claimable by the kudian, and it is therefore scarcely necessary to pursue this point further. Again, even if a certain share of the produce is found to have been generally allowed to the kudians, this can only last so long as the kudian occupies the holdings; but how does this fact show that the jenmi could not evict the kudian which is the important point at issue? But Sankaran Nair says that the fact that the kudian has been, as he says, paying rent at a uniform rate for a long time, shows a want of title to the land in the jenmi. This involves two assumptions, neither of which is verified. The first assumption is that the kudians have been for a long time paying rent at a uniform rate. There is nothing to show this. On the other hand, the jenmis from time to time used to adjust the rate of rent according to the various circumstances of season, crop, &c.

Again, how does payment of rent at a uniform rate show want of title in the receiver of the rent? One would have thought that the payment of rent was the very best evidence of title. On the whole, the argument founded upon this supposed customary division of produce is simply inconclusive.

The question originally proposed for discussing by the tenant advocate was whether before 1852 the jenmis were in the habit of ousting their tenants for causes for which they are now evicted. I proceed to show that the jenmi's right of eviction was always undoubted and exercised from the remotest times of which we have authentic record. This is the first time in the history of Malabar when we find this right seriously denied. That the right was always possessed by the jenmi will be

clear from the unanimous verdict of early English authorities, and from the history, traditions and usages of the country. Some of the tenant advocates themselves admit that the right was possessed as a matter of theory by the jenmi, but they say that the right was rarely exercised in practice. The first place where we meet with an absolute denial of such right of eviction in the jenmi is in the report of the committee appointed in 1884. There the broad statement is hazarded for the first time that scarcely a single jenmi brought a suit of eviction against his kudian until 1852, and that the procedure before that period was for the jenmi to get a decree for rent and sell up the kudian's interest. That this statement is wholly incorrect and quite opposed to actual facts, it is not difficult to show. One has only to glance at Mr. Strange's report, where at page 440 he gives a tabular statement showing the early average for 10 years of about 1,200 suits in ejectment brought by the jenmis. The very fact that at the time of Mr. Strange's special commission, the Moplah outbreaks were suspected to have been caused by oppressive eviction by the jenmis, is pregnant evidence to show that such power was then admitted on all hands. A glance at Mr. Strange's report is sufficient to convince any one that the jenmis had been always exercising their undoubted right of ouster and that such right nobody ever dreamed of denying. Mr. Strange's view is fully borne out by the opinions of such eminent authorities as Major Walker, Dr Buchanan, Messrs. Warden, Graeme and Thackeray and a host of other writers who have furnished us valuable information in regard to Malabar land tenure. I have collected a large number of decrees ranging from 1828 to 1843, which show that the jenmis used to evict their tenants, and especially kanom tenants, at their mere will and pleasure. Any number of such decrees can be produced if necessary. Those who maintain that the jenmis had no power of eviction before 1852 produce absolutely no evidence in support of their assertion, and this is not at all to be wondered at, seeing that stern facts cannot be altered by convenient theories. It may, of course, be conceded that evictions were not as common in former times as now. This is due to two reasons. First of all, the kudians of the good old days, unsophisticated by modern ideas of equality and independence, stood always well with the jenmis, bearing with cheerfulness the customary terms imposed upon them and never denying the jenmis' title. Even now it is not rare to find in the interior parts of the district old kudians who think it a sin to defraud a jenmi of his ~~customary~~ rights. Secondly, in former times when money was scarce in the country, competition for land was little. The jenmi had therefore little inducement to turn out his tenant who was as good as another. But where there was sufficient inducement, the jenmi had full power to evict, as can be shown by facts and figures too numerous to be gainsaid.

It is said by the tenant advocates that the Sudder Court in 1856 extinguished the ancient privileges of the kudians by ruling that a kanom was a redeemable mortgage for 12 years. This complaint pre-supposes that before that period kanom was not a redeemable tenure. Not only is no authority advanced for this supposition, but also all known facts are against it. It will be seen on a careful consideration of all the circumstances connected with the Sudder Court proceedings of 1856, that if they effected any change at all, it was in favor of the tenants and not of the jenmi as erroneously supposed. First of all, their very object was to put a stop to oppressive eviction, as that was supposed to give rise to agrarian discontent and Moplah outbreaks. Secondly, a kanom tenant before that period was liable to be evicted at any time for refusal to renew or non-payment of rent, and as to renewal, it was enforced as Purushantram or succession duty on the death of either the jenmi or the kudian. This might often be at near intervals of each other. To show this, I may quote page 470 of Strange's report. To prevent this insecurity of tenures and to give the tenant an immunity from repeated exactions in the shape of renewal fees, it was ruled by the Sudder Court in the interests of the tenant that a kanom tenure was to last for 12 years, and the benefit thus secured to the tenant was amplified by the courts subsequently "holding that non-payment of rent or refusal to renew within 12 years was not sufficient to work a forfeiture as was the case before. The action of the courts since 1856 have thus been in the direction of improving the position of the kudians and therefore the present complaint advanced against the courts on their behalf comes with very bad grace indeed. Again, it is absurd to say that the Sudder Court extinguished any right they had. If before 1856 the rule was that kanom tenants could not be evicted, how is it that such a rule was not even alluded to by the experienced judicial officials

of the district who were consulted at the time by the Sudder Court? A widespread custom such as this must surely have been known and recognized by the courts. Yet we find no allusion to them either at the time or ever afterwards. Again, if the Sudder Court decision did such havoc in the rights of the tenants as now represented, it is inconceivable that there was no agitation or representation to the Government on the part of the tenant. The history of origin of jenmi tenure shows beyond dispute that it is an absolute and unqualified property to the soil and not merely, as is now asserted, a co-partnership in the usufruct with the kudians. The institution of jenm preceded the organization of Government, and all rights inferior to jenm were of subsequent creation. The very best circumstantial evidence in favor of the view that the jenmi's position as long recognized is the true one is furnished by the weakness and hollow nature of the arguments by which the tenant advocates now seek to support their slippery theories and by the various subterfuges to which they are driven when their arguments one by one are shown to be untenable. The first and most important point on which they originally joined issue with the jenmis was as regards the question whether before 1852, the date of the Sudder Court proceedings, the jenmis had the power of ousting their tenants. The negative of this issue was for some time strenuously maintained by the tenant advocates, they being apparently not aware of the great risk they ran in resting their case on such a weak foundation. What is more wonderful is that the first committee also fell into the same grave blunder which they could well have escaped if, instead of reasoning from self-assumed theories, they had given anything like adequate consideration to actual facts and figures. However, when the jenmis contended and were ready to show to demonstration that the power of ouster before 1852 was always exercised and was not even so much as doubted, the tenant advocates finding no way out of the stern logic of facts changed their line of attack and, giving up their original contention as untenable, took shelter under other arguments and contentions of a nature calculated to throw a glamour over the minds of foreign observers, but little likely to command weight with men who have any practical acquaintance with the condition and circumstances of Malabar. The process of reasoning by which it is now sought by some of the tenant advocates to boil down the rights of the jenmis is indeed amusing; they take as the basis of their peculiar arguments some theories of their own in regard to past institutions and tenures and clench and cleave them in such a way as to suit their own contentions. Fact and circumstances are explained and their effects construed in a way which at first sight to an unwary mind would appear to be plausible. Their hollow and incomplete nature can duly be detected by a close and careful scrutiny. Such specious arguments are thus peculiarly dangerous and I would earnestly request the committee not to accept them as valid unless and until they hear what is to be urged (and there is much) on the other side. A mind accustomed to legal subtleties and refinements can easily explain away every conceivable fact to suit a particular theory; but this is certainly not the mode of conducting a fair and impartial investigation into an important subject like the one under consideration. I have already shown that the argument founded upon a supposed customary division of produce is unfounded and inconclusive. In the second note prepared by Sankaran Nair, he considers the objections stated by Sir Charles Turner to be views put forward by the committee and the conclusion that he unsuccessfully labours to establish is that Sir Charles Turner's opinion is incorrect. But I hope all unbiassed minds will agree with me in saying that Sir Charles Turner's minute is decidedly the best and most ably-handled paper on this question of jenmom rights. It is the outcome of the learned Chief Justice's special study of the subject for more than six years and its combination of ripe wisdom with mature experience gives it a special value. It is well known that as a specialist in Malabar law, Sir Charles Turner has few compeers. That the opinion of such a learned gentleman offered without any view to party interests should receive the very highest respect is nothing but just and proper. The whole tenor of Sir Charles Turner's report shows that what induced him to bring out his impartial defence of the helpless cause of the jenmi was his strong sense of justice and fair play.

I shall now consider how Sankaran Nair deals with it. He says, what must strike everybody as a rhetorical surprise, that the arguments adduced by Sir C. Turner to prove private ownership in lands are duly consistent with the theory that the kudian was the owner of the lands. This is a conclusion the wildness of which is, to say the least, staggering. As well may we say that "jenmi" means the "kudian." Let

us now follow Sankaran Nair in the arguments by which he comes to this astounding conclusion. He takes Sir Charles Turner's statement that the ruler's share of the produce being limited, there must have been another proprietor for the remaining share, and he says that such proprietor was not the jenmi but the kudian. If this is so, what becomes of the jenmis? Where are they with their share of one-third of the produce conceded by Sankaran Nair himself elsewhere in his writings? The case of the Zamorin quoted does not prove anything, for he is a jenmi himself with nobody under him as co-proprietor of the produce. The passage from Keralolpathy is misleading, as without the full context it is difficult to assign any proper meaning to it. It does not show anything of the sort Sankaran Nair wants to establish. The grotesque absurdity of holding that the kudian is the owner of the lands is too glaring to need any refutation.

The next argument adduced to show that the kudian was co-proprietor with the jenmi is one founded upon a supposed view as regards the origin of society in Malabar. The tenant advocate says that the commonly-received theory that a Brahminical theocracy preceded the institution of subordinate tenures is wrong and that evidence is wanting to establish it. But as I have already shown, all the evidence we have point to the fact that the institution of a Brahminical theocracy preceded the institution of land tenures, and we have no valid reason to discredit the array of authorities, both European and Native, which prove this peculiar origin and history of Malabar. Keralolpathy itself, on some passage of which the tenant advocates base their theories, will furnish, when properly construed, the best evidence of this. I have already shown in treating of the "jenmon tenure" how the theory of a free gift of the whole land to a Brahminical hierarchy is the only theory consistent with and accounting for all the known facts about Malabar and its early history. The view that previous to the advent of the Brahmin colonists a body of Nair tenants already existed in the country and after the Brahmins settled themselves there was a sort of recognised divided ownership in the land, proceeds upon a misunderstanding of the plain meaning of Keralolpathy. Sankaran Nair takes his stand on a passage in Keralolpathy which says that, after Parasurama settled the Brahmins in Malabar, there was considerable disturbance caused to them by the Nagas (serpents); that, to conciliate them, Parasurama ordered a share of the Brahmins' property to be allotted to them, at the same time constituting them "Stana Daivom" or tutelary deities. Sankaran Nair thinks that the Nagas, who were thus gracified and given a share in the property, where the ancestors of the original Nair inhabitants. This view is indeed novel and amusing in the extreme. How the Nagas or body of serpents could have been the ancestors of Nairs surpasses one's comprehension. Every Malayalee must know that the "Nagas" means the serpent deities attached to each tarwad which are even to this day worshipped as part and parcel of the Tarwad Dhurma Daivom. The other arguments brought forward are—(1) that there is no trace of colonization by conquest and therefore nothing to show that the Brahmins gained complete dominion; (2) that the family law of the Nambudries being found to resemble the law of the Nairs, it must be inferred that the Nambudri Brahmins copied it from the Nairs who were already existing there. As to the first argument, it is to be observed that it in itself is the very best circumstantial evidence to show that the theory of "gift" by Parasurama is true; for, unless this theory of a free gift by one who was absolute owner is admitted, it is difficult to understand how the ascetic and unwarlike Brahmins were able to secure and enjoy those superior rights and privileges which we find them exercising from the remotest times. It is absurd to suppose that by force of arms they obtained their right to the soil from the sturdy Nairs. As to the argument from the analogy of the family law, it is a pure fallacy to suppose that the Brahmins copied their law and customs from the Nairs on their alleged advent in their midst. The very idea of adopting the law of the Nairs, "the great unwashed," would have been in ancient days revolting to the sentiment and degrading to the high religious sanctity of the Nambudries. On the other hand the fact established by the authorities is not that the Nambudries adopted any particular law themselves, but that Parasurama, the founder of Keralam, and after him Sri Sankara Chariar imposed on them the peculiar law of inheritance for the better conservation of their family estates. To the Nairs also who were subsequently brought in the same law with necessary changes were laid down for the same purpose. There is every reason to believe that the same

hand fashioned the law for both the classes, and the assumption that the Nambudri Brahmins adopted the law of the Nairs is opposed to reason and principle.

Sankaran Nair himself does not believe that the above two theories are really tenable, and therefore, as a last refuge, he takes shelter under a third theory. He says, "assuming that the Nambudries were originally by conquest or occupation the full owners of the lands, and remembering that the Nambudri was a non-cultivating class, is it not likely that by force of custom the other classes would be allowed to acquire an interest in the land?" To this the plain answer is that it is precisely because the Nambudri is generally a non-cultivating class that the Nairs were brought in and assigned the business of cultivation under the Nambudri jenmis. These Nambudri jenmis parcelled out their lands for cultivation to their Nair neighbours on various tenures subject to such terms as were agreed on between them. When possession of land was thus acquired by the Nair kudian under contract with the Brahmin jenmi, how can there be any question of prescriptive acquisition of an interest in the soil by force of custom? All that custom could have done would be to establish certain usages and incidents in the case of various tenures so long as they inure; this, of course, nobody denies.

Sankaran Nair next adverts to the opinion of Sir Charles Turner that the language of ancient jenm deeds unmistakeably points to the view that jenm is the most complete private dominion in land. The circumstantial evidence derived from this is of great weight. Mr. Logan, who investigated the subject himself, admits the fact. Now all that Sankaran Nair has to say against this is that Sir W. Robinson has come to a different conclusion. But it is evident that Sir W. Robinson's opinion does not contradict the view of other British inquirers in favor of the jenmi if by the term "ryotwary proprietor," is meant the jenmi. Even conceding that Sankaran Nair is right in his statement that Sir W. Robinson meant the kudian by the term "ryotwary proprietor" the fact remains that Sir W. Robinson's view proceeds upon a mistaken analogy between the right of a jenmi and an eastern coast proprietor—an analogy which all known facts about Malabar forbid. He testifies to the high and inviolable character of "ryotwary property" on the Western Coast.

As regards the early jenm deeds, Sankaran Nair thinks that the extraordinary rights conveyed by these deeds were really rights which belonged to a ruler as such, and that these deeds do not show anything as regards the rights of the jenmi as against the kudian. As for the remark that they are royal rights, it is disproved by the simple fact that we find such expression in private deeds of sale which can certainly not grant royal rights. As to the statement that the right of the jenmi as against the kudian is not shown, it is to be remarked that the very language of these deeds show that the kudian has no right to the soil as against the jenmi. The jenmi's right is described in terms which negative all idea of a divided ownership to the soil. The jenmi is described as being entitled to the entire soil, to every conceivable thing about it and underneath it.

Sankaran Nair next proceeds to make a general onslaught upon the opinion of early inquirers which happen to contradict his theory. He says that their information was gathered generally from the jenmi class and cannot therefore be trusted. This is a wholly incorrect statement. The suppliers of the information and materials on which the opinion of these early inquirers is founded were generally the leading native officials of the day, such as huzur sheristadars, who were all Nair tenants. To take an instance: The righthand man of Mr. Græme, one of the early Commissioners whose opinion strongly favors the cause of the jenmi, was one Pilapara Kanara Menon of Calicut who was the sheristadar to the Principal Collector and who subsequently distinguished himself in the conquest of Coorg. He was then a big kanom tenant and even to this day his family possesses extensive kanom and other leasehold lands. Could it be supposed that such a man would give wrong information to benefit the jenmis at the expense of his own class? Besides, the Hindu landlords of the day seldom came forward to volunteer information as they were afraid and suspicious of the proceedings of the early British administrators. It is therefore unfair to say that these early inquirers were misled by the jenmis.

Sankaran Nair next deals with verumpattom and kanom tenures. In discussing the verumpattom tenure, Sankaran Nair quarrels with the ordinary definition of the term. He is of opinion that where no term is specified, a verumpattom tenure does

not necessarily inure only for a single year, but that, in some cases, the right to hold for 12 years, and in other cases the right to hold for ever, has been recognized. This view of verumpattom tenure is to a great extent fallacious. In the absence of a specific term, it is always a lease from year to year and has always been so held by the courts. No doubt it has been ruled in a recent decision of the High Court that a royal lease in consideration of avakusam or fee received is to inure for 12 years, but this decision went on the express ground that according to the custom proved the payment of such fee conferred on the tenant the right to hold for 12 years, probably in analogy to the renewal fee in the case of the kanom. This does not show that a verumpattom lease pure and simple is to have the same incident. As to the statement that verumpattom tenure, in the absence of a specific term, has been in some cases held to confer a right to hold for ever, I can only meet it by a direct denial. Sankaran Nair quotes an anonymous case. I remember the case well and I can undertake to say that it decided nothing of the sort that Sankaran Nair wants to establish. In that case all that the court decided was that, when there is nothing to show the nature of the tenancy, the mere fact that the tenant set up a perpetual tenancy which he failed to establish does not entitle the jenmi to recover. This is expressly put on the ground that perpetual tenures being as common as simple leases in the part of the district whence the case came there was no presumption that a tenure not proved to be permanent is necessarily resumable. Here no question of verumpattom arose and the case was decided on the short ground that plaintiff, in order to succeed, must prove the tenancy alleged by him.

Kanom tenure is next dealt with and it is contended that the view that the kanom is only a security for rent is wrong and that the true view is that it is a mortgage of the jenmapattom. The fact appears to be that a kanom is both a security for rent and a mortgage of the jenmi's right. The mistake in Sankaran Nair's definition lies in the statement that it is a mortgage of the jenmapattom. If by this it is meant to suggest that the kudian has a pattom or share of the produce independently of the jenmi, then I say that it is entirely wrong. I have already shown that the kudian's right to any portion of the produce is purely the result of contract with the jenmi. Sankaran Nair finds fault with Sir Charles Turner's theory that the remission of a percentage of the kanom is the origin of the renewal fee. Whether Sankaran Nair is correct in all that he says on this point it is unnecessary to consider, because this is at best an insignificant matter. The real question is whether kanom, as contended now on the other side, was an irredeemable tenure before 1852. Mr. Sankaran Nair admits that the ruling of the Sudder Court that a tenant could not be forced to renew for 12 years from the date of the last renewal was in the interest of the tenant; but he says the mistake lay in adding that it was not compulsory on the jenmi to renew. I should like to see Sankaran Nair's authority for the position that it was incumbent on the jenmi to renew at the desire of the kudian. The very fact that this plea was not raised in any of the numerous cases of eviction before 1852 is the very best evidence that this idea was never existent in the country. I have collected a number of decrees for eviction passed from 1828 to 1843 in suits brought by jenmis to redeem lands demised on kanom, but in not a single case do I find any such plea advanced.

In alluding to the opinion of early inquirers and the proclamation of the Joint Commissioners in 1793, which declare in unmistakeable terms the right of the jenmi to evict his kudian, Sankaran Nair again harps upon his familiar argument that these authorities derived their information from jenmis. I have already shown that this view is entirely a mistake. It is said that the Court of Directors, as early as 1821, pointed out the unreliability of the opinion of these early inquirers. I should like to know when and in what circumstances the Court of Directors so intimated their opinion. I doubt much if there was really any such expression of opinion on their part as regards the investigation of Malabar tenures, for I find the same authority admitting in the clearest terms the complete nature of private property in land enjoyed by the jenmis of Malabar. In two despatches of the Court of Directors to the Government of Madras, I find the following passages: "In forming the materials at a distant period for the settlement of the lands of Malabar and Canara, great caution should be used lest you interfere with rights which have been hitherto considered to be inviolable or to disturb those ancient boundaries or land-marks which at that time had determined the extent of private property by which the proprietors of lands have

been governed from time immemorial." Again, "In framing fiscal arrangements applicable to the existing state of society in Malabar and Canara, it is important not to lose sight of the strong ground upon which the proprietary rights of the landholders in those districts are founded. By attempting to introduce an intermediate class of persons . . . we shall not be creating an order of great proprietors, for we have no property in the land to confer with the exception of some forfeited estates"

It is alleged that the proclamation of the Joint Commissioners does not show unqualified right in the jenmi to evict his tenant for non-payment of rent. That this statement is falsified by the very language of the proclamation will be evident to all who peruse the proclamation, and it is therefore useless for me to dwell on it. Exception is then taken to the advice of Sir Charles Turner to the Government not to trust the statement of the committee that against the wishes of the kutatm of the tara no kudian could, of old, be turned out. Sankaran Nair himself admits that there is no direct evidence available in support of this statement. In point of fact, all that we know of the power and influence of ancient jenmis point to a wholly different conclusion. This statement is of a piece with the contention originally advanced by the committee that, previous to the Sudder Court ruling of 1852, there was not a single suit of eviction brought by the jenmi. This statement is completely falsified by facts and figures too numerous to be gainsaid as I have already shown, and this issue has been virtually given up by the tenant advocates. To show that a jenmi could not evict a tenant of his own accord, Sankaran Nair conjures up, in imagination, a powerful tara which is alleged to have held the big jenmis in awe. In support of this statement a passage is quoted which does not at all appear to me to bear out the conclusion drawn from it. The existence of such a guild of Nayars, who held the powerful jenmis like the Zamorin in subjection, is opposed to all that is known of the constitution of government in ancient Malabar; and, this being so, the weight due to the anonymous authority quoted by Sankaran Nair is highly problematical. Even conceding, for argument's sake, that such a powerful tara did exist, how does this show that the jenmi's power of freely dealing with his property was subject to their sanction. It is not pretended that the alleged kootam of the tara had any judicial functions, and the supposition that the ruling chieftains and other powerful jenmis of old allowed this body to sit in judgment over their acts is, on the face of it, monstrous. It is, moreover, a mistake to consider this kootam of the tara as a body distinct from the jenmis. They were mostly the jenmis of the tara themselves, and as such they had every conceivable motive to support and not to resist the proceedings of their powerful compeers. In regard to this "kootam of the tara," I must be allowed to remark that the committee have altogether misunderstood the nature and function of such a body. "Tara kootam" is merely an association of the leading men of the desom, organized for purposes purely social. They had no concern with the enforcement of legal rights and no authority to bind others by their award. If this is doubted, I challenge an inquiry.

Mr. Sankaran Nair next considers the question of melkanom, and labors to prove from it his theory of the permanency of kanom tenure. He says that the present law that a melkanom is a valid transaction is wrong, and that it is opposed to the view entertained in ancient times. Now it is to be remarked that we have no just ground for holding that a decision is necessarily wrong because it is modern, and in this particular matter all the previous rulings and authorities were duly considered by the court before it passed its decision. All that the old view about melkanom amounts to is that the kanomdar has a prior right of being asked when the jenmi wants to raise a further sum upon the land. Supposing the kanomdar is unable or unwilling to advance the required amount, then there is nothing to prevent the jenmi from demising it to another on a further kanom, the effect of which is to terminate the holding of the prior kanomdar. This is precisely the case with "otti," and surely it is absurd to claim for kanom a greater privilege than that attaching to "otti," admittedly a higher tenure.

Mr. Sankaran Nair next considers the answer given by Sir Charles Turner to certain of the so-called circumstantial arguments brought forward by the committee in support of their new theory of kanom tenure; the first argument is that private family temples and houses belonging to kudians are built on kanom lands, and this, it is said, shows the intensity of the sentiment of ownership in the kudian. As to family temples, their instances must be very rare. So far as North Malabar is concerned,

I do not think there is any. Even if there are solitary instances, they are all cases either of express contract with the jenmi or cases where, the jenmi being pious, the kanomdar knows that the jenmi will think it a sin to evict him together with the deity from his holding. As to houses being built on kanom lands, it is due, as Sir Charles Turner has pointed out, to the scarcity of land in the land-market. In South Malabar till recently nothing was more difficult than to compel a jenmi to part with jenmi lands, for there is a traditional unwillingness to sell jenm. Poor kudians who cannot command the luxury of purchasing jenm lands are therefore obliged, through sheer necessity, to erect their houses on whatever lands they could get. Whenever they can afford to have jenm lands, they always build family houses on such lands. It is only when all other resources fail them that they think of building their houses on kanom lands. So far as North Malabar is concerned, this argument does not hold good. There, except in the case of low caste people, it is very rare to see family houses built on kanom lands. Even the poorest man, provided he has a patch of jenm lands, locates his tarwad house on it. In fact it is the pride of every North Malabar man that he does not live in a tarwad built on a precarious holding under another. To show that the circumstance of building family house on kanom lands evidences an idea of permanency, Sankaran Nair argues that if there was a likelihood of eviction, the tarwad would never have assumed that name. How this is I cannot understand. A person of a particular tarwad is always known as belonging to that tarwad on whatever paramba his family residence may from time to time be shifted. It is said that the statement of Sir Charles Turner is reckless, that it is the scarcity of land that compels a tenant to take up lands on whatever tenure he can get it. This is a very unfair criticism, as every person, with any pretension to practical acquaintance with Malabar, will admit that Sir Charles Turner is entirely right. What is really reckless is the statement that because family houses are in rare cases built upon kanom lands by people who cannot get jenm lands, that circumstance to be taken as affording a proof of the sentiment of ownership involved in kanom tenure. Mr. Sankaran Nair asks, "If it is not because kanom implies an idea of ownership that family houses and temples are built upon kanom lands, how is it we do not find them built on lands held on yearly tenancy of the modern day." As to this I must say that, first of all, it is not true that family houses are not to be found built upon simple leasehold properties. Even if such instances are not as common as in cases of kanom, the obvious reason of it is that kanom is a higher tenure in which the tenant has a money right over the land, and in which he is entitled to the value of the buildings. Sankaran Nair doubts whether this statement as to the kanom tenant being entitled to the full value of buildings is correct. This is indeed strange, and this doubt, though now convenient for purposes of party warfare, comes with bad grace indeed from those who duly, the other day, fought resolutely for the recognition of that right in the matter of the Improvement Bill.

Another argument brought forward as showing the high character of kanom tenure is the practice, which is alleged to exist, of Nayars purchasing land in the name or some Nambudri and taking a kanom demise from him. I do not know whether Sankaran Nair can point to any actual instances of this at present. It may be that in ancient days there were here and there stray instances of this, but their true explanation is quite different, and it is to be regretted that Sankaran Nair has not been able to see it. It is a well known fact that the ancient jenmis of Malabar, and more especially the Brahmin jenmis who at one time monopolised the land, were very averse to selling their jenm lands, and this aversion was all greater in the matter of a sale of jenm to an inferior like the Nayar class, who it was considered was unworthy to step in the shoes of the holy jenmi. When a Nayar therefore wants to get lands, it would be impossible for him to get a sale of jenm directly from the proprietor, but would be obliged to have it purchased by a Nambudri, a course to which serious objection would not be taken. The Nambudri, in whose name the purchase was ostensibly made, could not consistently, with the idea then prevalent, sell it to the Nayar; and therefore to all outward appearance a kanom demise is granted to the Nayar, and as the intermediary Nambudri is merely a tool, the Nayar enjoys the property as his own though under the appearance of a kanom. This being the real explanation of the practice, if it existed at all, the conclusion sought to be drawn from it by kanom advocates does not arise at all. The next argument is, "How are we to account for the fact that the kanom deed specifies no time for redemption and contains no provision to surrender, while such details are common in the case of panayams." Now the statement that

kanom deed does not specify the time for redemption and contains no provision to surrender, is wholly incorrect as regards North Malabar. Their kanom documents always specify a term 5, 12, 24, 36 years as the case may be, and there used to be always inserted a clause for surrender on expiry of the term. As regards South Malabar, the reason why such details are not mentioned is because ever since 1862 kanoms have always been understood to enure for 12 years, and it has been held that the mere use of the word kanom is sufficient, in the absence of an express term, to confer a right to hold for 12 years. As regards the kanom deeds prior to 1852, the reason of the non-insertion of such particulars is that kanom was always understood to be tenure redeemable at any time, and its nature and incidents were too well known and recognised to need any express mention. If any particular term was contracted for by the kudian, it was not rare to find such term inserted in the deed.

Another argument in favor of the alleged permanency of kanom tenure is the alleged fact that kanom interest, when sold in the market, fetches a price far in excess of the sum which the purchaser would get from the jenmi when evicted. The reason of this is obvious and the only wonder is that, ignoring the true explanation, this is brought forward as an argument in favor of kanom. It is a fact well known to all that an ordinary kanomdar of South Malabar enjoys, in return for the small sum advanced on the land, a large share of the produce, the jenmi's *micharom* being in many cases small compared with the net produce of the land. No doubt a considerable part of this gain for 12 years the jenmi takes from the kudian as renewal fee at the next renewal, but still the yearly profit to the kudian out of the land is something very substantial, and the value of the holding is at a maximum just after a renewal and at a minimum just before a renewal. This accounts for the fact that the kanom interest when sold just after the grant or renewal fetches a higher price than when it is sold when about to be renewed. So far as North Malabar is concerned, I must deny the statement that kanom interest when sold fetches more than the *actual* amount of the kanom. I can produce documents of kanom transfer without number in which nothing but the bare amount of the kanom is the price of the assignment, and this is due to the fact that a kanomdar there does not get anything more out of the property than the interest on the kanom money. As regards South Malabar, the practice alleged depends also to some extent upon the liberality or otherwise of the jenmi under whom the kanom tenant holds. If the jenmi is mild and considerate, the kudian's kanom interest sells for a higher price than when the jenmi is grasping and rapacious. Scarcity of land in the market has also much to do with this as Sir Charles Turner has pointed out. It is certainly not due to any sanctity attached to the kanom that this practice exists, if at all it exists, in the manner alleged.

The next and last argument brought forward in favor of the new theory about kanom is the general practice alleged to exist of praying for redemption in a suit not on the ground that the term has expired, but on the ground of forfeiture for non-payment of rent or renewal fees. If this statement means that redemption suits are never brought on the mere ground of expiry of the term, I most emphatically say that the statement is wholly wrong so far as modern kanoms are concerned, and more especially the kanoms of North Malabar. I can confidently assert that redemption is prayed for often on the ground of expiry of the term. Even in regard to kanoms of ancient days, I can produce numbers of decrees where redemption was prayed for on the ground of expiry of the term. It is said that in some suits for redemption non-payment of rent or renewal fee is made the ground of action. As to this I must say that mention of this is made more often not as a ground of suit, but as an additional circumstance over and above the fact of expiry of the term which is the real cause of action. In suits for redemption, unless when the suit is brought the very day after the last payment of rent, there must from the very necessity of the case be a demand for arrears of rent, and to draw from the mention of arrears of rent the conclusion that it is put in as a ground of action is, in my opinion, wholly unfair. In some cases over and above the statement that the term has expired, the additional circumstance of non-payment of rent or other dues is inserted in the plaint by the ignorant *vakil's* clerks who generally draw up the plaint in the *mofussil* because they think that, by adding such a charge against the kudian, the court will have its sympathy enlisted on the jenmi's side the more readily. The best and most conclusive argument to show that this alleged practice has not the significance attributed to it is the admitted fact that not in one single redemption-suit did the kudian set up such a right as is

now claimed for him. To avoid the effect of this awkward fact, the only explanation given is that the tenant had no opportunity of pleading such a defence. This, it is clear, is a very lame excuse and cannot obtain the least credit with those who know anything about the litigious tact and smartness of the average kanom kudian of Malabar. If, as is now contended, the practice had any existence at all, is it conceivable that it would not have been pleaded? It is all very well to assume certain facts as existing and to draw conclusion from them to favor one's own theories. On the whole, then, I do not think that any of the so-called circumstantial arguments brought forward by the tenant advocates prove anything at all against the jenmi's absolute right to the land.

Sir T. Madhava Row, in the notes drawn up by him for the information of the committee, has professed to deal with the question from the point of view of practical statesmanship. The view put forward by him is that, though it may be difficult to disprove, in strict law, the right of the jenmis to deal with their properties as they like, still the exceptional circumstances which in his opinion exist in Malabar demand exceptional treatment as a matter of public policy. He says that in Malabar there exists an extraordinary monopoly of land by the jenmis, and that most of the natural and economic processes which tend to relax a land monopoly being non-existent, lands there have become tied up in the hands of the jenmi class. This statement is not borne out by the existing state of things in Malabar. As a matter of fact, there is no country in the world in which landed property is better diffused. So far as regards South Malabar, the jenmis seldom cultivate the lands themselves, but lease them out for cultivation under various tenures to various classes who are thus in actual occupation. As regards North Malabar, there is no separate class of jenmis as distinct from the class of kudians. The class of jenmis is also the class of kudians with very few exceptions. No question of monopoly can therefore arise there. That, without the aid of any of the so-called natural and economic processes, the possession of landed property is so well diffused among all classes shows beyond doubt the intrinsic wisdom with which the land law of the country was framed in ancient times, and this very circumstance ought to make us cautious as to how we interfere with such an excellent customary law. Sir Madhava Row says further that the jenmis form only a small fraction of the population and, while monopolising the land, they seldom cultivate their land or fulfil any useful duty towards it. From this he argues that the kudians who form the majority of the population and are directly concerned with the cultivation of the land ought to be assisted by the legislature. As to the statement that jenmis form only a small fraction of the population, it is manifestly incorrect, so far as the greater part of the district is concerned. It may be that the number of *big* jenmis in Malabar and more especially South Malabar is small, but if the word "jenmi" includes, as it does, all proprietors of *jenmom* lands, then it is not correct to say that the jenmis form only a small fraction of the population. In North Malabar almost every peasant is a proprietor, and the body of such peasant proprietors form the majority of the population. As to the statement that the jenmis fulfil no useful duty towards the land, and is not a capitalist benefiting the land, all I can say is that I do not understand it. It is contrary to all that one knows about Malabar jenmis to say that they are not capitalists benefiting the land. If they are not, I should like to know who is. The jenmis not having many other resources or industries to fall back upon, they always invest their superfluous income in the improvement of their lands for the purpose of deriving out of them the utmost benefit they can get. Throughout the greater part of North Malabar the jenmis, who are peasant proprietors, cultivate their lands themselves with this view, and the amount of labor and expense spent by them to improve their lands can only be understood by one who actually sees them in their agricultural operations. Shortly stated, Sir T. Madhava Row's view, as I understand it, is this:—"The jenmis have been for a long time enjoying the land as absolute owners without admitting the kudians to a co-partnership with them. This state of things it is high time to abolish. For the purpose of making landed property better diffused among the kudian class, and thereby improving their condition, the State must interfere and arrest from the jenmi a portion of his absolute right so as to vest it in the kudian." This, I must say with all deference, sounds like "socialism." Why this principle of communism, which has not yet found its way in any civilized country in the world, should be made an experiment of in Malabar in the first instance is indeed not clear. If this is the sort of exceptional treatment contemplated, woe to the well-being of Malabar !!!

APPENDIX F (g).

PROCEEDINGS OF THE COMMITTEE ON MALABAR LAND LAW.

Saturday, the 27th March 1886.

PRESENT:

The Honorable the President.

Members.

Hon. Mr. Justice Muthuswami Aiyar, C.I.E.	Rája Sir T. Madhava Ráo, K.C.S.I.
Hon. Mr. H. H. Shephard.	Hon. Mr. S. Subrahmaniya Aiyar.
Mr. H. J. Stokes.	Mr. Sankaran Nair.
Mr. Ramachandra Aiyar.	Mr. Gopalan Nair.
Mr. Anantan Nair.	The Tirumalpád of Nilambúr.

Mr. Cardew, *Secretary*.

The Minutes of the last Meeting were approved.

The Secretary read a letter, undated, from the Tirumalpád of Nilambúr, requesting that a longer time might be given for considering the draft Bill prepared by Mr. Shephard, before it was discussed by the Committee.

The Hon. the President said he thought that the Bill might at least be discussed by the Committee.

The Hon. Mr. Justice Muthuswami Aiyar read a note in which he had recorded his views on the question of further legislation to check eviction, and said he proposed to move a series of distinct resolutions on which the Committee might vote.

Rája Sir Madhava Ráo said that he would suggest that Mr. Shephard's draft Bill be first proceeded with, or at least the "waste land" clauses of it.

The Hon. Mr. Justice Muthuswami Aiyar said he thought the Committee could not flood the Government with fragmentary legislation.

It was then determined to deal with Mr. Justice Muthuswami Aiyar's resolutions, which he proceeded to move in succession:—

1st.—"That the Compensation for Improvements Bill is not a sufficient check against capricious eviction, and, on that ground, it does not render further legislation inexpedient."

Seconded by the Hon. Mr. Shephard, and, after discussion, carried, the Tirumalpád of Nilambúr dissenting.

2nd.—"That it is not expedient to advise legislation on the basis suggested by the late Commission, viz., that an occupancy right existed from time immemorial and was inadvertently taken away by the Sadr Court in 1856."

Seconded by Mr. Stokes. After discussion, Mr. Justice Muthuswami Aiyar desired to postpone, and, later, withdrew this resolution.

3rd.—"That it is just and equitable to protect ancient tenants and kanomdars against capricious eviction, so long as they are ready and willing to fulfil their customary obligations to their janmis."

The Hon. Mr. Shephard seconded the resolution.

Mr. Stokes said that other tenants, besides ancient tenants, needed protection.

Mr. Justice Muthuswami Aiyar said that he had excluded tenants, other than ancient tenants, because the former had made their contracts with their janmis after the courts had ruled the kanom to be terminable.

The resolution was carried by 6 to 1.

4th.—"That it is desirable to limit the protection due to other than ancient tenants to the provisions contained in the Bill prepared by the Hon. Mr. Shephard."

After discussion, Mr. Justice Muthuswami Aiyar desired to postpone, and later withdrew, this resolution.

5th.—"That an ancient tenant shall be taken to be one who, and whose ancestors or predecessors in title, have had continued possession of the land in question for sixty years or more."

Mr. Ramachandra Aiyar seconded the resolution.

Mr. Sankaran Nair moved to substitute the figure "30" for "60" in the resolution. He said that the late Commission had fixed on the date 1852—34 years ago—as the date from which an occupancy right might be conferred for several reasons: (a) because it was about 1857, that the law making the kanom renewable was declared; (b) because evictions were not common before 1852, and therefore a tenant who was holding in 1852 might be presumed to have been holding for a considerable period before that date; (c) because of the practical danger of encouraging the use of forged documents, if a longer period of tenancy had to be proved.

Rája Sir T. Madhava Ráo seconded the amendment.

Mr. Gopalan Nair said he would propose to substitute the figure "24" for "60" in the resolution, as a compromise between those who would fix the period of tenancy giving a claim to an occupancy right at 12, and those who would fix it at 60, years.

Mr. Gopalan Nair's amendment not having been seconded, Mr. Sankaran Nair's amendment was put to the Committee and not carried.

Mr. Sankaran Nair then moved to amend the resolution by adding the words:—

"provided that any tenant who has been in possession for 30 years shall be presumed to have been in possession for 60 years or more, until the contrary is shown."

After discussion, Mr. Justice Muthuswami Aiyar accepted the amendment, which was put to the Committee and carried, six voting for it, and the resolution, as amended, was then agreed to.

6th Resolution.—"Customary obligations shall be declared to consist—

- (1) of an obligation not to deny the janmi's title;
- (2) of an obligation to use the land so as not to render it unfit for the purpose for which it was usually let, nor to make the use of it a nuisance to the landlord.
- (3) of an obligation to pay the usual renewal fee and a fair and equitable rent."

The Hon. Mr. Shephard seconded the resolution, which, after discussion, was carried, eight voting for it.

7th Resolution.—"That the form in which capricious eviction is to be prevented is a declaration that the ancient tenant shall be entitled to claim a renewal subject to the above customary obligations."

The Hon. Mr. Shephard seconded the resolution, which was carried by 4 votes to 3.

8th Resolution.—"That the renewal fee and the rent payable during each term of twelve years shall be the fee and rent fixed by the parties by express agreement, between them, or in the manner prescribed in the next paragraph, namely, that in the event of any dispute as to the amount of customary renewal fee or rent payable, the landlord or the tenant shall be at liberty to sue to have the amount fixed by a Court of Justice:

the Court, in fixing the amount, shall have regard to the letting value of the land, to the improvements which the tenant shall have made, and to the annual value of land of similar quality in the neighbourhood:

Provided that the renewal fee paid shall in no case exceed 20 per cent. of the kanom amount: or, in cases other than those of kanoms, the renewal fee shall in no case exceed one year's net produce, less the land revenue."

Mr. Gopalan Nair seconded the resolution.

After discussion, the resolution was carried, six voting for it.

9th Resolution.—"That the foregoing resolution shall not extend to kanoms, which are mere mortgages."

Explanation.—Where the share of the produce which the kanomdar enjoys is merely equivalent to interest on the money advanced, the kanom shall be assumed to be a mere mortgage."

The Hon. Mr. Shephard seconded the resolution, which was carried.

The Committee then proceeded to consider the Bill drafted by the Hon. Mr. Shephard.

In section 1, line 27, after the words "provided that," it was resolved to insert the words "without notice."

In section 3 (1), lines 3 and 4, the words "it shall be lawful for the Collector to give notice" were amended so as to read "the Collector shall give notice," and in line 7, for the word "to," the word "shall" was substituted.

In section 3 (4) in line 1, for "dealing," the word "deciding" was substituted.

In section 3 (4) (b), line 1, after the word "valuable," the word "minerals" was inserted.

In section 3 (4) (c), line 2, for the words "a fixed annual assessment for it," the words "an annual assessment fixed by the Collector."

In section 3 after clause (5), the following was inserted:—

"(6) No putta for land exceeding 25 acres shall be granted under this section."

Section 5 in line 4 and section 6 in lines 2 and 6, the words "cowle or" were inserted before "putta."

The draft Bill, with these modifications, was then approved of. It was resolved that Mr. Sankaran Nair should be requested to draw up a Bill on the basis of the resolutions which had been moved by Mr. Justice Muthuswami Aiyar, and that a Statement of Objects and Reasons should be prepared to the Bill prepared by Mr. Shephard.

The Committee then adjourned to Saturday, the 3rd of April.

(True Extract.)

A. G. CARDEW,
Secretary.

APPENDIX F (h).

PROCEEDINGS OF THE COMMITTEE ON MALABAR LAND LAW.

Saturday, the 3rd April 1886.

PRESENT.

The Honorable the President.

Members.

Raja Sir T. Madhava Rao, K.C.S.I.	Hon. Mr. Justice Muthuswami Aiyar, C.I.E.
Hon. Mr. H. H. Shephard.	Mr. H. T. Ross.
Mr. H. J. Stokes.	Mr. Sankaran Nair.
Mr. Gopalan Nair.	Mr. Anantan Nair.
The Tirumalpád of Nilambúr.	

Mr. Cardew, *Secretary.*

The Honorable the President proposed that the minutes of the last meeting be approved.

The Hon. Mr. Justice Muthuswami Aiyar said that the minutes were inaccurate as regards his second resolution, inasmuch as he had not desired to postpone nor to withdraw it.

It was ordered that this correction of the minutes of the meeting of the 27th March be recorded, and the minutes, as corrected, approved.

The Tirumalpád of Nilambúr presented a written statement, expressing his views, which was read and ordered to be recorded,* the Tirumalpád stating that he did not wish to press the motions suggested in the statement.

* *Vide* enclosure No. 1.

The Committee then proceeded to the consideration of the Bill prepared by Mr. Sankaran Nair on the basis of Mr. Justice Muthuswami Aiyar's resolutions.

Mr. Stokes said he would point out to the Committee that the reason originally alleged for legislative interference in Malabar was political necessity, and no political necessity had been shown.

Mr. Justice Muthuswami Aiyar said he agreed in that statement, and he wished it clearly understood that he did not consider any political necessity for legislative interference had been proved, and that his only object in proposing the resolutions which he had made regarding ancient tenants was to place the relations of landlord and tenant on a more satisfactory basis.

The Honorable the President pointed out that in the terms of the order of Government appointing the Committee, there was no mention of political necessity.

Mr. Sankaran Nair said that, before the Bill based on Mr. Justice Muthuswami Aiyar's resolution was further considered, he wished the motion of which he had given notice† and which had been circu-

† *Vide* enclosure No. 2.

lated, to be considered and, he hoped, adopted.

Mr. Justice Muthuswami Aiyar said that he was strongly opposed to the proposal. Though he would not desire to specially protect the endowments of religious institutions, he entirely disapproved of depriving them of the protection which was extended to the property of other jenmis. The devasom was, as it were, unable to defend itself.

Mr. Sankaran Nair said it was not for that reason that he proposed to give occupancy rights to tenants under a devasom. He would omit the proposal to extend the right to tenants under a stani, and he would accordingly move the following motion :—

“That it is just and equitable to protect tenants holding under any devasom against capricious eviction so long as they are ready and willing to fulfil their customary obligations to the devasom.”

Mr. Gopalan Nair seconded the motion.

Hon. Mr. Shephard said that the words “and it is expedient to legislate accordingly” should be added to the motion.

Mr. Sankaran Nair said that he would add those words to his motion.

Mr. Stokes said that the motion, as it stood, would apply to private devasoms.

Mr. Sankaran Nair said it was not his intention that his motion should apply to private devasoms, and he would insert the word “public” before the word “devasom.”

The motion, as amended, was then put and lost, three voting for it and six against it.

The Bill based on Mr. Justice Muthuswami Aiyar's resolutions was then read and considered.

Mr. Sankaran Nair said there was one omission which would have to be supplied, viz., the exclusion of kanomdars, who were pure mortgagees, from the operation of the Bill.

Mr. Justice Muthuswami Aiyar said there were one or two points in which the Bill needed correction to make it accord with the intention of his resolutions. His intention had been simply to translate the practice of good jenmis into legal obligations.

After some discussion—

The following amendment of the Bill was agreed to by Mr. Sankaran Nair and Mr. Justice Muthuswami Aiyar: the Bill to read as follows :—

Section 6.—The renewal fee shall be the fee fixed by the parties by express agreement between them, if any, or in accordance with the custom of the country ;

Provided that the renewal fee shall in no case exceed 20 per cent. of the kanom amount, or in cases other than those of kanom, the renewal fee shall in no case exceed one year's net produce less the land revenue.

Section 7.—The rent shall be the amount fixed by the parties by express agreement between them, or in the manner prescribed in the next paragraph, namely :—

That in the event of any dispute as to the amount of the customary rent, the landlord or tenant shall be at liberty to apply to have the amount fixed by a Court of Justice. In fixing such amount the court shall have regard to—

- (1) the letting value of the land ;
- (2) the rent payable by the tenant under the contract subsisting at the date of renewal ;

Provided that where the land has been improved by the tenant, the letting value shall be the value of the land, before it was so improved by the tenant, and for which compensation has not been paid ;

- (3) to the amount of renewal fee paid.

Sections 8—11—to be struck out ;

Section 12—to be re-numbered as section 8 ; and

Section 13—to be re-numbered as section 9 ; and to read as follows :—

“In a suit for ejectment against a customary tenant on the ground that the rent or renewal fee due has not been paid, the decree shall specify the amount,” &c.

Mr. Justice Muthuswami Aiyar then moved, and Mr. Sankaran Nair seconded, the following resolution :—

“That the Bill, based on Mr. Justice Muthuswami Aiyar's resolutions, as amended, be accepted.”

This being put to the meeting, four members voted in favor of the motion, and four against it.

It was therefore decided that the Bill was not carried.

Mr. Gopalan Nair then drew attention to the Bill which had been prepared by Mr. Stokes and a Sub-Committee,* and the consideration of which had been postponed by the Committee at the meeting of the 13th March 1886. He moved that that Bill be now considered and adopted.

Mr. Sankaran Nair seconded the motion.

Mr. Stokes said that he thought the Bill the only feasible method of checking capricious eviction. He admitted there were objections to leaving so much to the courts, but he thought the great advantage of the Bill would be that it deprived the jenmi of his absolute threat of eviction.

Mr. Justice Muthuswami Aiyar said he had considered this Bill when drawing up his resolutions, and his strong objection to it was that, though the Committee admitted its inability to frame any definition of capricious eviction, it yet imposed on every district munsif throughout the district the duty of saying what eviction was capricious and what not. The Bill accorded a power to the subordinate judicial officers of the country which, as far as his experience went, could not be rightly so accorded.

The motion was then put to the meeting, and was lost by four votes to five.

Mr. Stokes then proposed, and Mr. Justice Muthuswami Aiyar seconded, the following resolution :—

“That a report be made to Government to the effect that, after a consideration of the question of Malabar tenancy in all its bearings and after a discussion of various proposed measures for dealing with it, the Committee has come to the conclusion to recommend to Government that no further legislation regarding the above question should be undertaken beyond the Bill for compensation for improvements already submitted and that † now forwarded.”

† Note.—The Bill prepared by Hon. Mr. Shephard.

After a short discussion, this motion was put to the meeting, and was carried by six votes against three.

It was then ordered that the Bill prepared by the Hon. Mr. Shephard be reprinted, with the amendments adopted at the previous meeting, and with the draft Statement of Objects and Reasons, and that they be forwarded to Government.

It was further resolved that no reason existed for any further meeting, and that a report to Government should be drawn up and circulated, forwarding the above Bill and enclosure.

The Committee then adjourned *sine die*.

(True Extract.)

A. G. CARDEW,
Secretary.

ENCLOSURE No. 1.

STATEMENT by the Tirumalpád of Nilambúr.

GENTLEMEN,

This is the fourth time that this Committee meets to consider subjects which have no direct bearing on the legitimate work with which the “Committee” is entrusted. I have stated, at several of our meetings, that no other legislation than the “Compensation for Improvements Bill” was necessary, and that steps for further legislation should not be taken, unless strong and valid reasons could be shown for the necessity of such legislation. The Committee is not able to urge, or at any rate has not urged, any reason, and the grounds on which the extraordinary procedure of the Committee is at present conducted are hardly justifiable. On the 20th of March, Mr. Ross proposed that no legislative interference on the part of Government, beyond the “Compensation for Improvements Bill,” was necessary ; but the Hon. Mr. Shephard brought forward an amendment, and the amendment being carried, a Sub-Committee was appointed to draw up a Bill on the lines of that resolution. The Bill, which is said to be based on Mr. Shephard's amendment, is in reality no amendment at all of the resolution proposed by Mr. Ross. It entirely destroys the nature of Mr. Ross' proposal ; and it goes out of its way to speak about the question of waste lands—a question never before raised by any of the members of the Special Commission and about which no dispute in reality exists. The waste lands of Malabar are, as the cultivated portion of it, the properties of the jenmis.

The resolutions moved by Mr. Justice Muthuswami Aiyar, at the last meeting, are calculated to greatly embitter the feelings of landlords and tenants towards one another, and swell the ever-increasing litigation of the people of Malabar, for which they have peculiar propensities.

The jenmis of Malabar invest their money in lands; and, as such, these lands constitute their wealth. When any legislative interference with such lands is contemplated on the part of Government, without sufficient cause, it is the same as proposing rules of guidance for the regulation of the expenditure of one's money, of which he is in undisputed possession and over which he has exclusive right.

It must be clearly borne in mind that when Government sold escheat lands, the interest allowed to those who purchased them on jenm was very low. At that time my Tarwad purchased lands on jenm for a lakh of rupees; and the percentage of interest we obtained was not more than $\frac{1}{4}$. When we are in want of a little money we are forced to allow interest, varying from $7\frac{1}{2}$ to 50 per cent., to our tenants, to whom we demise on kanom the lands so dearly bought. This fact, taken by itself, is a grievance, and the grievance becomes intolerable if the lands let to tenants, at the sacrifice of jenmis' money, to a certain extent, are not to be restored on the payment of money. This certainly is not political economy. It is simply ridiculous to attempt to pass a law for the alienation of one's legitimate property.

If, without wasting much time on fresh legislation, the necessity for which is not felt, the Committee is prepared to see the business with which it is entrusted brought to a close, satisfactorily to both landlords and tenants, I propose, as a compromise between both parties, to move the following resolutions at this meeting:—

- “(a) No tenant holding lands under a joint family, shall be ejected without the consent of a majority of the members of the joint family.”
- “(b) The evils complained of are mainly due to the interference of *kariasthans* (land-agents) and therefore it is necessary that the appointment of such *kariasthans* should not be left entirely to the karnavan of joint families, but ought to be made by the majority of the members of the family (Tarwad).”

ENCLOSURE No. 2.

NOTICE of motion by Mr. C. SANKARAN NAIR, dated 30th March 1886.

At the next meeting I propose to move the following resolution:—

“That it is just and equitable to protect tenants holding under any devasom (or stani) against capricious eviction so long as they are ready and willing to fulfil their customary obligations to the devasom (or stani).”

The objections hitherto urged against any interference between landlord and tenant can hardly be urged against this resolution.

APPENDIX G (2).

Note by Sir WILLIAM ROBINSON, K.C.S.I., on the Collection of Documents appended to the Commissioner's Report, dated 16th June 1882.

I venture, with some diffidence, to submit the notes which I have had to make in my study of these original documents, with some prefatory and explanatory remarks. If my differences with the Commissioner's interpretations and observations occasionally appear harshly expressed, my apology, both to Government and the Commissioner, must be my earnest desire that both sides of this matter may be fully before Government and those who have Malabar's future on their hands.

2. In my review of the first three well-known documents, which belong to a period prior to the 9th century (the first two possibly much before that date), and are expressed in ancient Tamul, then the official and documentary language of the country, I have followed the translations of K.

K. Kelu Nair's translations of Nos. 1 to 3 Kelu Nair (*Madr. J. L. & S.*, n.s., vol. v, No. ix.) in preference to Dr. Gundert's earlier efforts, which the Commissioner has used. And I beg specially to commend them—as well as his prefatory sketch of the history of Malabar—to the notice of Government. Kukel Kelu Nair was a native judicial officer of great erudition on all matters connected with the history, institutions and usages of his native country, and of high authority amongst his countrymen and European officials alike. He had Dr. Gundert's earlier renderings of these documents before him, and acknowledges the aid he derived from them; but K. Kelu Nair's translations speak for themselves as to the obvious advantages which the learned native translator possessed. I may add, incidentally, that not much profitable speculation can be based on unimportant (from an agrarian point of view) documents executed 1,000 years ago.

3. It will be convenient, I think, before reviewing these documents in detail—and with reference to the embarrassing stress laid on the word *nir* (water) and coinage of such novel terms as “water-contact birthright,” and misapprehension in respect to such terms as *attiper*—to remind Government of the legal formalities which apply to native conveyancing in all countries from the earliest times. “Land is conveyed by six formalities: by assent of townsmen, of kindred, of neighbours, and of heirs, and the delivery of gold and water (*nir*)” (*v. Ellis, M.P.*, page 20, and K. Kelu Nair, page 37, *M. J. L. & S.*, n.s., vol. v No. ix). The term simply expresses *seizin*; “turf” would, I believe, be the equivalent in old English conveyancing. It always means outright devise by a proprietor, and transfer of possession. Mr. Ellis further remarks (page 203, *M.P.*): “The proprietary right of the subject is probably better defined in Malabar than in any other part of India: various modes of transferring land by lease mortgage (*otti*)... till at length confirmed in full property, are in constant use; and the form and substance of the several deeds are fixed by immutable rule. The final deed by which proprietary right is conclusively transferred from the hereditary proprietor is called *atteperai-nir*.” In short, a deed of outright sale. It is probably a compound of a colloquial contraction of *arithi* (Tamul), complete, &c., and *pettal*, to take (*Ellis, M.P.*, page 178, *note*), and not as suggested (in a wholly novel and, I believe, ungrammatical form) by Mr. Logan. I am thus particular, because the Commissioner appears to strain after the discovery of some kind of special incident, and *quasi*-divine right, in the term *jenmon* (by the way, a recent expression, and not exclusively agrarian), and coins the word “water-contact birthright.” We know what *attiper* is—indeed the terms of such deeds explain their import—and *jenmon*, birth, inheritance, descent, &c., was not originally a tenure of land, or even a “birthright;” and such an expression as *attiper-jenmon*, “deed of sale inheritance,” is, to say the least of it, not a convenient expression, if not a contradiction in terms. *Jenmon*, birth, inheritance, &c., does not exclude the possession of land under the ordinary incidents of such property, or add

force to those incidents; but it included many other territorial, social, taxationary, and other incidents, which pertained to the *Jenmi*-ship in the persons, families and institutions to which the title, with its privileges, attached.

4. It need scarcely be added that high-sounding invocations, sometimes expressed in general terms, as in some of these documents, sometimes in Sanscrit *slokas*, as to "protection" of assignments of property, and curses on those infringing the titles

"Protectors," "Overseers," Kanakkars.

and rights conveyed, find a place in most ancient Hindu documents. I notice this point because the Commissioner appears to misapprehend such expressions in the documents before him, and apparently deduces from them the utterly novel and fallacious idea that the great body of the ancient hereditary ryotwari landholders of Malabar, who were included under the term *Kanakkars*, were merely a lot of "protectors" and "overseers"—of whom and what is not so explicitly hazarded—without other title or right in respect to their fugitive and servile occupation of their native soil and homes.

5. With reference to the early history of Malabar, it will suffice for the purposes of this review to observe, shortly, that the preface to Aitchison's *Treaties*, vol. v. (Malabar), affords a good epitome of its early story; and the preface to K. Kelu Nair's

Early History of Malabar.

translations of the three first documents (*M. J. L. & S.*, N.S., vol. v, No. ix.) present the native view of the subject in a readable form. Malabar never was a "petty empire" (paragraph 88a). It was a dependency of one of the Tamul kingdoms in the East for centuries—thirty-six "viceroys" (K. Kelu Nair), holding the government for twelve years each, would cover a considerable space of time—with a *Perumal*, or representative of the royal personage (*Chacraverti*). And when revolution (however brought about) destroyed this connection, its various small provinces passed under the independent rule of their respective native *Polegars*, or princes, and ancient feudatories, who maintained their sway down to the epoch of the Mahomedan conquest; and, with the exception of such changes as the ambition of the Zamurin brought about in the south, pretty much within their ancient boundaries. As regards the unrecorded past, traditions of immigration, lingual affinities, social (*Polegar*, &c.) and institutional analogies, and more especially agrarian conditions (in almost every detail), law and diction—for all Malayalim agrarian terms are identical with old Tamul expressions, and their derivations from earliest times between the Tamul and Malayalim provinces of South India.

6. In the same relation, for the elucidation of these documents, it may be shortly stated that the organization of the country for agrarian, civil, social, and administrative purposes, was of the ordinary Hindu type, and intimately allied to that of Tamul nationalities, the cradle of its races, languages, and institutions. It rested on the village system in its truest and least disturbed form (*v.* Sir Thomas Munro, &c.).

Territorial Organization, Villages, &c.

There were the *tara* and *cheri* (Tamul), and later the *deshom* and *ulldeshom* (village and hamlet), with its institutions of head-man (*Pati*, *Deshadhepati*, *Deswali*, &c.), hereditary village servants (*Cheri-janmakar*) and village *Panchayet* or *Kutam*; there were the *Vattoms* or village circles of Tamul countries, possibly with their official organization, for revenue registration and record; there probably existed—in many parts of the country at least—the *Kaveli* system of police and watch and ward, common to all South Indian populations, with its *Kavelgars* of many grades down to the village watch, and its grain fees, &c., &c.; there were the ordinary village pious uses and wider religious orders and personages (*Nambudries*, &c.) and institutions, with their usual privileges. And finally there were the independent native princes, with their large private properties and usual sources of public income and taxation—with their occasional, and latterly (during the last, and probably the previous century, at least) very active levies of the inhabitants for aggressive and defensive purposes amongst themselves and against external menace. With these probably rested, in the main, the guidance of the revenue system and assessment (*pattom*) of the properties of their subjects, such as it was from time to

time, within their respective territories, and the exercise of the usual functions which belonged to the position under ordinary Hindu conditions. To these, negotiators and conquerors (foreign and British alike) looked in their transactions with their subjects; and when relieved of sovereign functions, used them as ordinary *Zamindars*. I am thus particular on so obvious a condition, because the Commissioner seems (I may wrong him) to suggest a kind of political and social isolation and speciality as affecting Malabar in these respects. Not only is such idea unhistorical and at variance with fact, but, as pointed out by Lord William Bentinck in 1804, we found in Malabar and Canara almost all Hindu conditions in their most typical, undisturbed and instructive form. Nothing has tended so much to obscure the truth, as respects every condition of Malabar and its institutions, as the persistent disposition of local officials to vest Malayalim things with a kind of mystery and speciality which never obtained until *Zamindari* complications confused them. They will never be understood until we thoroughly realise that there has been nothing occult or unusual about its conditions; that it belonged to South India, and in its every relation and institution was one with Canara, as pointed out by the wisest statesmen of the past. I am almost tempted to add, the less of a local *quasi*-expert, the better exponent of Malayalim history and conditions in the past; the wider and more general the acquaintance with India outside (including even Bengal), the readier the appreciation of Malabar's historical and agrarian condition past and present.

7. It may likewise prove explanatory of these documents to premise generally that the ruling feature in regard to the tenure of land—at least down to the period of the Mahomedan conquest—was that all

Tenures of Land, Revenue Assessment, and Relations, &c. *land was private property*, with all the legal incidents of inheritance, sale, &c.; and that it was distributed amongst a

multitude of prescriptive ryotwari landholders and "proprietors" (*v.* *Glossary* and Sir Thomas Munro, &c., and Mirassi papers, *passim*), of various classes and conditions, from the native ruler, noble, and religious institution, with their large estates tilled by their predial slaves and under-tenants (*Kudian*), down to the *Virom-pattakar*, or hereditary occupant (the *Mulguenigar* of Canara and *Ulkudi* of Tamul countries), who were more or less directly in account (*warg* of Canara) with the State in respect of their fixed and moderate revenue demand. These paid what was equivalent to a prescriptive and more or less fixed land revenue (*pattom*, *janmi-pattom*, *kanom-pattom*, *nigdi-pattom*, or the like), assessed on fixed, moderate and mutually recognised principles on their holdings, to the State for the time being, or to some assignee or representative of the ruler's rights. At the same time there were, under the native rulers, privileged classes, institutions and persons, whose properties remained—for pious reasons, exigencies of warlike calls on them, such as became heavy during later centuries, and other causes—unassessed and untaxed until the Mahomedan conquest supervened, and placed all on an equal footing in this respect (*v.* Aitchison's *Treaties*, vol. v. (Malabar). As regards tenures of land, therefore, Malabar was at the time covered by these documents much in the same condition as the sister province of Canara, and *Mirassi* nationalities in South India in general; except that, as compared with the latter, the rights and conditions of the agrarian population of Malabar, and fixed character of the revenue demand against them, survived much longer—indeed into this century—in a more typical and undisordered condition. But I hope to treat these matters more fully elsewhere. Practically, what we have to do with in Malabar is the dethroned native ruler and others who had possessed rights of taxing their fellow-subjects' private properties, self-constituted as *Zamindars* (without recognition by the State or assurance of the revenue); and progressively acting precisely as Bengal and other *Zamindars* have done throughout India under analogous circumstances. And this fact must guide, I venture to think, future legislation.

8. There always have been in Malabar (where property was valuable, landholders prosperous, and the agricultural population thick and divers), as in all proprietary countries—call them Ryotwari, *Mirassi*,

Kudian and peasant cultivators, leases, &c.

or what we may—a steadily increasing abundance of cultivating peasantry (*Kudian* and the like) who occupied and cultivated, planted and rented portions of such proprietary holdings under the ordinary local arrangements (*Kari-pattom*, *Kuli-kanom*,

&c., &c., the *Chálgueny* of Canara and *Kudi*, &c., of other countries), and shared their crops and produce or paid fixed rents, vacated their temporary occupation, and so on, according to customary usage or specific lease, or devise. But these were not prescriptive landholders or "proprietors," or even *Virom-pattom* occupiers (the *Mulgueni* of Canara or *Ulkudi* of Tamul countries); and were not in account with what I will term the State, in respect to a fixed revenue demand on their holdings. Such fugitive occupancies scarcely come within the scope of an inquiry into tenures of land in Malabar; nor are their subjects probably the class in whose behalf legislative intervention could be claimed without serious confusion and traverse of social and agrarian relations that have long subsisted.

9. I must, even at the risk of prolixity, venture to suggest that the analysis of the sources of the contributions to this collection of documents—so far as the period prior to the British rule is concerned—is not a little significant. Of the whole

Analysis of Sources—Resistance of Inquiry. number (47), 27 are contributed from foreign States, Cochin (17) and Travancore (10). Of indigenous documents, 9 come from Valavanad, 6 from Karumbranad, and only 1 (of an uncertain character) from Calicut and Yernad together, the seat of much of the Zamurin's property, and the properties of those great *Jenmi* families (*Kovilagams*, five in number) that supply the incumbent of that dignity. Now, the archives of these dethroned rulers and *Zamindars* are rich in treasures of historical and agrarian testimony; but it has been the consistent policy of this great *Jenmi* race—from our earliest connection with Malabar—to foster and trade on the ignorance and misapprehension (possibly, too, on the apprehensions) of the local officers of Government—if not to deceive them (*v.* despatch of Court of Directors, 1821), and that policy has not been departed from in respect to this call. So far as I can judge, not a single *Jenmi* or *Nambudri* of position, influence and wealth has aided the Commissioner's researches, and their example and influence have doubtless been obstructive and repressive as regards others; and probably intimidatory. And yet the records of many of these great families must contain many documents of useful antiquity, recovered by renewals (*polachill*) and the like devices from the ancient prescriptive landholders—*Kanakkars*, *Virompattakars*, &c., and contributors to their revenues; as well as in many cases those ancient registers of taxation (*Granth-vari*), which recorded the properties and revenue burdens of the numerous proprietors subject to their rule, and their recognised legal claims against the landowning body of ryots within their sphere in olden times. And some may still possess the schedules of the very numerous "proprietors" (*v. Glossary*) whose allegiance, as well as the prescriptive State revenue demand (*pattom*, *jenmi-pattom*), had to be transferred to their Moslem conquerors towards the end of last century; others have records of their administration of the revenues of their respective *Zamindaris* for the British Government, under the provisional arrangements of 1793 (Aitchison's *Treaties*, vol. v)—documentary testimony, in fact, from which most important ratification of prescriptive popular rights might be deduced for the information of Government at this time. But reticence has been, and must continue, their profitable policy. As readily expect a Bengal permanent settlement *Zamindar* to aid inquiry into the prescriptive tenures and rights of the ryots they have sacrificed, or into ancient fixed *purgunnah* rates, as expect a Malabar *Jenmi* to expose his unhistorical pretensions, or advance an inquiry which might suggest a challenge of their destructive aggressions—aggressions unsupported by British settlement, and unjustified by any right, as of a ruler, to disturb or enhance ancient prescriptive and mutually recognised settlement of the past, when such matters were in their power, and prohibited alike by the Moslem settlement and the first treaties of the British Government (*v. Aitchison's Treaties*, vol. v.). I am, of course, now no longer able to trace out sources of information which may still exist in the official records—mutilated and falsified (in *Jenmi* interest) though these have been by official corruption; but there may be remnants of MacLeod's abortive Ryotwari settlements of 1801-2; Waughn's surveys (*alwa paimaish*) of 1806-10, probably recorded holdings and the prescriptive demand (*shist* or *pattom*); and the accounts, &c., of the Bettatnad and other escheat settlements may throw light on these matters. The prescriptive *jenmi-pattom* of a great portion of the landed property (*jenmom* and *kanom* alike) in South Malabar, still lived in the villagers' memories when I first went to the district, forty years ago, and could doubtless be ascertained with

partial accuracy, as well as the prescriptive holdings to which it attached, should a systematic survey and settlement be now undertaken, with legislative sanction, in this behalf.

10. I am quite conscious that some of the views I have ventured to hint at, and some of the observations I shall make on the documents (translations only) before me, may be said to be inconsistent with authority that can be cited; but I believe that the truth will best be reached if some of the attempts to establish the existence of radical local peculiarities, some of the endeavours to reconcile inconsistencies inaccurately, and to set up glosses and unsuitable and alien analogies in explanation of eccentric developments are—if not set aside—placed in a somewhat different light; with what success others must decide, so long as the truth is elicited. With these observations and apologies, I venture to place on record my notes on the documents before me, for what they are worth.

No. 1 is for all practical purposes a complete and hereditary *inam* (to use an ordinary expression) granted in favor of one Joseph Rabban (Rabbi?) by a Raja (Ko) named Ravi Varma. It conveys probably simply the Headship of a village named Auchuvannam (or some five small villages or hamlets) with all that appertains thereto; together with certain "concessions" or privileges—formally termed "72 *Viduper*." These affect, apparently, customs and transit duties by land and water, remissions of duties and public fees and taxes; and such revenues as may have been paid by the villagers are assigned to the grantee, with the various social concessions mentioned. The grant is declared to be within the cognizance of the great feudatories of the surrounding country (Dr. Gundert terms them "owners"), in whom one readily recognises the then or future Rajahs of South Malabar.

N.B.—The terms of the grant are simple and natural; and relate to matters in which the probable representative of some immigrant Jewish traders was specially interested, and with which the Rajah could deal without interfering with other rights; and it was naturally negotiated also with the chiefs—*Poligars*, *Odyans* or the like—of adjacent districts through which trade would pass. The grant bears the equitable impress of all such *inams* on the West Coast, where, as Sir Thomas Munro observed, the ruler possessed no unappropriated land (save waste, and that rarely) which he could confer on such *Inamdars*. No land was conveyed (*sub silentio* it could not pass), and Jewish traders were never hungry for land in foreign countries. And no obvious allusion to burdens on land, by whomsoever paid or received, occurs. Land even then was probably private property, and not available about a trading port on the sea-coast. I forbear conjecture about the meaning of *viduper*—probably "concessions gotten or obtained;" for *per* is derived from the Tamul *pettel*, to take (*v. M.P.*, p. 178 [8]), and not from the Malayalam *peru* as surmised by Mr. Logan. It certainly was not "birth" (*janmam*) or "inheritance," though the privileges might have been hereditary; much less was it "houses" or "manors" as elsewhere suggested by Mr. Logan. I confess that I think that the simplicity of this document has been marred by so much learned conjecture, if not fanciful exaggeration. The foreign *Inamdar* was not exalted to the position of a Malayalam "Chieftain of a *Nad*" (par. 88, e) by some social distinctions of no extraordinary character in Malabar; and it is evident that the Jews themselves never assumed that he was. It will be observed that this *inam* was somewhat further extended by the transaction recorded in No. 3, when the *patti-pata-varom*, a part of the Rajah's revenue from the land dealt with under that deed, was assigned to these *Inamdars*. It may be worth while to notice that this and No. 2 are the only instances on record of *inams* of this character—common enough in other parts of India—in Malabar (Travancore). They are as rare in Canara; and the fact indicates the close analogy subsisting in regard to the condition of property throughout the coast, and the respect for private rights and tenures which its Rajahs were obliged to maintain.

No. 2 is likewise an *inam* grant emanating from a "royal palace"—of the *Perumal* or "Viceroy" (*K. Kelu*, &c.), it is assumed—and conveys, without reserve (with water), to one Iravi Karten, a great merchant and apparently a foreign immigrant, the village of Manigram as a hereditary property. Dr. Gundert uses the term "the lordship" of the village; possibly the *Pati* or "*Deshadhipati*" or "village headship" of later centuries, and *Pateli* of other countries—with certain social

distinctions in respect to dress and dwelling; the collection of all revenues and dues for watch and ward—equivalent perhaps to the *kareli* fees or transit dues (for protection) of other times and places; a variety of lesser social concessions and privileges named, with jurisdiction over the four suburbs (hamlets?) or streets of the village and the bond-servitude of the oilmakers and five classes of artificers. It further indicates the complete possession or gift (with water) of the customs and brokerage dues on commodities of all description entered in the harbour and town of Codangalur. The grant is negotiated with the cognizance of two (neighbouring) Brahmin villages—apparently of representative character—and also of the “rulers” (Gundert) of Travancore and the Rajahs of Yernad and Valavanad, in the adjacent district.

N.B.—The *inam* grant, as it stands, is again of the simplest and most natural character; and made by some competent ruler, who, it is conjectured, was the *Perumal* himself. If, as surmised by Kelu Nair, the grantee was an influential *chettayar* (merchant) from Salem, the seat of the *Chacraverti* of South India (*v. M.P.*, page 40), it was natural enough that some such provision should be made and negotiated for him by the representative of that royalty, the *Perumal* in Malabar. The grant probably simply confers on him the dignity of the headship of the village, and other usual local social privileges; together with the State revenues of the village such as they were, and certain mercantile immunities and profits. Again, no land is specifically conveyed; and no agrarian burdens are alluded to. With reference to the foot-note, I observe that *cheri* never means “foreign settlers,” or “bodies corporate,” or the like. It means hamlets, streets, and the like. As observed by Mr. Logan elsewhere,* the expression survives to this day in common use amongst the Laccadive Islands, where it means hamlet, outlying parts or divisions of the island. The use of the term water (*nir*) with reference to matters other than land, shows that it was merely an emblem of complete concession. A high-sounding title—“merchant-prince” perhaps—is conferred on the *Inamdar*; but no “organization” of Syrians, or elevation to the position of chieftain of a Malayalam *nad* (par. 88, *c*) of the foreigner, is implied.

No. 3 is a document of greater agrarian interest and less simple, but not, as observed by Kelu Nair, the less generally intelligible. By this deed one Saphir Iso (*a Tamul Maraver?*), in conjunction with the ruler of Travancore, and the people of Auchuvannam (*Jews' inam*) and the *Pati* (probably the *Deshadhipati* of later centuries, and *Patel* of other countries), or head of the village of Pamatalla—conveys as an outright gift or concession (*viduperak atti*) a certain property that he owned—probably by previous purchase—named Auchukandi, or consisting of five lots (*kandum*) of land within boundaries named; in respect of which he was in receipt of the *varom*, or share of the crop, and other dues. In the concession are included the families of certain servile classes, whose taxes or contributions to be paid to the church are specified; and probably tenants who shared (*varom*) the crops they raised. Pious duties and offerings (apparent free-will) are earnestly urged on the Vellalar *Karalar*, or landholders and peasant occupiers and proprietors of the village or the estate (of five *kundam*), in order that the church may fail in nothing. The Rajah, on his part, confers certain jurisdiction over offences committed, &c., on the community, and places the pious uses under the general protection or supervision of “the 600” (Kelu Nair explains this formal expression to mean “the local inhabitants” and “local authorities”), and of the neighbouring *Inamdars* of Auchuvannam (*Jews*), and of Manigramom (*Chettayar Inamdars*), and possibly (there is confusion in the translations) extends the seventy-two concessions (*viduper*) relating to customs and transit duties, taxes and revenues, already granted to the above-named *Inamdars*, and to the church community. The customs, together with the other fixed rates (*pati-pata-varom*), probably those pertaining to the *Pati* or headship of the village, are reserved for the same *Inamdars*, while the public dues (*ko-patavarom*) are to be paid into the Rajah's treasury.

N.B.—The latter part of the deed needs no review. Expressions in this deed seem to throw light on the expression *Pati*, which Mr. Logan translates “overlord,” whatever this means. It probably belongs to the village organization—so perfect and typically Hindu in Malabar—and is probably simply the *Deshadhipati*, *Desavali* (or *Patel* of Canara and other South Indian countries), the head and magistrate of the

village. These persons had and still have a variety of claims against the villagers. No doubt an Indian village was a well-ordered community (not “household”), but “caste” scarcely emanated from the Malabar village institution, perfect though it was (foot-note || ||). “The 600” were no doubt the influential inhabitants of the adjacent country, or local proprietors, the “people” and “neighbours” of later documents; and they may have occasionally met in conference; but the term is a technical and formal one, of which the true derivation hails from prehistorical times. The notice of this deed shows how early the position of the Malabar *Jenmi* was well defined. With reference to foot-note ‡, the position described in the Commission Diary, 15th February 1793, was precisely that of the age of this deed. He was not a proprietor (save as respects his own home demesne), but a prince and administrator of justice, social dignities, &c. The deed affords no evidence of the existence of “guilds,” &c., beyond the ordinary village constitution. I have translated *Karaler*—an old Tamul word meaning peasantry—“landholders.” It expresses, in fact, the old *Kaniachikar* or *Mirassidar* of Tamul countries; and is equivalent to the *Kanakkar*, or proprietor (*v. Glossary*), of later years in Malabar.

No. 4. The following is no doubt an important document from an agrarian point of view, of old, but much later date; and it is recorded in the Vatteluttu language and recently translated by Dr. Gundert. I confess that I could have wished it submitted to an unbiassed native authority—if now procurable. The document records the conclusion of the purchase—already under negotiation for some time—of Tiramannur (possibly an entire village of this name), a *padaramel*, with all that belongs thereto, by a certain Rajah (“ruler of Cheranad (Shernad)”) is the translator's rendering), with the *Prabhutwan*, mastership, chiefship (*v. G.I.T.*, page 422), or possibly the village headship, or *Pati* of earlier years. The *padaramel* is described as a *kanom* or landed property in full possession under the general protection of “the 600,” and situated within the jurisdiction of the *Iran* or Prince (possibly some *quasi-feudatory* of the Rajah's). The headmen of the village (*Ur-aler*) and temple managers (*Potual*) are enjoined to aid the *Padaran* (apparently the new substitute—the purchaser) and the 600 to enforce his pious uses. They are to protect the *padara* property (*Tiru-kunam*, sacred hill?). The purchaser (“agreeing party”), and not “the 600,” are to furnish the pious supplies and maintain the temple offerings.

N.B.—*Padaramel* is probably rightly rendered as “Padarar's domain,” which is perhaps equivalent to the “private demesne” of a Rajah (*pandaram* means the Rajah's property in the Laccadives). Mr. Logan attaches the importance to this document which doubtless it deserves, but misapprehends it, as appears to me; as does also the learned translator, if he be the author of the parenthetical “*kanom* or *mortgage*” introduced. The deed simply records the outright purchase of a hereditary landed private property (*kanom*), probably an entire village, of a private owner or *Kanakkar*—himself perhaps of a family of good position and a *Jenmi*. The purchaser is a Raja—“ruler of Cheranad (Shernad?)” is the translator's rendering—and the village within his own jurisdiction. The property is without any encumbrance whatever and probably destined to pious uses—a fact (if such) which would negative, were there ambiguity about the terms, the likelihood of such fugitive lien as *mortgage*—a lien the degrees of which are otherwise expressed by *panayom*, *otti*, and other well-defined terms; not by *kanom* at that period, or till long after the British rule supervened. The importance, in short, of this document lies in the practical evidence which it affords as to the condition of landed property and ownership (*kanom*) in earliest times, and of the relative position thereto of Rajahs, *Irans*, and *Jenmis* generally. They might not touch it—if they had not the means to pay its full value, whatever the object in view. The deed tells us what all tradition—affirmed by the history of our early contact with them—indicates, that “the 600” (a generic and technical expression in ancient deeds) were not the “bodyguard” or swash-bucklers (*kurikals*, &c.) of contentious, quarrelsome and grasping native princes. They were the body of influential and peaceful inhabitants, the proprietors and landholders of the country, and the “persons interested” in having the agrarian law of property—the *kanom-jenmom-maryade*—the common law of the land, and the pious usages of the country, maintained and enforced. They were the yeomanry of a law-abiding people (*v. Lord W. Bentinck's despatch*); and the folk-lore of Malabar and our own experience point

alike to their having been a stern and independent-minded, withal law-abiding, barrier against lawless aggression of those in power, whatever their condition. We have forfeited "the 600" and have *Jenmis* instead—to the people's sore wrong—in Malabar; and possibly without political or financial advantage to the State. *Prabhūtwam* of course does not mean "sovereignty" of a small purchase, of at most a small village. The *Prabhu*-ship of a village (the *Swami*-ship of some countries) means no more than the *Desavali* (village head). I confess (and must ask the Government to bear with) much anxiety on the score of these exaggerations—this *omne ignotum pro mirabili*. It underlies the false picture of the agrarian conditions of Malabar—historically false—which was early put upon the local officers by interested parties (*v. Court of Directors' despatch*, 1821), the glamour of which still works ill to the people. I must admit that I hold that paras. 112 to 116 of App. I of the Report, so far as I follow their fanciful delineation, contain wholly unreliable conjecture. *Kanom* is property—not "duty to the State," whatever that means. There were no "heads of Nayar militia" at the era of these documents, or "village commandants of militia;" and no popular "military organization" in the original civil or agrarian constitution of Malabar. There is not a trace—be it a *mokhasadar*, *paik*, or what it may—of such an organization in the country. There were doubtless bodyguards and ruffians about such aggressors as the Zamurin and other princely races; especially during the late times of disorder and oppression throughout Malabar; but they were no protectors or overseers for good. As to "bodies corporate" collecting and distributing public revenue or *patom*—sometimes appropriating it amongst them, as I gather—I believe Mr. Logan's speculation—so far as aught approaches either a principle or practice of significance—to be absolutely visionary. Malabar possessed from the earliest time, and maintained it to the end, an exceptionally perfect Hindu village system. Property has ever been entirely private and individualized, and every ancient deed we possess of sale (*attiper*) or adjustment of demand (*patola*) indicates the absence of any communal condition of the kind—as pointed out by Sir Thomas Munro (*v. 31, Dec. 1824*) as the result of the ripest experience—in the early years of the century. Mr. Logan has failed to realize the fundamental condition of property on the West Coast, and become the prey of many imaginative and inapplicable analogies—"guilds," "corporations," &c.—from alien sources.

Nos. 5 & 6 (dates unknown) are both obviously comparatively modern deeds from the south-eastern part of the district Pálghat, and belonging possibly to a period of disorder and oppression—chiefly at the hand of the Zamurin races—when, late in the 17th and early in the 18th century, the Rajahs and nobles (*Jenmi*) of that district—in connivance with the minor proprietors and village landholders, and the inhabitants generally—sought to save large areas under their rule, their private demesnes and home farms, as well as tax-paying property or *kanom* of others, from the rapacity of the aggressors, by devoting them ostensibly to pious uses, and placing them under the taboo of their own family gods or of some revered shrine of the neighbourhood. Be this as it may, by

No. 5 (date unascertained), one of the branches of the Pálghat Raj conveys, in general terms, to pious uses, a large area of country, comprising several villages and apparently well-peopled—judging by the expressions used and degrees of the assenting public—within extensive territorial boundaries named, and including both rice-land (sowing 1,500 *kalams*) and hill and forest property. The conveyance purports to be of *Manayom* (tax-free) land—probably the family demesne, property, or home farms of the family (*sherikal*), and worked by their own slaves; but the area evidently included likewise land from which the fixed revenue assessment (*patom*) to the amount of 422 *kalams* of paddy—the *pattomai pattamanda* of more specific deeds—were due to the Rajah. This public charge or land-tax also passed under the deed. The seed area of such private property is not particularized in this general (possibly collusive) transaction, but from the nature of the transaction and area included, it was probably considerable, and the *patom*, or fixed demand, very moderate.

No. 6 (date unknown) is also a deed by a person of high rank (*Titu* is the form of deed used), a proprietor and *jenmi*. The deed is addressed to the village accountant and public notary, and purports to record the free gift and transfer—by way of expiatory offering for wrong done—of his private property (*swanma*) to the

nambudri manager of the family temple or domestic god. The territorial boundaries are carefully described, and they apparently included another property otherwise devised, the balance (*michāram*) of whose *varom* or *patom* was likewise to pass. The deed is not otherwise of agrarian interest.

No. 7 (A.D. 1290) is of considerable agrarian interest. It is a deed of sale by an owner (Gundert) or proprietor (*Udaya*) of a village (*desam*) named "with what is comprised therein (*Ulpattigal*)," his private property therein, in short. The waste or unbroken high land (*paromba* or *peramboke*) which it conveys is accurately demarcated, and with it pass the rank and petty tributes (*sthānānangal*) which custom assigned to persons of that position. The latter are enumerated with much completeness, and most of them point to an inhabited and cultivated condition of the village at the time. But the deed is silent as to any claim against the holders of such cultivated property. No servitude either of person or property, as respects the villager-landowners is conveyed. The object of transfer was the outlying uncultivated part of the village, and the headship of the village by apparently an Ekabhogam *mirassidar* as he would be termed in Tamul countries. The term "prince" and "lord" are inapplicable.

No. 8 (A.D. 1464) is a deed of gift by a branch of the Pálghat Rajah's family, with seizin (*nir*, water) of a certain lot of land described, together with the servants, slaves, cattle, implements, &c., &c., pertaining thereto, and some other matters, to a temple, with promise of very special regard for the safety of the Brahmins attached to it (as was natural in such a hill and jungle locality). The property was evidently a home farm, and lay, as I know, near the Rajah *Kolagam* of dwelling.

N.B.—The drift of the foot-note is not clear. The Kalpati Brahmin village is the adjacent village, and probably furnished the serving priests; and more probably the term *mukkal-vattom* relates to the people of the *vattom* or circle of villages. The Pálghat Rajah or *Polegar* family had been the recognised rulers of the country for many centuries since the *Perumal's* rule, or that of the foreign *Chacraberti* he represented. Some variety in conveyancing in the interim is natural. From the commencement of the 16th century deeds of sale came to be termed more specifically and technically *attiper*, *attipetola-karanam*, and the like cognate expressions. *Attiper* is, as already noticed, an old Tamul expression, which has doubtless been correctly rendered by Dr. Gundert (*v. foot-note*, page 63, vol. 2 of report) a deed of sale for what it will fetch; in short, for full market value. It applies to the sale of any private property in land, and has nothing in any way synonymous with "birth," or "birthright," or "water-contact birthright," or the like. I will retain the simple and customary and sufficiently comprehensive term deed of sale for *attiper* and its equivalents, assuming that the necessary words of seizin are present, as they always are, and that the usual formality of reciting the requisite persons as having been present and assenting, has been complied with.

No. 9 (A.D. 1523) is a deed of sale of a village (*desom*) with its headship (*Desadhipati*) and management (*Urayama*) of its temple. It passes the temple and its landed property, with the predial slaves attached to it, and also the private property of the family or house (*Taravād*), together with the residence and all attached thereto (*kudiyerupu*), rice-land (*nilom*), and dry land (*paramba*), with the slaves or field hands belonging to it.

N.B.—In short, the deed passes a village of which the vendor was official head (*Desadhipati*) and manager of the temple (and its property), together with the private property of his undivided Malayalim family (*Taravād*), which they had been cultivating with their own field lands. Both parties to this transaction were persons of high rank. With reference to paragraph 154, I may remark that Mr. Logan is right in

Jenmom, Taravād.

his surmise that *jenmom* is a novel and inaccurate term as expressing a tenure of land; it expresses family and hereditary rights and titles irrespective of ownership of land—though amongst these was included family property. *Taravād* is family residence; not "authority" in the *tara* or village—a principal *mirassidar's* home of an undivided family.

No. 10 (A.D. 1550) is an ordinary *otti*, or deed of mortgage with possession—here termed *veppu* (a local Pálghat expression). It demises two lots (*kandam*) of rice-land, and an enclosure (*vallapu*), and is executed apparently by an ordinary landholder or *kanakkar*, and his brothers of an undivided Hindu family.

N.B.—This deed is an early and simple representative of what always has been, and ever must be, an enormous class of agrarian transactions—the mortgage by landholders and owners of their property to meet existing pressure; and nowhere more numerous than on the West Coast, where land has always been private property, and estates exceptionally valuable. The names *panayam*, *veppu*, *otti*, and possibly others of the same character, are probably old Tamul expressions. *Otti* is still used, I believe, in many Telugu districts; and possibly in parts of the Tamul country. Be this as it may, they express different degrees of the same class of encumbrance, viz., mortgage; a term which is in direct contrast with *jenmom*, *kánom*, *kániachi*, or *mirassi*, *muli*, and the like which express the prescriptive ownership, the ancient ryotwari proprietorship, of South India. Their existence points directly to the fact that *kánom* has never expressed temporary occupancy under mortgage obligation, and *vice versa*. I am alluding, of course, in these observations, to ancient Hindu agrarian facts and their expression, and the early common law of the land, and not to the false glosses and inapplicable analogies which have gradually crept in and perverted the whole position. Mr. Logan fails to recognise the distinction—indeed, ante-dates, as it were, and intensifies the error throughout his paper—even while treating of early times, when agrarian terms still expressed distinctively the facts they recorded; and *otti* was mortgage, *kánom* property.

No. 11 (A.D. 1587) records the sale of a house; and

No. 12 (A.D. 1617) that of an insignificant bit of land named *Ottakundom* (one lot) sowing 60 yedangali of paddy—with much grandiloquence of formality, as to persons present, or rather probably absent.

N.B.—I should not have noticed these two trifling transactions save to point out again the exaggerated notions which Mr. Logan labors to import into every trifling village transaction. The presence of the “Emperor” (*Ko*) and “Overlord” (*Pati*) are missed at the execution of the first; and I can only observe, as regards the second and foot-note, that if every *kovil* in Malabar is to be represented to Government as a royal palace, and its *Nadvali* resident is to be suggested to Government as the “King of the *Nad*,” if, in short, the small aristocracy of the land, or minor official classes, heads of *nads* and villages (or even temple dignitaries), are presented to Government as kings and princes, “overlords” and lords, “military commandants of villages” and the like, an unreal picture of Hindu agrarian society at any time in Malabar is placed before them. It is quite in accordance with the history and analogy of every Hindu country that disorder should arise, and continue long, when central authority is weakened or wrecked, or a country becomes deprived of any central authority whatever.

And such doubtless was the fate of Malabar when revolution—whatever its motive, and whoever its agency—removed the central authority which we are accustomed to embody as it were in the name *Perumal*

Early political position was one of slow growth as respects native princes; and strength of land-owning classes.

or Premier of the land, and left its principal feudatories and hill chieftains to develop into rajahs and rulers—with very slowly but still steadily increasing completeness of authority and peaceful, civil administration. But it is matter of history that the power of these petty usurpers grew, and was consolidated very slowly. It was probably centuries before they could even impose the legal land-tax (*pattom*) on the ryots. Rivals and pretenders were probably not failing from the story of any ruling family in Malabar at any time; and some hill chieftains and semi-independent nobles maintained a position of struggling and uncertain independence almost within our own times. Not only so; the revenue history of the country, with its multitude of the class we now term *Jenmi*—a name of recent application comparatively—clearly shows that many nobles and other families of distinction and authority—whether delegated or spontaneous—and privileged persons, such as temple dignitaries and the like, exercised the quasi-ruler's right of assessing—in the sense of the Hindu and local common law—the landed properties of the classes of landholders who were politically and socially

subordinated. But these persons were not “kings” or co-ordinates of the native princes at the head of the main division of the country. While on the whole there is reason to believe that fair political order and subordination prevailed through the greater part of the country through many centuries, great strength and independence remained, and was often exercised by the landowning classes; especially the *kanakkars* or ryotwari landholders. Family property—often of large extent, and occasionally added to by unscrupulous means—was likewise in the possession of “houses,” or *Taravads* of local distinction in the village and *nad*, but that, like other property, was subject, as respects every incident of property, to the same common law—the *kanom-jenmom maryade*—which governed the whole landed interest of the country, whether the owner was a man of position and a *jenmi*, or an ordinary ryotwari proprietor or *kanakkar*. There is little doubt that families of rank, as well as many minor landholders (the small *jenmom* property of the present day), were long able to exempt their demesne land and properties from the exaction of *patom* or land-tax by the ruler; indeed, down to the Mahomedan conquest. But no claim to be treated as permanent *inam*—either as tax-free land or emolument attached to office—has ever been advanced as respects such properties in Malabar. Nor, when taxation reached them, was it supposed to infringe the fullest right of ownership. On the other hand, there is no trace that a mere fugitive right and possession, with menace of forfeiture and eviction at will, ever attached to the ordinary proprietary tenure known as *kanom*, at the hands of any exactor or collector of a *pattom* revenue. The *pattom* question no more affected the ownership of land in Malabar than did the *shist* question in Canara; it affirmed it. With reference to Mr. Logan's foot-note I venture to remark that there is no trace of “the Nayar 600 breaking up their communal rights” in the agrarian history or probable condition of property from the earliest times. Sir Thomas Munro discussed this matter in his despatch of the 31st December 1824, and pointed out, with special reference to this district, that there never was any *raison d'être* for communal conditions of landed property on the West Coast of India; and that private, individual ownership—as respects all classes of ryotwari proprietary—had characterised its distribution in Malabar from time immemorial. I think, therefore, that it is to be regretted that the point is, as it were, re-opened, and that authority, as it were, questioned. *Kandom* and *nilom* (both probably old Tamul agrarian expressions) designate small lots or areas of rice-land which are agriculturally of the same character as regards level, quality of soil, return for seed sown, &c., &c., and as a rule assessed, just as in Canara, as a lot, to *pattom* or *jenmi-pattom*. The term does not express “share”—*nilom*, which is used indiscriminately to express the same fact, of course cannot possibly do so. And if the agrarian diction of the country had to express any such fact as sharing property, it would possibly use such word as *amsham* or some old Tamul equivalent.

No. 13 (A.D. 1620) records the sale (with usual formality of expression) of a house and adjacent dry land (*parambu*)—probably of a family of distinction (*kurup*), whom we should now term *jenmi*.

N.B.—I only notice this unimportant deed in order to observe that the foot-note on page 64 of the enclosure No. 2, appears somewhat fanciful. *Tara-vattam* is probably forename or family title (largely indulged in by the family apparently). Verbal analysis would point to the ordinary Tamul

Patti, Vattom.

expression *vattom*, a small official district; and the term may be equivalent to *Vattam-manayakar*—a title and office belonging to the ordinary village constitution of South India and Canara—as an overseer and manager or superior accountant, over a small district of villages. The countersignature of such an official to an ordinary village transaction was probable enough, while the neighbours (*ayal*) in the village, and *pati*, or village head, were cognisant of the transaction. Mr. Logan asks anxiously who the *pati* was? My humble venture is the “head of the village,” and his place the official place of meeting in the village. The intervention of the village head is *en règle* from a legal point of view. The importance of the transaction does not suggest the needful presence of a “lord” or “overlord,” or create surprise that the “King (*Ko*)” is not mentioned in the sale deed. But one thing is certain, viz., that the *pati* never was, and never could possibly have been, a “body corporate” of either Jews or Gentiles; nor could have been 600 or any other number of the

inhabitants and proprietors of the *nad*. He was and must have been an individual, and possibly not a very exalted individual, in the village or *nad*. There is not the slightest trace of any *pati*, or any number of *pati*, dividing their *puti-pattom* (a matter, by the way, not suggested by the text of any document of later date than the 9th century)—whatever that meant, in those early centuries amongst the undivided Hindu houses (*Taravāds*) of the country. While there is not the slightest historical evidence or reasonable inference for the conjecture that there was such a village or even *nad* dignitary as the “hereditary military commandant of a village.” It is, however, not improbable, as thought by Mr. Logan, that the *Pati*, or village head, or other recognized official, was generally some temporarily influential man in the *nad* or district, such as the *Vattam-manyakar*, or village *Potail*, ordinarily is. I do not myself feel safe in endeavouring to connect incidental expressions that occur in two unimportant documents—such as the foreign Jews’ *inam* grant and this small transaction—separated by an interval of a thousand years; but such parallelism as does exist, seems to point to the great antiquity and permanence through ages of the true and typical Hindu village constitution as it still exists in Malabar; for *Pati* means the same in both. I am conscious of prolixity in dealing with this feature of the report and its appendices, and of hanging somewhat lengthy observations on small crooked nails in my text. But I am satisfied that it is essential to the understanding of agrarian conditions, and therefore of agrarian rights and tenures in Malabar, to remove the stilted platform of “Empire of Malabar,” “military organization of society,” and other fancies and figments which I had imagined were long ago put out of court by the sarcastic summing-up of the Court of Directors on the matter, and labors of Sir Thomas Munro; but which I find partially revived under the cover of inapplicable foot-notes, &c., in the paper before me. Government have to understand that the political constitution of Malabar has been for ages not only typically Hindu, but typically weak and distracted, and the agrarian conditions (by the same consideration) of the landowners typically strong and protective. There had been no central power in Malabar for a thousand years, when the Mahomedans appeared on the scene; when the whole feeble and discordant structure of political society and life vanished almost without a struggle before their easy conquest, and numbers of *jenmis* sought personal safety in flight; leaving a stalwart yeomanry to assert their rights before their new Mahomedan rulers—an ordeal out of which they emerged with rights respected and affirmed, and the moderate claims against them accepted as sufficient, and ratified. The long intermediate centuries since the Perumal’s disappearance had in no small measure been spent—with increasing cogency towards the close of the epoch—by these *Polegars* and independent princes in internecine contention and disorder, such as of necessity gave strength and persistence to the village and local constitution of agrarian society, and afforded exceptional opportunity to the minor aristocracy of the land, as well as its vast *ryotwari* proprietary of various orders, for the permanent maintenance of their rights and the assertion of their independence within the common law. And so it was. Neither their history nor traditions, nor their local institutions—call them assemblies (*kutams*) of villages (*deshom*, *tara*) or of *nads*, or meetings of *Taravāds*, or what we may—nor the management of their revenue settlements, justify the slightest doubt that that law-abiding independence of character, assertion of right, which passed right through the short-lived Mahomedan era, and survived well into our own times (and to our cost) was meanness or subservience, indifference or impotence in the face of wrong, under the previous feeble and distracted rule of small native potentates. No! The Hindu village and localised agrarian constitution possessed and retained special and concentrated vitality, and the rural inhabitants who constituted it exercised more than ordinary check on aggression in Malabar. The 40,000 to 50,000 scheduled “proprietors” (*v. Glossary*, “Proprietors”)—the *kanakkars* and the minor landholders of birth and position (*Jenmis*) who contributed from their private properties to the public revenues, who stood on the State revenue rolls of our predecessors, Hindu and Mahomedan, and afterwards on our own—were the outcome of ages of law-abiding independence and self-protection as respects their ownership of their native soil. They were the aggregate of many bodies of “600” of the native yeomanry of the country; but not “Nayar militia,” “body-guards,” “overseers,” or “protectors”—much less “mortgagees” or other fugitive occupants of ancestral and hereditary holdings. Least of all did they belong to the

category of “intermediaries,” “speculators,” and “capitalists,” to which in the last stages of this report the wronged disestablished ancient ryotwari proprietors of Malabar are relegated by Mr. Logan.

No. 14 (A.D. 1620) records the sale, by a Nambiar of rank, of a house (or part of a house), with adjacent *peramba*, described, to one of the heads of a village community (*Ural*), and apparently for pious uses. The neighbours and *pati* aided the transaction, and the deed may have been (?) countersigned by the *Vattam Manyakar*, or like official.

N.B.—I would observe, with reference to the foot-note, that landed property was not in a state of “gradual disentanglement of separate rights,” &c., &c., anywhere on the West Coast of India in the 17th century or any other century short of fable-ages; Munro *judice*. Maine had societies of later agrarian civilization in his eye in the passage cited. A house (*vidu*) and hillside, in Malabar, never was an Anglican “manor,” or anything analogous to it. The only *joint* holding known to Malayalam agrarian conditions, as a rule, is the undivided Hindu family, or house (*Taravād*). The subject of the sale may have been some outlying “partitioned” dwelling, &c., of one of the members of such a family. Be this as it may, neither in this, nor any other transaction I ever heard of, can I trace indications of houses or lands being held “jointly by the *tara*” (whatever it means); nor do I recollect that any one else ever did. Certainly not Munro.

No. 15 (A.D. 1622) records the sale of a small village, possibly a suburb of the town of Cochin, by the Rajah of Cochin, to a private family (evidently of distinction, judging from the name, &c.), with all comprised within boundaries named, together with the (*Desadhipati*) headship (or *Pataili*) of the village, and the *Amsam-stanam*, or social honors, &c., of the *Amsam*, and also the privilege of collecting the customs duties of the place.

N.B.—The document is interesting inasmuch as it affords evidence, if such were needed, of the simplicity and self-containedness of the village constitution on the West Coast of India, and of the character of a ruling prince’s functions and right. The Rajah sells a small village, with its official *Patail*-ship (to use a well-understood phrase), and its local distinctions, to a family of position, as a social and agrarian unit; and he adds the collection of the State customs of the place, which were of course within his prerogative. I should not infer from the description of the contents of the land conveyed, that it comprised a single acre of rice-land (*kandom* or *nilom*) or of planted dry-land (*paramba*), and these valuable things did not generally pass on the West Coast *sub silentio*. But pass what might, the deed is simple and complete for its purposes. The interest Mr. Logan finds in it is of the usual inflated character, and I fear is somewhat fanciful. He finds in the appointment (for value received) of a village *Pati* a “habit of occasionally selling the over-lordship of territory” on the part of the Rajah. What territory? what over-lordship? need scarcely be asked; the deed tells its own very simple and natural village tale. Doubtless village (*desom*, *tara*, *cheri*, &c.), offices and divisional offices (whether of *vattom*, *amsam*, or *nad*), or even higher functions, were sold; doubtless *sthānā mānangal*, whether the petty *viduper* of early days or the village and social dignities of smaller areas were subjects of *nazerana*, or sale, in Malabar as elsewhere, for what they were worth, to landed aristocracy of the neighbourhood. But no astute Malabar Rajah was in the habit in the 17th century of devising imaginary “over-lordships” over undefined territorial domains when he sold off apparently some petty village waste or suburban (as I gather Mr. Logan conjectures) lots in the vicinity of a seaport town, of which he might—unchallenged of course—concede the sea customs collections. *Amsom* of course never did—nor could it by any etymological straining be brought to—mean *varom* or *pattom*, or anything connected with the division or distribution of crops, or rupees or articles of any kind, as surmised by Mr. Logan. The usual acceptation of *amsom* is territorial, and, *faute de mieux*, may here be taken to mean the local distinctions of the village or *amsom* (our present *amsom* comprises on the average about four *desom* or villages): possibly the town of Cochin and its *manangul* might be comprised in the *amsom* as described. *Amsom* then does not mean either a “*Ko*’s (Rajah) or *Pati*’s share of produce.” Nor is there any reference whatever, even in the sale deed of a Rajah, to *pattom*, either due to the State or to any one else. The silence was in order,

characteristic, and significant, even assuming that the boundaries named comprised occupied land—land subject to *varom* or *pattom* (*pattomii*). I notice this point in order to explain to Government the silence which will be found to be observed in almost all such old deeds—even where the vendor was obviously the claimant or collector of the public demand. The “Queen’s taxes,” to use a familiar expression, or public demand, the *pattom* against assessed land, was and still is a wholly separate matter from the individual personal proprietary rights which the ordinary devisees of the country are intended exclusively to convey; and so long as these taxes or *pattom*-claims were moderate and the conveyances were not collusive, we rarely find these public charges noticed in private deeds, affecting only private and proprietary right, in the old deeds either of Malabar or Canara. These charges appeared in the public village accounts—the *wurgwar* account of Canara—and in the *grantharis* or registries of taxes (*rari*) of the Rajahs and other collectors of the fixed *pattom* of Malabar, and not in private deeds. Later on, we find these charges stated in private deeds in both countries—often, no doubt, for convenience of description of the lot of land or estate passed, but very often, too, from collusive motives. A disproportionate share of the lump land revenue demand against a proprietor was transferred by arrangement to the land made the object of the sale—often a mere nominal transaction—which the vendee undertook to discharge for all time to come, to the relief of the rest; frequently to the serious loss of the revenue, to whomsoever payable. In the 17th century (the epoch of this deed) there was little motive for such frauds; and the information, if any, contained in the village accounts or public *granthari* was not transferred to the deed of devise.

No. 16 (A.D. 1625) is a simple purchase of a house and *peramboke* land, defined by the representative of a village temple (*Ur-al*). Of no special interest.

No. 17 (A.D. 1627) is of special agrarian interest. It is a *pattolakaranam*, relating an adjustment of the fixed *pattom*, or revenue demand, and is the first of its kind in the present collection. The document acknowledges the receipt by two persons of 121 fanams from the holder of eight lots of land, which are collectively described as an estate, subject to a *pattom*-demand (*pattamii*, equivalent to the *tirurepet* or *pattapet* of Tamul countries) of say 100 *Yedangali* (5 *potti*) a year (*pattamandu*), in addition to a *kaveli*-fee, the amount of which is not specified. Interest on this advance at 5 per cent. in kind is to be deducted; the balance (say 20 *yedangali*) to be paid in future annually.

A.B.—No time for repayment of the advance is named. The estate must have been considerable, and the *pattom* (inclusive of *kaveli*-fee) very moderate—possibly not much more than one-fold (*meni*) of

the seed sown; and it may be assumed to have been valuable. The precise relation between the landholder and the recipient of what was obviously an advance of prospective years’ claims, is not stated. He may have been a *Virompattomkar*—the *Mulguenigar* of Canara—permanent hereditary occupant contributing to the revenue demand of a larger estate, or himself in direct account for his holding under *virompattom* tenure; or, as is more probable, he was a *kanakkar* or ryotwari proprietor meeting some *Jenmi*’s revenue claim. Be this as it may, the legal and reasonable inference is, that the *Pattomkar* was no tenant-at-will, or tenant under any defeasible right; that the claim (*pattom*) was an authoritatively recognised and unalterable one in law; and that it was moderate, leaving a valuable estate in the owner’s hands.

• With reference to Mr. Logan’s foot-notes, I would remark that the *Kavalphalam* is simply the *kaveli* tax of Tamul countries levied by various grades of *Kavilgars* for the duty of watching the crops—or rather a black-mail for abstention from robbery (*kuller-mén-kavilgar*)—which likewise obtained in Malabar. There is no duty of protection thrown on *kanakkars*, the owners and occupants of land. They are the men from whom the fee is wrung, as

Kaveli fees.

in this case. It is by no means improbable that the recipient of the 121 fanams was a mere collector of the various quotas of the various landholders, *Kanakkars*, or *Mirassidars*, of the adjacent district, to the *kaveli* demand, in the interest of some

recognised *Mén Kavilgar*. One thing is certain, that landholders who were the victims of the system were not their own *Kavilgars*, or protectors.

Another somewhat ambiguous expression occurs in the foot-notes. Mr. Logan terms this document “the earliest *kanom* deed he has seen.” I assume that he means *mortgage* deed, in the sense he

generally uses it in this connection. But it is the recipient of the advance—whom I will term for the nonce *Jenmi*—who mortgages his revenue claim as security for the advance: he is the debtor. The case throws some light on the fact that the discharge of such claim by a *Jenmi* did not, under the ancient agrarian conditions, alter the landholder’s position, or make him a tenant-at-will, as is practically the case now. The *Kaveli* system, it need scarcely be added, was not a military organization.

In this connection I may correct an error into which Mr. Logan has fallen in his descriptive notice of technical terms, Ch. II, part vii. of the Report. He renders *michârom* “the superior’s share of

Michârom, Rent.

the produce; rent in the modern sense.” The expression (*minchina varom*) means the “remainder” or balance of the *varom* after all legal deductions are made, as in the case now before us. Neither *varom* nor *pattom* means “rent” in the modern sense; much less does *michârom*, which means the balance of that revenue claim after deducting interest on advances, loans, compulsory prepayments, and the like, made by the landowners. The term meant likewise the balance of the legal land-rate—after deducting interest on the capitalized value of all intermediate improvements effected by a landowner on his property on any occasional re-valuation for assessment purposes. More especially in regard to the re-valuation and revision of assessments of fruit-bearing trees (cocoanut included) and plantation industry. The equitable principle of lengthened freedom from taxation, in respect to outcome of private expenditure and industry in extending cultivation and plantation, obtained in Malabar; and a long period (nominally sixty years) elapsed before the capitalized value of such improvements, and their exemption from demand, disappeared by gradual instalments—nominally 20 per cent. every twelfth year—and merged into a fully taxable estate. The improvements on an estate were of course the indefeasible property of the proprietor—expropriation was unknown—and only merged fully into sources of increased taxation after the lapse of two generations or more.

No. 18 (A.D. 1655) records the sale of a considerable property, consisting of rice-land (sowing 105 paras of seed) and dry land, &c., to a Tamul Brahmin, by a person apparently of the ordinary *kanakkar* proprietary class.

N.B.—It suggests no remark.

No. 19 (A.D. 1666) is an outright deed of gift in consideration of services rendered, executed by a *Nambudri* Brahmin (?) in favor of a certain *Nambidi* family. It purports to demise as hereditary property two lots of land, respectively named Pallipurat-pattom and Vellakore, the latter already apparently held (by gift?) for some years by the donee, as *kâram-pattom*—a permanent tenure (*kâram-karayma*), subject to any fixed *pattom* encumbrance attaching thereto.

N.B.—The kind of property created by a *karama* or *karayma* devise—whether by a gift or sale—is by no means uncommon in the coast districts, especially in Canara. It is equivalent to the *muli* or *mulgueny* of that province—a complete devise with seizin as respects ownership and all its incidents, but carrying with it the recognised public revenue demand (*shist* or *pattom*) appertaining to the lot or holding passed, if

Kâram, Karayama.

assessed individually, or an equitable share of the same, if the lot formed part of a larger estate. The name of the first lot, and indeed the character of the deed, suggest that the property which passed had stood assessed to a recognised revenue demand—call it *Jenmi-pattom*, *kanom-pattom* (land-tax), or what we may—while still in the donor’s possession, and when the devise took place; that it was in fact a *pattomai* property as attempted to be described under No. 17, and if so, the usual *pattom* encumbrances (registered in the local or

village office [*pati*] or the like, and in the public or *Jenmi's granthwari*, would pass in all probability with the property under the deed. But of itself the devise created no *patom* dues, reserved none, nor did it otherwise deal with any *patom* dispositions. It was a simple transfer of property by gift (*dānapatram*), and not a *patolu-karanam*, of which No. 17 is a specimen, and others follow. My own impression is that the *Karayamakar* was simply private owner, equivalent to *Kuruler* of earliest times and *Kanakkar* of later times.

I make these observations in order to show that there is nothing in the deed itself to suggest the confusion and misapprehension into which Mr. Logan appears to me to have fallen in his remarks in para. 143 of App. I relating to this simple document. I have already observed that the *Kanakkars* of Malabar were not "over-seers" or "protectors," but *Ryotwari* proprietors. Much less were they in the

Kanom, Kanom deed.

Mr. Logan terms "water - contact birthright-holder" (page 29). I further

remark that there was no such thing as a *kanom* deed—of course I am treating of *kanom* in its historically-correct and contemporaneous (with this document) meaning—and that the terms *kanom* and *patom* (or their compounds) never were or could be convertible or synonymous in any combination; no more than the title to a property could be synonymous with property-tax. Neither in Malabar nor in any other Hindu country (for the agrarian facts are common to all South India) was there ever confusion either as regards the facts or the terms by which they are expressed: *patom* is a "due," a "tax"—conventionally, perhaps, a lot of land subject to a due—never a "holding" title or right. The deed in question is simply a deed of gift of private property (*kanom*) by a competent owner, subject to any legal or recognized dues or *patom* encumbrance. But Mr. Logan uses the term "*kanom-deed*," in describing it; and puts the anxious quæri, "What is a *kanom* holding?" There is no specimen of an ancient *kanom* deed amongst the collection submitted; and probably none ever existed, for a *kanom* holding is not described in a deed. The reason is obvious; and the natural explanation is that those ancient and immemorial, indefeasible, and complete hereditary prescriptions of Indian agrarian rights of property—the land-faith as it were of the people—which are recognized and affirmed alike by the common law of the land and popular consensus of ages, never were embodied in written documents in any age, although they have stood severer tests and been defended no less earnestly than the best titles of England (*vide* Sir Thomas Munro). The antiquity and completeness of these properties and the validity of these unwritten titles become manifest only by their legal incidents, when transactions come to be based on them; and these transactions afford the surest evidence of the immemorial pre-existence of their main *rationale*, viz., the complete, inalienable and otherwise unassailable proprietary right of the rural population as respects the land. I think the search for an ancient *kanom* deed in Malabar would be as futile as for a *Muli-deed* (in Canara), or a *Kaniachi* or *Mirassi* deed in any Tamul district, although equally abundant documentary dealings are to be met with by persons to whom these unwritten prescriptions belonged. A *kanom* holding was an ancient prescriptive right of property by unwritten title and deeds; recorded changes are, as it were, fresh departures in regard to it. And these titles were quite apart from all taxational incidents and legal burdens, however imposed. The deed before us is an illustration. *Karuma* or *karayma* was a permanent hereditary title duly devised by the donor. It created no *patom*, reserved and adjusted none; for this was a matter subject to other considerations to which possibly the donor could be no party. I am at a loss to find where Mr. Logan finds in the deed the term *karayma-kanom*, or, if he has coined it, whence his authority for such a compound. I confess that I should be at a loss to translate such a tautological, if not contradictory, expression in terms. I should as lief expect to find *karayma-muli* in a Canarese document, or *karayma-kaniachi* or *karayma-mirassi* in a Tamul one, as *karayma-kanom* in an ancient Malayalim devise. We have not, of course, here (A.D. 1666) to do with what modern Malabar conveyancers may venture in the matter of compounding new agrarian expressions, since the era of confusion has fully set in, and *kanom* (prescriptive proprietary right) has come to be viewed as a convertible term with *panayom* (pawn) and *otli* (mortgage), and possibly even with *datom* (rates and taxes) as alleged by Mr. Logan.

I must venture further to observe that neither does this document contain, nor could any other document belonging to pre-British times be produced which does contain, even a colourable justification of Mr. Logan's assertion that an individual

whom he terms "water-contact birthright-holder" could set aside at will a *Kanakkar's* prescriptive title to his holding on the occurrence of successions on either side. The immemorial legal incidents of such property traverse such a position. Nor do the authorities cited (all modern and alien though they be) support it. Græm's "Glossary" correctly describes *purushantran* as an official exaction—a *nazerana* in short, known throughout India from earliest times—which was collected by all sorts of official superiors on the occurrence of successions to positions of local authority and trust, and even to property. But it constituted no break of title. It had no more to do with titles to property (or rights of trades, &c.) in Malabar than succession duties, which Mr. Logan apparently suggests as an analogy, have to do with titles or inheritances in England. In the letter alluded to (Mr. Warden, 12th September 1815) the Collector discusses the claim put forward by *Jenmis* that a *Kanakkar* "renewed his *kanom* deed after a lapse of a certain number of years," "with concomitant deduction"—what, in short, we now call *polachilt*; and he adds, "I have never seen a bond in which the time for renewing it was specified, or the least allusion made to the privilege." The Collector's letter was doubtless one of those before the Court of Directors when they penned their despatch, dated 12th December 1821, reflecting on the credulity of the local officers.

As regards Mr. Logan's further observation commencing with the words, "It was quite natural that at such times the parties should be free to separate if they chose," I remark that conditions which might appear natural to a London house-agent adjusting breaks in a lodging lease, would have been unnatural, unhistorical, and cruel, when their subject were the ancient rights and independence of great bodies of ancient Hindu *Ryotwari* proprietors in Malabar, or indeed in India in general.

No. 20 (A.D. 1666) records the sale of a house, with adjacent dry land, within boundaries named, by a Kurup—therefore of birth and position—family, to the *Ur-aler*, or village headmen, of a certain village, probably for pious uses. The deed was executed with due legal formality, with the knowledge of the neighbours and the *Pati*, or head officer of the village, and it is countersigned by the *Turuvattom-kaikandan*, or manager of the *vattom*, which it is scarcely necessary to add is the small revenue or administrative district of villages (*tara*) so well known in South Indian rural administration (the *magani* of Canara), and an integral part of the village system.

N.B.—The deed is simple and is an instance of well-observed legal formality in drawing deeds. It would scarcely need notice but to point out that the most ordinary legal formality expressed by *Kovil*

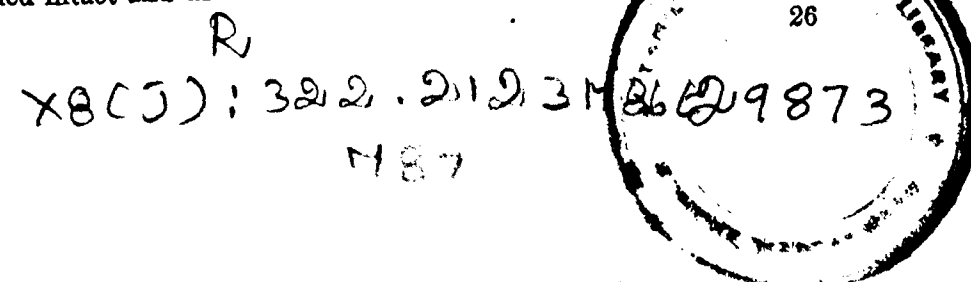
Kovil, Vidu.

becomes "King of the *Nad*;" "*Pati*," the village head, appears as "lord" and

"over-lord," whatever this means; a very ordinary house (*vidu*) represents a "manor," an Anglican notion which agrarian Dravidian was never taxed to express; and so on. Of course there is not the smallest connection between this house (*vidu*) and the seventy-two concessions or privileges (*viduper*) of the Jews' *inam* deed and other documents, in which these concessions of small sources of revenue and social distinctions were the object of the devise by some competent local authority 1,000 years before.

No. 21 (A.D. 1681) records the sale by the Rajah of Cochin of a stretch of dry land (hill and waste) within boundaries named, with all included therein. Rocks, charcoal-burning, &c., indicate waste and unoccupied land of the village, to which probably the devise was limited.

N.B.—The deed presents no obvious reason for the foot-note. The transaction has no analogy with No. 15. It is a simple sale of land, unaccompanied with any office; and the Cochin Rajah may have claimed a right to dispose of village waste, while the occupied land—that of the peasant proprietary and hereditary holdings—remained intact and unmeddled with.



No. 22 (A.D. 1681) is a deed (*tilu*) whereby a Nambudri Brahmin family—consisting of two males and two females, and evidently of high rank—with a view to avert the wrath of some malignant spirit against the family (*Taravad* “house”) voluntarily surrender their family inheritance (*Taravad*, *Jenmom*) in the Alur village, &c., to the fifteen of a certain ancient Nambudri community, and the elders (*Muttadu*) of Kolimannan. The hereditary property of the “house” consisted of rice-land and *paramba* (dry, woodland, and waste), and three temples, named, belonging to the family, together with the property, slaves, &c., pertaining to them; also of property in three hamlets (*uldesom*) named, and the management of the Kandagur temple; and was to be enjoyed as perpetual *devasam* (consecrated to pious uses) by outright inheritance with seizin (*nirjenmom*), on the same terms as heretofore by themselves (the devisors).

N.B.—The transaction was between Nambudri Brahmins respecting sacred property—a fact which may account for the use of the term *jenmom* in expressing ordinary hereditary family (*taravad*) property and its incidents (in respect to which it expresses no sort of distinction and conveys none) twice in the same document; a

Jenmom, family inheritance, &c.

property which, for every legal purpose, might have been described as *kanom*, or any other term which expresses private family and hereditary ownership. The devise is not, as erroneously stated by Mr. Logan in the foot-note and at page 27, p. 130, a deed of sale (*attiper*). It is an ordinary deed of gift to pious uses, and not a deed of sale at the full market value, as expressed by *attiper*. Neither etymologically nor as an expression of a legal or agrarian fact, have the terms *jenmom* and *attiper* (in any of their combinations) any connection or convertibility whatever. It will be observed that the expression has no reference to what are now termed “*jenmi* right,” birthright, and claims. It applies, so far as land is concerned, to hereditary ownership and otherwise to hereditary offices in respect to the management of certain local temples. The use of the expression “*taravad*” is strictly correct. *Illom* (with others differing locally) is the distinctive name of a Nambudri residence or home; but “*taravad*” is the more comprehensive term for the “house” of an undivided Malayalim Hindu “house” or family, and in this relation it is used indiscriminately as respects families of rank and position as landed proprietors in a village (*tara*, a village). No “change in the constitution of society” is indicated. Its characteristic stability is evidenced by the deed. As regards the derivation of the term, it is probably to be found in old Tamul (*tara* is, of course, Tamul).

No. 23 (A.D. 1693) is a *pattola-karanam*, or note in adjustment of the fixed revenual demand (*pattom*) in respect to a landed property described as “subject to a fixed revenual demand” (*pattomai*, equivalent to *tirvapat*) of 24 paras of paddy a year (*pattomandu*). It acknowledges the receipt of 240 fanams by a person evidently of high rank, official or other, the interest of which, at 5 per cent., was to be deducted from the gross *pattom*, and the balance (commuted into cash) to be paid in future year by year.

N.B.—The transaction records, in fact, an advance of the annual fixed public rent-charge, and consequent re-adjustment of its future amount. In his comments on this document, as in the matter of No. 17,

Pattom, Pattola, Tenants, &c.

also a *pattola-karanam* (page 33, App. I), Mr. Logan incorrectly terms it a *kanom* deed or mortgage. The property against which this fixed rent-charge lay was, as may be inferred from the document, the prescriptive private property of the landholder; the transaction applies only to the *pattom*, and in no way affects its tenure or other incident. The *pattom* was practically hypothecated for the debt, so far as the interest was concerned. Of course the position is readily recognised. Needy rent-chargers (to use an English analogy) under the Hindu law—whether ruling princes, *Poligars*, local administrators, temple managers, *quasi-zamindars*, or others—were in the habit of levying advances, forced or otherwise (known in Canara as *shamilat*) from landholders against whom a claim could be advanced; and nowhere more than in Malabar, where the claim was moderate and landholders prosperous; and no doubt the great bulk of such landholders became holders of such *pattola-karanam*. When the character of the transactions of this kind became misrepresented or misunderstood

they became sufferers—now practically to the extent of losing the stability of their prescriptive right of property—under the pretence that they were “mortgagees,” “tenants,” and so on. And now we are introduced to the novel position of “protectors,” “overseers,” “guilds,” &c. Whereas, the fact was, that in Malabar, as in Canara, the ancient prescriptive landed proprietary—call them *Kanakkars*, *Karaimakars* or minor *Jenmis*, *Mulgars* (Canara), *Kaniachikars* or *Karalers* (Tamul), or what we may—were in “possession” (to use Sir Thomas Munro’s expression) of a fixed and moderate property tax—*pattom*, *kanom-pattom*, *shist*, *rekha-shist* (Canara), *tirva* (Tamul)—and willingly tolerated no enhancement, change, ouster, or the like; and the needy rent-charger had to acknowledge his debt and pay interest on his exactions. The moderation of the demand and value of the estate left the landowner with means to make the rent-charger his debtor; or where the *vis major* left no option, he continued a no less unwilling subject than when we now enhance our analogous demand in the face of ancient prescription.

I venture these trite and prolix remarks because the Commissioner seems to me to be in confusion as to the first principles of ancient prescriptive agrarian conditions on the west coast, and indeed throughout South India. Of course, I use the word “rent-charges” as an imperfect though intelligible analogy, and to indicate how the term “rent” came to be somewhat inaccurately used in this connection. A reference to Sir Thomas Munro’s writings on Canara, and indeed throughout the writings of all writers on landed tenures, settlements, and revenual demands in early days, the expression “rent” is employed with reference to the public charge, the State demand under Hindu law and prescription, against the landed proprietary—the Ryots—of South India; but not with reference to the transactions between such Ryots and their cultivators and field-hands. Where *Zemindari* conditions, such as sprung up under British rule, were permitted to supervene, as has been the case in Malabar, a confusion of terms has led to a confusion of facts and conditions; and we have in Malabar precisely the same results as in Bengal, as between the ancient prescriptive proprietary (the *purganah* Ryots) and the *Zemindars*; with this difference, that in Bengal a certain legislative justification—or at least *rationale*—exists, while in Malabar the whole thing is usurpation and unlegalised aggression, without even that guarantee for the revenue which the permanent settlement implies.

No. 24 (A.D. 1706) records the sale of a private landed property (*tonma*, equivalent probably to *tanaku-unma*), the boundaries of which are carefully delineated, together with eleven predial field-hands or slaves, and the woodland (*kadu*) bordering (*kara*) the rice-land on both sides.

N.B.—The sale is of a home rice-farm, with slaves attached and the woodland (probably to the watershed) on both sides which naturally belonged to it. That this latter was *waste* is not suggested, and the deed is exceptionally specific as to boundaries and the nature of property demised. It

Property in the soil; improvement.

would invite no remark but for the singular comments offered by Mr. Logan at

page 29, App. I., par. 144. The deed itself points, of course, to corroboration of the fact—which all evidence and authority (*vide* Sir Thomas Munro *passim*) alike go to establish—that throughout the west coast private property in the soil has obtained from earliest times, in respect to its distribution amongst the population, even as relating to uncultured waste. But in this note Mr. Logan opens a discussion in connection therewith as to “the uncertainty that exists as to the ownership of waste in Malabar, and also the right to improvements in the soil;” and he starts the crude hypothesis (“which I maintain,” he urges, “is the true basis of fact,” whatever that may mean), “that there was in ancient times, and even in large measure down to the British assumption of authority, no such thing as private property *in the soil*” in Malabar. He then proceeds to discuss the position of the fanciful person whom he styles “the water-contact birthright-holder” as a “feudal chief,” not a freeholder of his own territory, not an owner of his own property, &c., with only “more or less extensive powers over persons resident on his territory.” Then we have these residents performing certain functions “in the body politic,” &c. “Property, if it existed . . . at all, consisted in the improvements made in the soil, as it is even at this date in the Laccadive Islands.”

I note incidentally the erroneous translation of *karayama*, real property, freehold, private estate, indefeasible land-holding (v. Gundert), as expressing the imaginary "functions (duties;" which Mr. Logan

Karayama.

sketches out for "these persons." Of course, in real life the agrarian condition of these persons has been, as the term indicates, something substantial and useful; and much more profitable to themselves and the country which they resided in; they were the ancient "proprietors" (v. glossary), the prescriptive land-holders—call them *Jenmakars*, *Kanakkars*, *Karayamakars*, or what we will—of the territory they inhabited. *Karaler*, *Karayamakar*, and *Kanakkur* are practically, according to the periods in which they occur, identical.

The Government may be assured that the agrarian condition of the inhabitants of the Laccadive Islands formed no exception or contrast to that of the Malayalim mainland; from which they emigrated, if tradition be true, as early as the *Peroomal* era. They took their home institutions

Land tenures on the Laccadives.

with them, more especially as regards the occupation and ownership of the land and the village constitution, and retained them in an undisturbed condition longer than on the mainland, as regards fiscal exactions, in the absence of any resident *Poligar* or native prince. It is but few centuries back when they began to be harried by Portuguese buccaneers and Mopla pirate chiefs; and if I may assume that the Ali Rajah of Cannanore fulfils Mr. Logan's conception of "the water-contact birthright-holder," the connection of that Mopla house recent, and with the Islands, was simply that of a ruling prince. The only exactions made and accepted by compulsion were the ordinary small royalties and recognition of rule, and the customs (*chunom*) on their ratively recent date, and any claim to interfere with the proprietary right in the soil—even as respects waste and unoccupied land—has probably no earlier date than the introduction of the British rule on the coast, with its *Zamindari* proclivities. No claim against the land, no assessment to revenue *pattom*, such as attaches to gardens on the coast, can be traced as of ancient origin on the islands. None appears in Tipu's settlement of Cannanore, nor in the British *Karar* of 1795; none descended to us with the northern islands in 1799—, where all ancient prescriptive proprietary rights were respected by Tipu when he saved this section of the group from Cannanore rapacity and misrule; and are respected still, as are all ancient *muli* (*karayama*) rights in Canara. Nor was I aware that property had ceased to exist in the islands, still fated under Cannanore rule, cruel and unwarrantable as are many of the traverses of ancient prescriptions that have found support, or no relief, under our administration. Waste, anciently the property of the residents in this territory, has been annexed to the *Bandaram*, or Rajah's management, since the British rule commenced; but I was not aware that it had gone further—and I doubt it. Be this as it may, aggressions of the character which Mr. Logan's subversive hypothesis would justify, have been the sources of bitter contention and disaffection, and of rebellion, on the part of the inhabitants against the person I have ventured to assume may embody Mr. Logan's "water-contact birthright-holder" in respect to this outlying corner of Malabar, and are still the scandal of Malabar administration. The management of their landed property by the villagers and islanders among themselves need not be gone into here. It has local peculiarities, arising out of certain *quasi-communal* interests—boats, watch and ward of plantations, &c.—which have impressed their character on the local and village habits as described by Sir Thomas Munro in his despatch dated 31st December 1824.

The island of Menekoy presents some salient differences, something more akin to Mr. Logan's hypothesis; and a curiously

Island of Menekoy.

savage and uncivilized thing is its agrarian administration to contemplate. The whole land is alleged to belong to the Rajah, and something like a periodical division of its crop is the grotesquely primitive spectacle we witness; but the island was peopled from Ceylon or Mahldive, and its conquest comparatively recent. Confiscation of the whole property of the people some time last century for rebellion is alleged to be the cause of the anomalous condition that exists, and may point to a sounder and more natural condition in the ancient prescriptions of agrarian life even there. But it is

futile to pursue the unhistorical and baseless hypothesis. I merely desire to warn Government against such traverse, even in idea, of Malabar truths, and to show that the fancied support cited affords an argument the other way.

No. 26 (A.D. 1707) records the sale of a lot of rice-land, with one predial field-hand or slave (a recent purchase), within boundaries named, and the adjacent (*kara*) jungle (*kadu*).

N.B.—The document is of the most simple character, and well defined as respects boundaries. Mr. Logan adverts again to his remarks already noticed as respects

Kadu, Kara, and Watershed.

the conveyance of adjacent jungle, or, as he terms it, "waste." I may remark, what is familiar to all well acquainted with the details of landholding on the west coast, that it may be generally assumed—unless otherwise provided—that the boundaries of a rice-land generally included the adjacent *paramba* or dry broken *peramboke* land, and some jungle on both sides, up to the watershed. In Canara, under the more centralized and regular Hindu government of the Bedanur dynasty, these prescriptions—recently so largely traversed by the *quasi-zemindari* aggressions of *Jenmi* persons in Malabar—have been always respected; none more so than *nattinir* (watershed is a household word as respects the prescriptive boundaries of properties), and we respect it under the name of *kumaki*. In Malabar this natural "march" was as fixed and familiar; and the *nirtaicha* (water pent) was in most parts as familiar, until prescriptions disappeared very generally before *Jenmi* or *Zamindari* influences. This is in fact the petty matter of *ka-lu kara*, which suggests to Mr. Logan a primeval and fanciful "uncertainty as to the ownership of waste land in Malabar." Where property is so valuable as in Malabar, and *Jenmi* claims and aggressions so extensive, boundary disputes abound; but they do not arise out of an immemorial uncertain condition of agrarian property, but from the factitious uncertainty created by the traverse of its prescriptive principles.

No. 26 (A.D. 1712) is a Cochín deed of sale, and records the conveyance of the site for a house (*pura-idom*) within certain boundaries specified, apparently to pious purposes in connection with a newly-established temple (*Kovil*).

N.B.—The deed, if correctly translated, opens as if the conveyance of a village (*deshom*) were the object of the transaction: all that is conveyed is a compound, as a site of a house (*purayidom*), possibly a small temple (*Kovil*). Possibly the use of the term is mere native grandiloquence; or, more probably, the mere colloquial form in which the word is often used, "my village," "my place." The expression and conveyance have no greater width than the term used and the boundaries specified. It is not "manor," whatever a Malayalim "manor" may imply.

No. 27 (A.D. 1712) records the sale of a village with its headship (*desadhipatyan*) and management of the village temple (*urayama* and *ambalapadi*), its mountains and hill-sides and rights of fishing and hunting, together with the *Taravad* house of the vendor. The deed was executed before the Panchayet of the *vattom* (*Sabha-vattom*) to which the village belonged.

N.B.—Of course there is no "sovereignty" or "supreme authority" in the *Pati*-ship of a village, even when the prefix

Adhipati, Desadhipalayom.

adhi is there; and it is to be regretted that careless exaggeration on the part of the unskilled translator has not been corrected. Unless some such expression has been lost with part of the deed that has disappeared, no landed property of this old undivided Hindu family of landed proprietors (*Taravad*)—possibly an *Eka bhogam* village owner (*Kanakkar* or *Mirasidar*)—seems to have passed. Besides the official position, only hill and dale and sporting rights were sold and bought. The occupied land of the family may, as so often occurred, have been otherwise disposed of, and the sale applied to the last shreds of their once more dignified position in the village. The deed is silent as to the other village proprietors and their land, if any existed; no *pattom* or dues of any kind are noticed in connection with the transfer or the office.

* No. 28 (A.D. 1723) records the sale of a small lot of rice-land (*nilom*) by Panickers, belonging to some local *Samudayon* (*Panchayet*) or community.

No. 29 (A.D. 1723) records the sale of a long list of such rice lands (*nilom*) with dry land (*parambu* or *peramboke*), seedbeds (*palliminyayil*), plantation land, &c., within boundaries specified. The transaction is recognised (witnessed) by the neighbours, head of the village (*Pati*), and the *Punchayet* of the *Vattom* (*Subha-rattom*).

No. 30 (A.D. 1723) records the sale by the head-men (*Ur-aler*) of a certain village, and probably managers of the village temple, of a certain lot of rice-land (*nilom*)—possibly *Devasom* property. The transaction is witnessed by the *punchayet* of the *Vattom* (*Subha-rattom*) to which the village belongs.

No. 31 (A.D. 1724) is a *pattola-karanam*, and records a readjustment of the annual revenue demand (*pattom*) against a certain landholder in consequence of a payment of 840 fanams in advance. The “Ekaram land, in the Ishwara mangalam-patom,” is described as a property subject to a fixed revenue demand (*pattomai* or *patupet*) of 56 paras of paddy *pattom* annually (*pattamadu*), with certain deductions and additions. The interest on the advance—viz., 42 paras of paddy—are to be deducted, and the balance (native term not given) of 3 paras 3 *tuni* is to be paid as the future demand.

N.B.—In fact, almost the whole *pattom* demand is hypothecated. As usual, Mr. Logan misnames this document a “kanom deed.” It is a *pattom* deed, and relates exclusively to the readjustment of

Kanom—Pattom.

the fixed annual legal demand against the estates of the private landed proprietors of the country under prescriptive Hindu law or local common law—call it *pattom*, *kanom-pattom*, *jenmi-pattom*, *pali-pattom*, or *ko-pattom*, according to local usage or fancy (if need be); it is one and the same thing, however called, and whoever the rent-charger: it is the prescriptive public demand known as *shist* in Canara, *tiruva* in Tamul countries, and familiar wherever Hindu institutions and law prevail. *Pattom* has, of course, nothing to do with *kanom*, although the charge was assessed against *kanom* land; i.e., land owned in full prescriptive proprietary right. Possibly the ancient prescriptive *purgunna*-rates of Bengal ryots were precisely the same; and if so, the fate of *pattom* and *purgunna*-rates under British rule has been similarly disastrous, and the cure of the evil is to be sought in the same direction. I observe that Mr. Logan thinks that the name Ishwara mangalam-pattom designates a larger revenue estate, or, as he terms it, “an aggregation of lands,” assessed in the public account under one lump demand (*pattomai*). This is by no means improbable, and was, and still is, a condition very general on the west coast. The Ikram land may have been a detached portion of such an estate held by an individual—possibly a purchaser—and the advance related to that portion only and to that landholder. Nothing is more common in Canara than to find a portion of an estate so separated, with its quota of revenue (*shist*) which is paid by the holder to the account (*warg*) of the whole estate. So too in Malabar *passin*, and probably everywhere where prescriptive lump assessment prevailed, as on the west coast. I will not follow Mr. Logan in his primeval speculations about breaking up of communal (for which, by the way, there was no natural *raison-d'être*: v. Munro) rights. Malabar is a very old country, and its people had long passed this infantine stage. There is no tradition or history of this equitable shuffling of the landed property and its burdens by the *Taravud Karanavers* of Malabar; and its condition, as observed by Sir Thomas Munro, certainly belies such hypothesis. Be this as it may, it is of no practical value, and may be dismissed as antiquarian pastime.

No. 32 (A.D. 1724) is likewise a *pattola-karanam*, in which the same individual (or rent-charger) acknowledges the receipt of 101 fanams and 125 paras of paddy from the same landholder in respect of another land (*pattomai* or *patupet*), the annual demand against which is 48 paras of paddy. Interest at 5 per cent., or 10 paras, being deducted, the balance is to be paid annually to the agent.

No. 33 (A.D. 1725) records the sale of a certain private (*tanikulla*) property, consisting of several lots of rice-land, and sowing in all 47 measures of seed by one P. N. Devan to the heads of the village (*Ur-aler*), and probably representing and in the interest of a local temple.

N.B.—It is a Cochin document, and suggests no remark of agrarian interest.

No. 34 (A.D. 1731) is a *pattola-karanam*, relating to the re-adjustment of the fixed lump revenue demand (*pattom*) against large areas of rice-land—possibly those of an entire village (*desom*)—in consideration of an advance of 14,000 fanams made to a certain Gogiyatri—probably the representative of some of the large temples, impropiators or assignees of the public demand. The document recites that certain lands situated in a variety of places, and probably several hamlets (*cherikal*), specified, with the total seed-area in each locality, and sowing in all 1,700 paras of seed (with 18 slaves), are properties subject to a lumped fixed revenue demand (*pattomai*) of 5,009 paras a year (*pattamandu*) which included 1,000 paras payable by the inhabitants of the Kayaradi Brahmin *Agraharan* (*pattillataver*) and 120 by *Vellamkers* (whatever the term may mean). The arrangement for the future provides for deductions of 2,240 paras on account of *kaveli* charges (*changngatampalisa*), 210 for expenses, and 1,050, the interest on the advance, in all 3,500 paras; the net balance (*purapad* or *miccharom*) of 1,500 paras being payable annually (with small quantity of oil).

Fines (*piri*) and penalties (*vari*, taxes) to go to the landholders.

N.B.—The document is of considerable agrarian interest. The moderation of the revenue demand, 3,500 paras—two-fold of the seed sown over 1,700 paras of land—will be observed. The demand

Pattom—Kavel-Indian Police.

affected only the rice-land; no other interest is involved or recognised. The *Agraharan* (I use a familiar term) and others were probably large holders of land, whose *pattom*, *kaveli* charges, &c., were probably collected by K. A. Tayamma. The deduction for *changngatampalisa*—in other words, the ordinary *kaveli* charge of South India for the watch and ward and guarantee of crops and property of the inhabitants of the *desom*—was made from the revenue charge (*pattom*). To whom this charge was payable in this case does not appear. It formed part of the Rajah's income as a rule (vide *Gundert*), and may have been payable to the Rajah of Cochin, within whose territory the village lay; or it may have been payable to some *Menkavalgar*, for these were represented in various parts of Malabar, or even to the village *kaveli*, in part at least. But one thing is quite certain, it was not payable to the *Kanakkars*, proprietors or occupiers of land, under whatever circumstances. They paid the cess for the protection of their crops, houses, and property. As lief talk of a Tanjore or Trichinopoly *Mirassidar* or inhabitant, or a traveller in Tinnevely, being his own *Kavilgar*. I may observe that the Chinese traveller alluded to obtained his escort from the Rajah, not the rural proprietary. No doubt that the *Kaveli* system was a very early form of watch and ward throughout South India, including Malabar, with its guarantee and restoration of property, &c., of the inhabitants, and was very complete in its constitution and gradations; but the proprietors and occupants of the soil were not the *Kavilgars*, but the assured; and a sore tribute was levied on them in this interest, in respect to every species of property, by Rajah *Poligars* *Mên-kavilgars*, *Nat-kavilgars* and *Ur-kavilgars*, *Changngutankars* and the like, of all grades. Possibly the inception of the land-tax—almost certainly of house and other *moterfa* taxes of Malabar—was *kaveli* in its principle; but I will not speculate. There is no suggestion in this *pattola-karanam*, or in any other document which Mr. Logan has discovered, that such a contributor to the public revenue as K. A. Tayamma, or any one else in the village, had to supply guards to “protect the territory of his water-contact birthright superior.” As regards the missing document (*foot-note*, “former document”), it could not have been a *kanom* deed, because such a deed never existed. It was probably a previous *pattola-karanam* relating to a previous advance and adjustment (for such people were always pressing for such advances), and naturally merged in this further transaction on the same lines. I admit that the conjecture about “the demisor's whole interest in the land,” &c., is unintelligible to me. Nothing was demised by this *pattola-karanam*, or by any previous one; and no interest in the *pattom* was relinquished, although it was partially hypothecated for the advance. In par. 146, App. I., in connection with this document, Mr. Logan again miscalls a *pattola-karanam* a *kanom* deed; and then attempts to reconcile the confusion by some device of translation. I confess inability to help the elucidation of Mr. Logan's meaning. But Government may be assured that *pattomai* is simply the *patupet* of the old Tamul, whence it is derived, and *pattamandu* similarly means the fixed revenue demand year by year. An

important fact has, however, been realized by Mr. Logan at this stage, viz., "the habit of calling"—I will add of misrepresenting, as is now the case in Malabar—"such a (*pattola-karanam*) deed as a *kanom* deed, is purely modern;" and I will add that the habit of explaining away *kanom* is equally modern and equally fallacious. We must, I venture to think, be very careful not to antedate, as it were, this habit by many centuries, and introduce anticipatory confusion and misapprehension, where none existed, in agrarian conditions, or their documentary expression; not to induce a belief that *kanom* and *pattom* were, at the era of this typical document, convertible if not synonymous terms? We must be careful not to throw doubts on the axiomatic existence of private ownership in the soil by a ryotwari proprietary on the west coast of India, and assume that the property of the agrarian masses in Malabar consisted from early times in some fugitive interest in the improvements effected in the unowned holdings; or that the prescriptive condition of rural society in Malabar consisted in

Commissioner's misapprehensions, and their effect. contact birthright superior" and a degraded, dependent peasantry-at-will, and serfs, on whom devolved functional

"duties" which would be as unhistorical and irrational as they are unprecedented from a Hindu point of view, so far as South India is concerned. The fact—as it appears to me, and I must venture to state it broadly—is that the Commissioner has thoroughly misunderstood the ancient prescriptive conditions of agrarian property, and the relations of political and rural life as they existed in Malabar from time immemorial and throughout the west coast; and has overlooked authoritative exposition of both, as well as the purport of several of the documents he submits in dealing with these papers. His speculations in regard to these things might, under ordinary circumstances, be left where they belong; but I cannot deny them practical importance in relation to this inquiry, when I find the Commissioner inviting Government—in connection with the remedial measures which they desire to have placed before them, in the face of advancing agrarian discontent and apprehension—to view the past condition of the ancient prescriptive Ryotwari property of Malabar as one of uncertainty and servitude; and advising the State to treat those who still, in many instances, represent the numerous ancient proprietary of the country—far advanced as their disestablishment has already proceeded—as "intermediaries," "speculators," and "capitalists," who may well be left to the mercy of the persons and circumstances that have been permitted gradually but well nigh to annihilate them, by ruthless and complete traverse of their ancient rights, and of the common law and prescription which had preserved the rural population of Malabar for ages in reasonable prosperity and generous law-abiding independence of character. I trace the effects of these uncertain notions in the easy treatment Mr. Logan lends to such important matters as renewals (*polachilt*) with their heavy fines, advancing rack-rent, *ouster*, and expropriation of the Ryotwari toil and outlay of ages under the name of "tenant-right," and the like, as subjects scarcely needing sifting in the light of the past, or canvass as matters of history, principle, and future administrative control—as matters to be left to speculative and fluctuating market competition. I trace them in the character of the relief he proposes to offer the people under their sore representations; wherein, abandoning the historical past and those lines of rural security which are associated with their immemorial agrarian life, he proposes to devise some novel legislative "chips" (I use the graphic expression of his own ideas on the matter in no irony, but sadly, I admit) of property which are to become rack-rented *coolie* tenures, devised on the lines of his own conception of future rural independence in Malabar.

* No. 35 (A.D. 1739) records the sale of a share in a rice-land named *Tarakandom*, &c., within boundaries specified, by two proprietors named.

N.B.—Such names of properties are common in Malabar; and lingual analysis, such as that unduly pressed by Mr. Logan, cannot be usefully applied to them without precise knowledge of the locality. There is not, of course, the slightest ground for the unintelligible suggestion of a "Nayar guild" holding "property in their corporate capacity" (footnote and par. 172, App. I). The thing is simply unheard-of, and traverses every agrarian fact of the country and the social condition of its population. Nor is there the smallest ground for supposing (*v.* foot-note No. 38, page 73)

that this document records the sale of any special kind of property—was a "freehold deed," whatever Mr. Logan may mean by such inappropriate and novel expression. Nor is it surprising that this document was handed to him as a copy of a "so-called *jenmom* deed," for it demised some of the ordinary hereditary private property of the country; than which no conceivable property could be more complete in all its legal incidents—term it, for social and other convenience, or rare caste reasons (as in the case of the *Nambudri* deed [No. 22] of gift to pious uses), *jenmom* or *kanom*, *karaima*, *tonma*, *tanikulla*, or what we may. For all practical and legal purposes, the basis of the transaction (ownership), the effect of the devise, and the substance or estate passed, were precisely the same.

No. 36 (A.D. 1742) records the sale of small rice-land property (*tonma*) sowing 10 paras of seed.

N.B.—The document presents nothing special. The transaction was evidently between two ordinary Ryots in respect to a private property.

No. 37 (A.D. 1742) records the sale—by one K. Manattiliravi Itarachan and heirs—of a certain private landed estate (*tonma*, or *tanaku-unma*) consisting of several lots of rice-land (*kandam*), sowing in all 70 paras (a considerable area), together with three plantation dry lands (*kuliparamba*) and two predial field-hands or slaves named.

N.B.—The vendor was head of one of the *Taravads* or undivided Hindu families of the district—possibly a branch of the well-known *Mannadyar* family (the document was obtained from the present head of the race) of the Naldestoms of Chittur (Cochin) and eastern or Tamul frontier of the Palghaut Raj; in short, what we now designate a *Jenmi* family of that district. The chief interest of the document, from an agrarian point of view, lies in the incidental mention of a *kanom* property (not named or otherwise described) that had been previously demised (*charttiyaka*) by deed—probably by the same vendor to the same purchasers—as one of the boundaries of the property which was the subject of the transaction

Kanam—especially as respects its use in a recorded. The deed of demise is not Palghaut deed. forthcoming, and its precise terms do not

therefore appear, but there is no ground for the conjecture of the footnote, "the land demised on *kanom* was not sold," and suggestion that *kanom* was other than complete private property. The occurrence of the expression in a Palghaut document in connection with a demise (*charttiyaka*, writing or execution of a deed) is appropriately significant of the opposite conclusion. On the Tamul frontier of the district of Malabar, amidst an almost semi-Tamul population, as respects the educated Brahmin (*Pattar*) classes, and the immigrant cultivators, there could be no misconception or misapplication of the expression *kanom*, *kani*, or *kaniachi* (*Mirassi*)—the complete, prescriptive, hereditary, indefeasible, and devisable Ryotwari property of both countries. What could the execution of a deed conveying *kanom* property mean else but its demise in its true proprietary character? and the form of conveyance was probably none else than the ordinary *attiper*, or deed of sale, of which we have reviewed so many. In short, what are all the *attiper* deeds of conveyance placed before the Commissioner, what even the *Nambudri* deed, (No. 22), in which the rare and exceptional expression *jenmom* occurs, but conveyances of private landed property, subject to all the complete legal incidents of such condition? And from local circumstances the term *kanom* (*kaniach*) expressed the fact more eligibly than any other in a Palghaut deed. The difference of name added nothing to the legal incidents or legal powers in respect to the land affected. Again, what are all the *pattola-karanam* which the Commissioner's wise call (meagrely though it has been responded to) has enabled us to examine, but readjustments, in respect to advances of the fixed revenue demand (call it *pattom*, *shist*, *tiruva* or *beria*, or what we may), in accordance with Hindu law and prescription, against private property of the Ryots, under whatever appellation it may appear, over which the rent-charger had no extraneous right beyond that of realising the fixed demand. As a matter of agrarian history, there is reason to believe that the use of the ancient prescriptive term *kanom*, as expressing the complete ownership of property and power of demising it, became more customary early in this (17th) century throughout the country; for we find that later on, when fugitive proprietors (whether belonging to the so-termed *Jenmi* classes or other) sought to

realise their property and transfer the proceeds to Travancore and elsewhere, it was purchased—especially by Moplas, foreign Brahmins, and others who trusted the Mahomedan rule—by what have been termed *kanom* deeds (whatever the form), which were so largely sought to be repudiated by the vendors on their return in the track of the British conquest.

No. 38 (A.D. 1750) records the sale of a certain piece of enclosed dry land (*vollapu*), within boundaries specified, for value paid in gold coin (*ponkanom*).

N.B.—The transaction is evidently between ordinary Ryotwari proprietors. With reference to par. 172, App. I., the term *vilayolakaram* (deed for price received) is equivalent to *attiper* (full market value), and “water-contact birthright” is an imaginative and unheard-of expression in any deed, Vedic or other. *Kanom*, when not relating to land, is frequently used for cash, ready-money, price, as here (*u* Gundert). It occurs also in the word *kutti-kanom*, tree stole or stoolcash—the money fee which was the moderate fixed revenue charge claimed against landholders (*Kanakkars* and others) for cutting a tree (of a few exceptionally valuable kinds) in the village woodlands or State, and nobles’ forests. Of course, neither here nor in any other relation does *kanom* mean “supervision” or “protection” as reiterated by Mr. Logan. No doubt the *kanom* right with all its proprietary incidents, was conveyed by the deed, but *ponkanom* does not express these rights (*v.* foot-note). In another foot-note we are told, as in the case of No. 35, that this deed was possibly meant to be a “freehold deed,” without explanation of what is meant thereby. It certainly was not an *inam* deed, or related to the revenue demand; and it differs in no respect from an ordinary sale deed. That it was handed to the Commissioner as “a copy of a so-called *jenmom* deed” was likely enough as regards legal incidents. The sale of ordinary private property—call it *kanom*, *jenmom*, or what we may—was practically a *jenmom* deed, with all hereditary and other incidents. There was no difference whatever. It may possibly have been handed to the Commissioner by some one who now calls himself a *Jenmi*, as the title-deed of his property; and an all-sufficient one it was, whatever his status, if not since traversed by the recent misconstruction of any *pattom* or revenue demand which stood against the property.

No. 39 (A.D. 1756) records the sale of a small lot of rice-land for what it was then worth (*annuperuarthan*).

N.B.—And is of no special interest. The transaction was between two ordinary Ryots. And

No. 40 (A.D. 1759) records the conveyance of a small lot of rice-land in Cochin to certain villagers (*ural*) and temple managers, probably to pious uses.

No. 41 (A.D. 1763) records the sale of a private property (*tonma*), comprising lots (*kandan*) sowing in all 60 paras.

No. 42 (A.D. 1770) is apparently an *inam* grant of certain *mupra* and *jenmom* (*swanu bhogam*?) revenues to a temple by the Cochin State, by the Rajah apparently—an *inam* deed perhaps.

N.B.—The exact nature of these sources of revenue and social condition of the devisees are not clear, nor do they affect Malayalim agrarian conditions. Mr. Logan’s conjectures on the subject of *mupra* appear antiquarian and speculative. *Michuron* (balance) is *minchina varom*, possibly some fluctuating share of the crop taken from the cultivators.

No. 43 (A.D. 1776) records the sale of a private property (*tungalkulla*) described, in Cochin, with all that pertained to it.

No. 44 (A.D. 1778) is a Cochin deed, and records the sale for full market value (*perum*) of certain rice-lands, and all that pertained to them (*ulpatti*), dry land and waste, within boundaries named; together with all hereditary profits (*janmamphalam*) accruing from the vendors’ property in the Tælikolangara village (*deshom*).

N.B.—The deed being a Cochin one, is less relevant to this inquiry, but its interest lies in the occurrence of the expression *janmamphalam*, incorrectly translated “*jenmom* right.” *Phalam* means, of course, fruit, profit, gains, advantages, fees, and

the like, and not *rights*. What these sources of profit of a general character were, is not specified. They were probably some hereditary village fees (*kaveli* or other), or some *thanamanangal* heretofore enjoyed by the vendors; who, judging from their titles, &c., were persons of high social position, and local magnates. The care with which the deed is drawn indicates the undefined and incorporeal character of these incidents.

No. 45 (A.D. 1781) records the sale of a small property, consisting of two lots (*kandan*) of rice-land, with adjacent dry land on both sides, with boundaries named, by a foreign Brahmin female.

N.B.—The expression *tonma* (*tanaku-unma*) for complete ownership, private estate—equivalent to *kanom* or *jenmom*, as the social circumstances of the parties may suggest—occurs freely in documents of this period.

Tonma.

No. 46 (A.D. 1784) records the sale of a small property, consisting of rice-land, within boundaries named, and sowing 12 paras of seed, together with the *Kaveli* office and rights (*paravu-karayama*).

N.B.—The vendor was apparently a member of the local watch and ward (*Kavel*); in all probability the village *Kavelgar*—judging by the name and area of the property—selling out. The office carried

Paravu, Kavel.

in Malabar, as elsewhere, right to village fees. Adverting to par. 152, App. I., it is almost puerile in me to remark that there is no survival for 1000 years of the ideal “mutual duties and trusts of the inhabitants of a water-contact birthright holding”

Vellacharu, Netti-nir—Watershed.

(*of which, by the way, there is no suggestion*) in this ordinary local police (*paravu*, sentry, guard) expression. The point is the longevity of Mr. Logan’s antiquarian Utopia. The incidental mention of the watershed (*vellacharu*—the *netti-nir* of Canara) as the boundary of one of the *parambas*, shows the usual character of such natural landmarks on the west coast. *Karayama*

Karayama.

(*v.* Gundert) is property, estate, title, but is here used of the hereditary right to fees (*kavelibhogam*) so universally known.

No. 47 (A.D. 1788) records the sale of an entire village (*desom*), within boundaries named, including what is comprised therein (*ulpattigal*), *parambas*, &c., together with the headship of the village (*Desadhipati*), and management of the village shrine.

N.B.—The offices or the ordinary privileges of the Patail or Deswali of a Malayalim village. Whether any occupied land (rice-land, &c.) passed, *sub silentio*, under this conveyance must depend on circumstances not to be gathered from its terms—probably not, as it is specific only as regards *peramboke* and the outside boundaries of the village. The contracting parties were of position and rank, as were the witnesses, &c.; and it is possible little more than official dignities, &c., passed, and perhaps the unappropriated waste of the village. Mr. Logan assumes (par. 139) more than the terms at all justify. The *venue* of the transaction appears to be the Cochin State.

No. 48 (A.D. 1808) records the purchase by the Cherikal Rajah of a certain piece of dry land (*paramba*) with the boundaries named, and described as the family or hereditary property (*jenmom*) of the vendor.

N.B.—The document belongs well into the British era (1792), and after various revenue settlements and attempts at settlements had inaugurated some uncertainty as to the stability of property, and brought about technical agrarian expressions not generally found in the older forms of conveyance. *Jenmom* here occurs for the first time in this collection of deeds—in

Jenmom in its modern acceptance.

the modern significance of the term. With reference to the foot-note and par. 110, App. I., the deed is no less and no more than an *attiper* sale deed for value received, the purchaser being probably the Rajah or previous ruler of country, the vendor a

prescriptive proprietor and lately a subject. *Jenmom*, as used here, is neither "water-contact" nor "birthright"; it is prescriptive hereditary property, and likely enough the vendor did not belong to the *Jenmi* order. The novel and technical use of the expression *jenmom* at this period, about Tellicherry, was natural and significant. Of the same year is

No. 49 (A.D.1808), which records the purchase of the vendor's village (*tangulkuladesom*), with the hereditary headship (*Patayom, Pati*), two shrines named and their management, and other sacred powers or privileges, the *paramba* or waste comprised therein (*ulpatta-paramba*), people and servants (*aladiyal*).

N.B.—Here again it does not seem likely that occupied land—rice-land, &c.—passed *sub silentio* under such a deed. I venture to think it dealt only with the unclaimed village waste, which may have become the property of the village head; but I have not the original before me. The specific object of the transaction related to the village offices and dues. With reference to par. 211, App. I, the ordinary and formal expression *aladiyal* has no reference to the "relation of *Jenmi* and tenant" or "authority over the people settled on the land." The relation did not exist; the people were the ryotwari proprietary of the country.

The further documents of this collection are of recent date (1848 and upwards), and are not relevant to examination of early agrarian conditions and documentary transactions in Malabar, although they may be useful specimens of the change inaugurated in conveyancing, and of the abject conditions to which the people now must submit, in order to get land to cultivate, or keep what may have been in their families from time immemorial.

The translations of specimens of documents in use in Malabar, which accompanied the Commissioners' report dated 23rd July 1801 (*v. Mirassi papers, Appendix II*), belong to the early years (1794-1800) of the British rule, and apply almost exclusively to transactions relating to small *paramba* holdings in and about Calicut, and are scarcely representative transactions as respects even that time. The translations are evidently free, and a majority emanate apparently from one *Taravād*. The *attiper* is in the usual form—that described as a "*kanom-pattom ola-karanam*, or deed of lease on *pattom*" (E), is apparently a *pattolu-karanam* in adjustment of the interest on an advance of 501 fanams, of the usual character; but whether there are any hitherto unusual conditions can only be gathered from the original. Most of the other deeds (including E and H) are of the mortgage (*otti*) class, or relate to small transactions in respect to house and garden sites in Calicut. Major Walker had not representative documents before him when he wrote, and *Zamindari* influences already prevailed, and deceived local officers (*v. Despatch*, 1821).

11. Viewed as a whole, this useful collection—meagre, and open to countervailing supplement by those interested, though it be—testifies to the presence, from earliest times, of all those unrestricted dispositions (of all the ordinary kinds known to Hindu agrarian law amongst South Indian populations) of land in Malabar,

General remarks—Proprietary rights of rural landholders. such as could only co-exist with the prescriptive existence of "private property

in the soil" in its completest sense, and that property widely distributed amongst the many and varied landholding classes of the country. In this respect there was almost entire identity—its absence, had it existed, would have been difficult to explain—between the rural conditions of Malabar and those of the sister populations of Canara and Tamul countries; and the collection of almost contemporary documents appended to Mr. Ellis's paper on *Mirassi* rights (*M.P.*, pp. 262 to 344) may be compared with advantage and interest. The collection thus corroborates the statements of Sir Thomas Munro (*passim*), Mr. Ellis, and other reliable authorities of earlier and clearer times as to the Ryotwari character of all landed property throughout the West Coast, and more especially in Malabar; and its distribution in complete and recognised ownership amongst the mass of the village landholders. Again, the collection indicates that the multitude of agrarian "proprietors" (*v. Glossary*) in Malabar were in possession

of a moderate, fixed, and mutually-recognised legal land-rate—call it *pattom* (with its many adjuncts) *shist*, *rekha-shist*, or *beriz* (Canara) or *tiruva*, &c. (Tamul), as we will—Revenual charge (*pattom*), its fixed and unalterable nature. —which was payable to the ruler or his representative in that interest; a land-rate

which was not subject to indiscriminate and unauthorized change or enhancement; advances on account being treated as loans to the rent-charger, whatever his political or social position. In this respect also the proprietors of Malabar were in precisely the same condition as those of Canara. In both districts casual additions (*shamilat*) were made by the rulers to meet special contingencies—*e.g.*, in Chenkal in 1732 to meet warlike menace from the north; but the ancient prescriptive *pattom* remained the recognised basis of all transactions and settlements with the landholders, and only alterable by authority. I have avoided the use of the word "rent," although this term is exclusively and invariably employed by Sir Thomas Munro and all early official writers to describe the State revenual charge wherever under consideration. I do so because its misapprehension has, I believe, contributed in no small degree to the confusion which has risen in Malabar as to the true nature of *pattom*; and because in no instance does it occur in these documents except as describing this specific charge—the old legal Hindu revenual claim of the ruler or party representing his interest—the *pattamandu* (annual fixed charge) against (*pattamai* or *patapet*) assessable proprietary land.

12. It may be further observed that none of these documents affords any ground for inferring the existence of a claim to

Afford no evidence of right of Ouster, Tenant-right, Renewals, &c., which are attributable to *Zamindari* aggressions. oust a prescriptive ryotwari proprietor from his property under any circumstance; indeed, the nature and incidents of proprietary right—such as no abeyance

almost could annihilate—on the West Coast (*v. Munro and M.P. passim*) and the moderation of the fixed revenual demand precluded its inception. There is no trace of what is now termed "tenant-right"—an Anglicanism without expression in any native language—or its converse, viz., confiscation and expropriation of hereditary industry and outlay on prescriptive property, under the pretence of paying off improvements. No *rationale* for renewals (*polachilt*) and other (*abwabs*) exactions is to be found in these legal transactions. The report of the Commissioner tells how many and grievous these last have now become. It further portrays the wide-spread suspension if not practical annihilation, of all the ancient prescriptive tenures of land in Malabar save those of the great *Jenmis* (to use a modern term) of the past—the *Zamindars* of the Mahomedan settlements and of our own earliest efforts to realize the revenues of the country (*Aitchison's Treaties*, vol. v.)—and those of the fortunate minority (some 8,000 in number) who have been able to maintain their titles (by prescription or purchase) to their more or less limited hereditary properties, now termed (minor) *Jenmom*, and placed beyond aggression from circumstances which it is perhaps no longer easy to trace with accuracy. This practical annihilation (if the term be not too strong) of the great mass of the ancient prescriptive property—call it *kanom* or what we may—is of course due to self-asserted *Zamindari* pretensions, supported by ill-advised administrative and judicial recognition; and the traverse of the ancient authorized settlements, and enhancement of the demand against all such property in excess of and in addition to authorized assessments to public revenue, under the plea of "rent" (in the English sense), and right to large fines on renewals and the like, are of course attributable to the same cause, although unsanctioned by either Mahomedan or British revenual settlements or ancient common law. In both matters probably serious popular wrong and public injury have been done; the sole profitters by the change being the *Jenmi* class as now constituted. It is improbable that in devising means of amelioration and restraint for the future, it will be found possible to restore the past as regards absolute right of property as it existed in the past, and revive the ancient common law (*kanom-jenmom-maryade*) in its integrity, or to reassert the ancient registered fixed assessments (*pattom*) of times prior to the Mahomedan conquest; but in the study of ancient proprietary tenures of land, with their almost immemorial origin in Malabar, it seems necessary to keep these facts before us, because they point to remedial legislative measures such as

have precedent in Bengal under similar conditions, or to the extension of our Presidential legislation, so far as it protects landholders in *Zamindari* estates, to Malabar.

P.S.—It will not be out of place to notice, with reference to par. 21, page 6, of this appendix, that the Mahomedan Government superseded—as was their wont (*e.g.* in Canara, in the Jagher, &c.—*v. M.P. passim*)—the ancient indigenous village system

of Malabar by the *quasi-foreign Hobli-war* system of Mysore, in their administration of revenue and account. Their motives were probably distrust, desire to destroy

local combinations, and preference for centralisation in administration. Be this as it may, the innovation has had the effect of most seriously weakening throughout Malabar, as elsewhere, the conservative influence of the native institution as respect agrarian rights and property, and that community of action in their defence which was the soul of that independence of character that marked the Malayalim population when we first knew them; and it has tended to obscure, if not destroy, that evidence of their existence which these institutions were fitted to preserve on the West Coast of India especially (*v. Munro, "Canara"*). This in all probability was the most serious, if not the only serious, injury inflicted by the Mahomedans on the rural population of Malabar. It has of course never been possible to restore the village institution to its former place in the administration of the country. Because, although Sir Thomas Munro's statesmanlike sagacity was able to indicate to incredulous local officers the existence of the village system in its most typical form in Malabar as elsewhere on the West Coast, and the *Hobli-war* system stood self-condemned; yet financial considerations precluded the restoration of the *deshom* administration in its integrity (it still fulfils important functions); unmanageable *Hoblis* were sub-divided into the moderate *Amshoms*—to each of which a Government establishment is assigned—which now constitute the units of local administration—a *vattom*, in short, comprising on the average four *deshoms*.

APPENDIX G (3).

Proceedings of the Board of Revenue, dated 21st October 1885, No. 2939.

READ—the following G.O., dated 18th July 1885, Mis. No. 482, Political:—

Read—Proceedings of the Board of Revenue, No. 1636, dated 5th June 1885, received through the Revenue Department.

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.

RESOLUTION—dated 21st October 1885, No. 2939.

In the first 352 paragraphs of his report Mr. Logan gives an historical sketch of Malabar and of what he considers to be the origin of the system of land tenures prevailing there, and also indicates the various causes which, in his opinion, have led to the present unsatisfactory relations which exist between the land-owners and their tenants and call for remedy. In paragraphs 353 and 354, he sums up briefly the conclusions he has arrived at and the best means of giving effect to them.

His conclusions are that—

- (a) the only person interested in the soil to whom the Government should look is the 'actual cultivator';
- (b) that the landlord's power of ouster must, in the public interests, be curtailed;
- (c) that the landlord is perfectly entitled to take a competition rent, provided he is dealing with capitalists;
- (d) that the tenants must have the full benefits of the ancient customary law entitling them to sell the improvements on their holdings;

and he proposes the passing of a law to attain these ends, which should provide for certain compulsory conditions in all leases of land to the actual cultivators of small holdings not exceeding 25 acres of wet or dry grain-crop land, or of 5 acres of garden land, whom he regards as non-capitalists. These conditions are that the actual cultivator should possess the following rights:—

- (1) a right to permanency of tenure with remainder to his heirs, representatives or assigns;
- (2) a right to use the soil of his holding to the best advantage for agricultural purposes;

- (3) a right to sell, give or transfer his interest in the whole of his holding, and, with the landlord's consent, to sell his interest in a portion of his holding for the best price he can get for it, but not to mortgage his interest in his holding or any part of it, nor to sublet or subdivide the holding or any portion of it, except to prevent its lying waste and as a temporary measure;
- (4) a right to $\frac{1}{3}$ rd of the average annual nett produce of his holding, estimated in kind and not in money, at the time of his entry on possession;
- (5) a right, if the Government revenue assessment on the land is paid by him, to the Government share of the produce estimated in kind and converted into money at the commutation rate fixed by Government.

On the other hand, the landlord of such a holding is to have the subjoined rights:—

- (1) a right (subject to the actual cultivator's right No. 5) to reserve as rent payable periodically, either in kind or money, a share not exceeding $\frac{2}{3}$ ds of the average annual nett produce of the holding, estimated in kind and not in money, at the time of entry on possession by the actual cultivator;
- (2) a right to sell to the actual cultivator on entry into possession, at the best price he can obtain for them, the actual cultivator's rights to raise improvements on the holding and to $\frac{1}{3}$ rd share of the nett produce;
- (3) a right of pre-emption at sales, whether public or private, of the actual cultivator's interest in his holding;
- (4) a reasonable right of veto against the person to whom the actual cultivator may wish to transfer his interest in his holding;
- (5) a right of veto on the sale of a portion of his holding by the actual cultivator, and a right of ouster if the actual cultivator mortgages or subdivides or sublets his holding;
- (6) a right to recover the land from the actual cultivator for reasonable schemes for utilising the land for other purposes than agriculture, or for improving generally the cultivation of his property;
- (7) a right to recover arrears of rent (not being less than one year's arrears) by the sale of the actual cultivator's interest in his holding, and a right to recover any arrears as a first charge on the proceeds of any sale, public or private, of the actual cultivator's interest in his holding;
- (8) a right to let his land for temporary purposes;
- (9) a right to eject the actual cultivator if he makes any change in the holding with a view to cause wilful damage to the landlord.

2. The remainder of the report is devoted to the justification of these proposals and to suggestions (1) for the formation of a class of small cooly-gardeners holding gardens not exceeding 2 acres in extent; (2) for the establishment of an experimental garden and garden school; (3) for enabling tenants to pay their rent when the landlord declines to receive it; (4) for encouraging the formation of a body of responsible practitioners to do the work which in England is done by Attorneys and Solicitors; (5) for having a survey of the district carried out and a register of lands prepared; (6) for modifying the law of Marumakatayam; and (7) for dealing with the question of Mappilla mosques and burial-grounds.

3. The Board do not propose to follow Mr. Logan through the arguments which he adduces in favor of his theory that the Malabar janmi is not the possessor of the *plenum dominium* in the soil, in which aspect it has been the custom of the British Government and district authorities to regard him. They consider that, for all practical purposes connected with any new legislation affecting land tenures in Malabar, it is sufficient to recognise the fact that the janmi had been so regarded by the Government ever since the British occupation of the country, and that, acting on this assumption, the Government has sold the *janmam* of a large number

of escheats as carrying with it the *plenum dominium* thereof. Indeed, Mr. Logan himself admits * that he does not see how this fact is to be got over. On this ques-

* Paragraph 326.

tion, therefore, all that the Board feel disposed to say is that they are not prepared to concur in Mr. Logan's conclusion that, on the disappearance of the Cheruman Perumal, the ancient water-contact birthright, which Mr. Logan says was apparently at first in the sole gift of the Perumal (paragraphs 41 and 55), was not arrogated to themselves by the chieftains of Nads, simply because there is no evidence to prove the arrogation, and that, consequently, these chiefs or janmis did not acquire the *plenum dominium* in their lands until the British accession to power (paragraphs 56 and 102). The Board think, on the contrary, that, considering that the janmi was, as Mr. Logan himself says, undoubtedly in old days the lord paramount over all the occupants of his janmam holdings, and that he was next in the social grade to the Perumal, any powers which the latter exercised, short of individual sovereignty over the whole country, lapsed to, or were usurped by, them on the Emperor's disappearance, and that they thus did acquire the *plenum dominium* in the soil of their respective Nads which had previously vested in the Perumal. Nor does this position seem to be affected by the fact that the janmis shared the balance of the nett produce of their lands (after providing for the cultivators) equally with the Kanakhars, who were their feudal retainers, and whom, in their own interests, they were compelled to treat liberally.

4. Mr. Logan has, admittedly, throughout his inquiry sought only to arrive at correct ideas of the condition of the actual cultivators of the soil. A large proportion of this class consists, he says, of men whose proper function ought to have been to work for hire; and he believes most fully that all other classes interested in the soil of Malabar deserve to be regarded as mere investors of their money, and, as such, perfectly competent to take care of themselves.† This feeling he accentuates at paragraph 325, where he says that he does not think it is necessary to legislate for people who are mere investors of their money, and who contribute nothing towards the wealth of the country. Again, after detailing the statutory measures he would adopt to improve the actual cultivator's position, he compares the main idea embodied in his proposals to chipping off from the block of aggregate rights which vest in a fee-simple owner, a portion, containing the right to cultivate, and letting it be sold and bargained for and generally made the most of by the persons concerned, just as they would sell and bargain for any chattel. But he adds that it is only necessary to make provision for this in the case of small holders, and that men of capital can and ought to make their own terms with the landlord if they wish to take up land for agricultural purposes.‡ Mr. Logan admits

† Paragraphs 85 and 86.

that he found it difficult to define who is a capitalist and who is not, and in what cases the cultivator should be protected or left to protect himself; and the way he has solved the difficulty is by classifying holders of more than 25 acres of land, wet or dry, devoted to grain culture, or more than 5 acres of garden land, as capitalists, and those holding smaller holdings as cultivators needing the protection of the State.

‡ Paragraphs 355 and 356.

5. Mr. Logan's views and proposals appear to the Board to contain more than one apparent inconsistency. While he says, in paragraph 85, that a large proportion of the actual cultivators are mere coolies who ought to be working for hire, that is, in other words, who ought not to be actual cultivators in possession of holdings at all, (apparently because they have no capital, and are therefore not capitalists), he says, at paragraph 378, that he is endeavouring to provide security *not* for capitalist farmers who use hired labour, but for cooly cultivators, who, with the grown-up members of their families, will supply all or nearly all the labour required on these small holdings. Again, in the 4th, 8th and 9th of his statutory proposals (paragraph 356), he, on the one hand, proposes to endow the actual cultivator of a small holding with the rights of permanent occupancy, of using the soil to the best advantage, and of receiving $\frac{1}{3}$ rd of the nett produce; but, on the other

hand, proposes to give the landlord power to make the tenant pay the best price for these privileges that he can get out of him before he takes possession of his holding. But what cooly cultivator will be able to pay down, probably, ten years' purchase of those rights in advance before taking possession of his holding? He must either be a small capitalist to do so, or must borrow the money and enter on his farm in debt. Such a system seems to the Board distinctly to encourage competitive rents among the very class whom Mr. Logan would protect from their effects.

6. Moreover, the Board are at a loss to understand why all other classes of holders of land in excess of Mr. Logan's small-farm maximum areas should be considered as mere investors of their money, or why, on that account, they should be debarred from that protection in the matter of fair rents and fixity of tenure which Mr. Logan proposes to extend to the actual cultivators of small holdings. The Board are doubtful whether they understand the expression used by Mr. Logan of "mere investor of money" aright, but it seems to them to be used somewhat in the sense of an idle holder of Government securities, who simply draws the interest from time to time and lives on it while leading a profitless life. But if that is the sense in which the expression is used, then the Board think that no greater mistake could possibly be made than to sneer at or condemn those who lay out money in the agricultural improvement of their land. The earth is the source of all wealth, and those who lay out their money in developing its powers of agricultural production do more direct good to society, if their labour is remunerative, than any others, for they increase the available quantity of the first necessary of life, which is food. These, therefore, are the very men of all others who deserve encouragement and the protection of the law. Mr. Logan is himself fully alive to the fact that there is hardly any limit to the amount of capital which can be profitably sunk in the soil by an agriculturist; but, he adds, when high cultivation is resorted to, the time for waiting for the profits to arrive becomes more and more extended, and hence an agriculturist holding land for a time limited is precluded from doing many things which, if his tenure was more secure, he would certainly attempt (paragraph 359). Here Mr. Logan himself furnishes the very reason for giving the capitalist tenant and cultivator fixity of tenure; but, instead of proposing to do this, he contents himself with saying that he thinks that landlords might do more for such tenants, and then adds (paragraph 361) that capitalists who take to cultivation in Malabar must, for the present, protect themselves.

7. The Board, moreover, do not consider that 'a chip' from the block of aggregate holdings can be said to be bargained for, and generally made the most of, by the persons interested in it, just as if it were a chattel, if it cannot be mortgaged or sublet; but Mr. Logan's proposals are very stringent against any such mortgaging or subletting of his holding by the actual cultivator. In either case, he is to be liable to be ejected by the landlord, while even his right of 'transfer' (apparently by sale or gift) of the whole of his holding is subjected to the 'reasonable veto' of the landlord, whatever that may be, and a sale of a portion of it may be absolutely vetoed, besides all which the landlord is to have the right of pre-emption in all cases. If Mr. Logan wishes to limit the landlord's right of ouster, he seems to propose a somewhat singular method of effecting that object by conferring on the landlord a right of ouster where it does not already exist, though taking it away or limiting its exercise where it does exist.

8. As regards rent, or rather the division of the produce between the landlord and tenant, Mr. Logan proposes that in every case $\frac{1}{3}$ rd of "the average annual nett produce of his holding estimated in kind, not in money, at the time of his entry on possession" is to be secured to the actual cultivator, and if he pays the Government land-tax then he is also to have the Government share of the produce in kind, converted into money at the Government commutation rate, made over to him, the remainder of the produce going to the landlord as rent. Concerning the arrangement relating to the payment of the Government assessment, it is quite enough to say that the landlord would never leave it to the tenant to pay the land-tax if he, the landlord, could make any profit by paying it himself, and that any such arrangement, if intended to benefit the tenant, would probably result in benefiting the

landlord; while as regards the method of estimating the produce the Board consider that any hard-and-fast rule of taking an average of preceding years' outturn in the year of the tenant's first taking possession, and fixing $\frac{1}{3}$ rd of that average as the fixed proportion of the annual nett produce which was ever after to go to the tenant, might work injustice either to the tenant or the landlord according as the years on the outturn of which the average was based were below or above the normal. On what number of years' outturn the average is to be struck is not stated; but the Board consider that the scheme in practice would be found unworkable, and would be abandoned in favour of taking the actual annual nett outturn as the basis of division. Moreover, to work Mr. Logan's scheme would require every landlord to keep an agricultural register of the annual actual gross and nett outturn of every piece of land he possessed, while the absence of such statistics might seriously interfere with the letting of land in many cases, to say nothing of the complications likely to arise from the sale or transfer of holdings or parts of holdings, or the alteration of the limits of holdings when leased. When a field or garden was sold to a new owner, an extract from the produce register must go with it unless all this work of registry was done for landholders by the State, which, apparently, Mr. Logan does not contemplate. Indeed, at paragraph 377, where he defends this part of his proposals, he says that the estimate of average outturn is to be made by the parties themselves, but that, after a reasonable time, if the cultivator finds that the estimate framed is grossly fallacious, he may apply "to the authorities" to revise it, though he admits that any such interference on the part of the authorities should be made most cautiously. The reason given for fixing $\frac{1}{3}$ rd of the average annual outturn as the permanent rental payable to the landlord is that then it will depend entirely on the actual cultivator's exertions whether additional produce is raised from the holding or not; but is it likely that any material improvement in the outturn of produce above the average of the actual outturn of a series of years is likely to result except by the expenditure of money in heavy manuring, draining, &c.? And where is the money to come from? Mr. Logan says, in paragraph 398, that he is "endeavouring to provide not for capitalist farmers who use hired labour, but for cooly cultivators, who, with the grown-up members of their families, will supply all or nearly all the labour required on their small holdings;" but how are 25 acres of wet land to be cultivated, to say nothing of being improved, by a man and his wife and two or three sons and daughters? The idea seems to the Board to be chimerical. Mr. Logan's rent-scheme, the Board think, would therefore resolve itself, in practice, into securing to the tenants $\frac{1}{3}$ rd of the nett actual annual produce of his holding in kind, while the other $\frac{2}{3}$ rds would go to the landlord, who would have to pay the Government assessment on the land, and to such an arrangement there seems to be no objection.

9. By clause VI of Mr. Logan's proposals the actual cultivator is to be denied the right to mortgage his holding or any part of it; and this arrangement Mr. Logan says (paragraph 393) is most necessary to prevent the cultivator mortgaging his interest in order to pay his landlord the heavy fines demanded at renewals. He then goes on, in the same paragraph, to say: "The tenant would not merely pledge his credit, but his interest in the land, and would be able thus to outbid the thrifty man with realised capital. There could be no objection to a man pledging his personal credit to raise a loan in order to make to his landlord the payments contemplated in clause IX, because, if he ever did it, he alone would suffer, and the man who bought up his rights in the land would come into possession of it on a totally different footing. It would not be so, however, if the pledge were of his interest in the property itself, because the transferee of his interest would come into possession of the holding with all the incubus of the mortgage debt lying heavy on it." The Board presume that, in the first sentence of the above quotation, Mr. Logan is contemplating the case of two men, one a "thrifty man with realised capital," a capitalist in short, and the other an impecunious peasant of the class on behalf of which his sympathies are enlisted and whom he considers Government should alone "look to," as competing for the tenancy of a farm under clause IX, which practically allows the landlord to put it up to auction. The impecunious man manages to raise or get the promise of the loan

of enough money to outbid the capitalist by a promise to mortgage his holding, if he gets it, to the lender of the money. If the sentence does not mean this, then the Board do not understand it; while, if it does, then the hypothesis seems to them to be far-fetched, while they do not see how the actual cultivator is to pay his renewal fines, when they become due, except by borrowing the money if he has not got it, and the only means of doing this is by mortgaging his holding. They were also under the impression that in the case of 'actual cultivators' of small holdings under Mr. Logan's scheme, renewal fines would become obsolete. But in the remaining sentences of the quotation, Mr. Logan makes what the Board regard as a rather curious distinction between the actual cultivator's pledge of his personal credit and of his interest in his landed property, in order to raise money to buy the tenure of the holding under the provisions of clause IX. A man's personal credit has usually no better basis than the possession of land by him; but, apparently, Mr. Logan would draw a distinction between money raised on a note of hand or bond and a mortgage of landed property, forgetting that the latter is, in the last resource of the creditor, the security by the sale of which he can still recover his money. But apart from this, as the Board understand Mr. Logan, he bases his objection to an actual cultivator's being given the power of mortgaging his holding on the ground that he might mortgage it before he got possession of it. His argument is, if the actual cultivator borrows money on a note of hand in order to buy the tenancy, then, if he finds he cannot get along, and has to sell his holding, the person who buys his holding will not be responsible for any portion of the debt; but if the land is mortgaged before the actual cultivator's entry into possession, then whoever buys his right thereafter will have to buy it subject to the mortgage, and will be encumbered with debt. But this hypothesis seems to the

* Under clause X.

Board an unnatural one, for the landlord would have the right of pre-emption,*

and would probably be both able and willing to buy back the land and pay off the mortgage for something less than the amount which the tenant paid him (the landlord) for the occupancy right; while the mortgage-holder, if he bought the land, (as would most probably be the case), would enter into possession of the holding free of the debt which Mr. Logan fancies would encumber him. Nor is it at all likely that any third party would buy the property subject to the mortgage unless he was able to pay off the latter at once and still have enough capital in hand to make his purchase a profitable one to himself. Mr. Logan's arguments against granting the right of mortgage to the actual cultivator, therefore, seem to the Board to be weak, while they fail to see how a holding is to be treated in every way as a chattel, as Mr. Logan proposes, if such a right is denied to the holder. Lastly, as he says, such a plan is opposed to the customary law, which not only recognises such mortgages, but even mortgages of such mortgages. There are only two kinds of mortgages of land, viz., (1) with possession, and (2) without possession, and if the tenant was forbidden to mortgage his land *with* possession without the consent, in writing, of his landlord, the Board think it would be quite sufficient.

10. That a tenant should not be allowed to subdivide or sublet his holding or any portion of it (presumably without his landlord's consent, though this is not specified) the Board think is reasonable enough, though such a restriction is, in respect of subletting, rather inconsistent with his right to use his land like a chattel.

11. As regards the landlord's rights and privileges those proposed to be conferred by clauses VIII and IX have already been discussed in considering the rights of the actual cultivator. That the landlord should possess a right of pre-emption at all sales of the actual cultivator's interest in his holding, the Board think, is only equitable and proper, as also are the rights of veto proposed to be given him under clauses XI and XII, though the 'reasonable' right of veto on a transfer of the actual cultivator's interest in his holding is a little indefinite. The transfers contemplated are apparently those by gift or sale, as transfer by mortgage is intended to be forbidden altogether, but it would suffice, as the Board have

already said, if the right to mortgage with possession was subject to such a veto, so that it could not be effected without his written consent. The right of ouster proposed to be conferred by clause XII is novel, but does not appear to be objectionable.

12. As to the power proposed to be conveyed by clause XIII, the Board think that, in the tenant's interest, the power of ousting him, if the landlord wants his land again for some 'reasonable scheme' other than agriculture, should be better fenced about. The land should, as Mr. Logan himself suggests at paragraph 399, be taken up much in the same way as land is expropriated under Act X of 1870; but the Board think that even more should be done for the tenant. The landlord should be bound to buy him out, that is, to buy up his lease and pay him for all his improvements. Or, it might be laid down that, unless the tenant agreed to vacate on such terms as he and his landlord agreed upon, the Court or Collector should decide whether the case was one that warranted resumption, and that unless it was decided that it was, the tenant should be allowed to remain till the end of his lease.

13. The provision in clause XIV, giving the landlord power to sell his tenant's interest in the holding to recover arrears of rent, is just and proper; but what would be the position of the purchaser of the interest? Would he be obliged to go to a Court to be put in possession? If so, then the landlord ought to be able to put him into possession in place of the defaulting tenant.

14. Clauses XV and XVI confer just and proper powers on the landlord, and call for no remark.

15. In concluding his forecast of the effect of introducing his proposed statutory tenure, Mr. Logan says, at paragraph 436, that the law should provide that evicted tenants are paid for their agricultural improvements at current market rates. Subject to the slight alteration that all improvements should be paid for at the rates prevailing on the spot at the time of eviction, the Board thoroughly agree with Mr. Logan on this point. To pay only for 'agricultural' improvements might exclude payment for a house in a garden and for the wall round it, while 'market' rates should not be paid, because they include the cost of transport to market as well as the local auction value of the improvements themselves.

16. From paragraph 438 to paragraph 452 Mr. Logan details a scheme for forming a class of small gardeners. This scheme the Board regard as the most practical portion of his proposals. The plan is briefly to take power by law to convert any cooly cultivator into a gardener with a permanent right of occupancy in two acres of waste land by means of a cowle, to be given him by Government or by the janmi of the land, subject to the payment of an assessment of 6 annas an acre to Government and 6 annas an acre to the janmi. A condition precedent to the grant of the cowle would be that the cowledar would live on the land under pain of its being taken from him. The further conditions attaching to it would be similar to those proposed for the actual cultivator already noticed, and apparently the rent and assessment would become payable according to the customary rules and according as whether the land was turned into a field or a garden.

17. Mr. Logan's proposals relative to the formation of an experimental garden and garden school appear unobjectionable.

18. Regarding rent receipts his proposals are to prescribe a form of receipt to be filled up and given by the landlord, and if he refuses or omits to give it the tenant is to have the right to recover damages from the landlord not exceeding double the amount of rent paid. Provided that it is made obligatory on the tenant to tender his rent and ask for a receipt first, then a suit to get a receipt and for some small damages in addition might be made to lie, but damages to the extent of double the rent paid seem rather too high. Then it is proposed that if the landlord refuses the rent after it is offered to him, it may be lodged in the revenue treasuries, and that the same course may be followed if the tenant cannot get a joint receipt from coparceners or entertains a *bona fide* doubt who is entitled to receive his rent. These provisions the Board strongly object to. If the deposit should be made anywhere, a civil court is the proper place. Moreover, the procedure

prescribed by clauses (e), (f) and (g) of section 465 are more fitted for a civil court than for an irresponsible taluk treasury officer. The whole of this procedure appears to be borrowed from a Bengal Tenancy Bill, which did not pass into law except after considerable alterations, and is not to be found in the Bengal Tenancy Act as passed into law.

19. The suggestions relative to the formation of a body of land agents deserve consideration, but the proposed penalty on a tenant for not employing one of these men seems too severe, if not altogether unnecessary.

20. The survey of the district of Malabar is a matter now under the consideration of Government, so that no remarks are required from the Board on the point beyond a concurrence with Mr. Logan as to the necessity for the measure. His proposals relative to the need for a land register appear to the Board thoroughly sound; but this measure will probably be carried out as part of the revenue settlement of the district.

21. In Mr. Logan's remarks in paragraphs 481 to 488 relative to the law of Marumakatayam and the changes in it, which he thinks are expedient, the Board need do no more than express their general agreement as to the expediency of the changes proposed, seeing that a committee has recently been appointed by Government to consider the draft of a Bill on the matter.

22. The concluding part of his report is devoted by Mr. Logan to a consideration of the question of how land is to be supplied to Māppillas for mosques and burial-grounds. Concurring in the view held by Mr. Strange, when Commissioner in Malabar in 1864, that the erection of mosques without official sanction, even on a site regarding the ownership of which there could be no dispute, should be prohibited under severe penalties, he advocates that the acquisition of sites for religious edifices and for burial-grounds for all classes of the community should be considered 'a public purpose,' and that land required for such purposes should be taken up under the Land Acquisition Act. This proposal has the full approval and support of the Board, and might be advantageously made of general application throughout the Presidency. There is, however, one paragraph among those relating to this question, which contains an assertion of a principle from which the Board cannot too strongly declare their dissent, though, for obvious reasons, they do not consider it is necessary or politic that they should record their views at length thereon.

23. Lastly, the Board are unable to accept, without some reservation, Mr. Logan's statement at paragraph 340 of his report, that the Māppillas organised the outrages of some twenty-five years ago in order to put a stop to the free exercise by landlords of their power of 'ouster,' and that the recommencement of the outrages in the last decade is entirely due to the landlords having again reverted to this mode of bettering themselves. No doubt, this action on the part of the landlords is, to a great extent, the cause of the animosity entertained by their Māppilla tenantry towards them; but the Board consider that if the tenants were not Māppillas, there would have been no such outrages; and that it is the fanaticism engendered by their religious tenets that is the primary, and the action of their Hindu landlords the secondary, cause of them. Some, indeed, of the most recent outrages seem to have had no connection whatever with land, but to have risen out of a lawless and blood-thirsty hatred by the Māppillas of men professing a faith differing from, or of men recanting from, their own.

(A true Copy and Extract.)

(Signed) F. A. NICHOLSON,
Acting Secretary.

To the Chief Secretary to Government, Political Department.

Copy to the Secretary to Government, Revenue Department.
„ to the Collector of Malabar.

APPENDIX G (3).

Proceedings of the Board of Revenue, dated 10th December 1885, No. 3344.

READ—the following letter from W. LOGAN, Esq., M.C.S., to the Acting Secretary to the Board of Revenue, dated Chantanatode, 26th Nov. 1885:—

I have the honor to acknowledge the receipt of copies of the Board's Proceedings, No. 2939, dated 21st October 1885, commenting on the proposals contained in my report on the Malabar Land Tenures.

2. So much has already been written on this subject that I fear to add to the bulk of the literature; but I think it necessary that the Board should, at the present time, be in possession of the following facts, some of which have come to my knowledge since my report was written:—

3. In Travancore, *janmis'* estates are of an allodial character. They contribute nothing to the public land-revenue. But when a *janmi* assigns his *janmam* estate, or any portion of it, to an outsider, the allodial character of the holding, or of the portion of it, is at once lost, and the transferee becomes an ordinary ryot.

4. The Travancore Government is nominally the *janmi* of all ryotwari lands, but, like the British Government in districts east of the ghats, the Travancore Government recognises a right of permanent occupancy in their ryots.

5. I have recently, in connection with the District Manual work, been scrutinising the ample records of the former British factories on this coast. The Tellicherry Factory records are remarkably full and interesting, and the Factors' dealings with many of the native chiefs of North Malabar bring out very clearly what the native organisation was in former times.

6. These chiefs were evidently fragments of a Government, which had, at one time, levied a land-revenue (*pāṭṭam*) on every cultivated acre.

7. The subdivision and resubdivision of the authority of Government was perfectly marvellous, and was probably without parallel in any country in the world. The great families,—Kolattiri, Zamorin, Walluvanad and Pālghat,—were petty suzerains, each with numbers of vassals, more or less independent and more or less fluctuating in numbers, who again were suzerains to still pettier chiefs, also more or less independent and more or less fluctuating in numbers. The subdivision of authority did not cease till the lowest stratum of agricultural society was reached.

8. Mr. Græme's inquiry showed conclusively that the land-revenue (*pāṭṭam*) was as moderate as the best of our recent land-revenue settlements, and as fixed (on wet lands at least) as the most ardent supporters of a permanent settlement could desire.

9. I was the first to point out in my report that the land-revenue, which these men in authority levied, was simply the *pāṭṭam*, that is, the *pād* (authority's) *vāram* (share). The subdivision and resubdivision of the authority of Government was not clearly seen by our early administrators, and the *pāṭṭam* collected by the numerous men in authority bore so much resemblance to *rent* in the English sense that it was very natural for our people to accept *janmam* as synonymous with *dominium*.

10. BUT THAT POSITION WAS NEVER ACCEPTED AS A FACT BY THE HONORABLE THE COURT OF DIRECTORS (paragraph 246, Appendix II to my Report), and the inquiry directed by them in 1821 remained practically in abeyance until the issue of my special commission in 1881.

11. In districts east of the ghauts the British Government has not conferred the *dominium* of their lands on zemindars or polygars, who were, for all practical purposes, identical with the *janmis* of Malabar.

12. Why then should the ryots of Malabar be placed in a worse position than East Coast ryots?

13. In this connection, I beg to solicit the attention of the Board to the view adopted both by the Travancore and Cochin Rajas of the position of these *janmis* in 1761. The Travancore Raja had, in the previous thirty years, been busily engaged sweeping them away in his own territories and in those conquered by him right up to the gates of Cochin itself. The one Raja wanted the other to assist him "in abolishing the dignities of every rank in my country," and the one appealed to replied, "When you wish to discharge the petty POLYGARS in your country, I will join you, &c." (My *Collection of Treaties, &c.*, volume I, pages 104—106).

14. The *janmis* were simply POLYGARS in the Travancore Raja's eyes in 1761, and as such undoubtedly we ought to have treated them.

15. In treating them hitherto as in any way different from *polygars*, we have departed from native ideas and customs, and, if we persist in so treating them in the pending legislation, we shall traverse all the inherited customs which gave birth to the *janmi* and to the *polygar* but not to the *dominus*.

16. Between the *janmi* (the inheritor of the land-revenue collections) and the *dominus* of the Latin Jurists, there is, I would very respectfully submit, a most material difference,—a difference which in East Coast districts has been recognised by conferring on the ryot a right of permanent occupancy on payment of a fixed rent. No such rights could be justly conferred on the tenant of one enjoying the *plenum dominium* of the soil without trenching on his legitimate property therein.

17. In conclusion, I have the honor to point out that several of the suggestions on which the Board comment, and which I put forward tentatively (paragraph 509 of my report), have since been abandoned on further consideration in my final proposals for legislation framed last year during the sitting of the commission. If the Board's criticisms in paragraphs 4 to 15 of their Resolution had been before me when I drew up those final proposals, I would have altered one or two more of the details.

RESOLUTION—dated 10th December 1885, No. 3344.

Submitted to Government in continuation of Board's Proceedings, 21st October 1885, No. 2939.

2. The First Member of the Board, being on special duty at the time that those orders were passed, had no opportunity of expressing his views on the question to which they relate, and has now recorded a separate Minute of Dissent.

(A true Copy and Extract.)

(Signed)

E. S. LAFFAN,
Acting Sub-Secretary.

To the Secretary to Government, Revenue Department,
with Minute of Dissent.
Copy to the Collector of Malabar.

MINUTE OF DISSENT BY THE FIRST MEMBER.

I concur with the Collector,—and I may be said to go beyond him,—in thinking that the case is stronger than he makes out, for, while he says in paragraph 7 that the position "was perfectly marvellous, and was probably without parallel in any country in the world," to my thinking it is not exceptional, but is the exact parallel of our own old Baronial system,—the natural outcome of a warlike existence. Our Barons or rather their predecessors were at the first all kings, by reason of isolation by the wilds of the country. If they had had cohesion, they would not have fallen a prey to foreign invasion, as they did again and again, of Angles, Danes, Norsemen, Normans. The growth of civilisation made all these kings Barons, still kings in all but the promise of cohesion, i.e., of rendering armed service to the king; and when at Runnymede King John asked them to show their titles to their lands, and they showed their true title when they touched their sword-hilts saying, "By these we won, by these we'll hold." So, exactly, was it on the West Coast. The Rajas were not strong enough to subdue and dispossess their polygars, and Cochin and Travancore wanted to combine for the purpose. But the Honorable Company was strong enough, and it is as idle, in my view, to try to revive polygar rights in Malabar, as it would be to revive Baronial rights in England. The age has passed away. The Honorable Company must be held to have let the question lapse intentionally.

2. Malabar is not the only coast that had polygars. All the East Coast and Southern India teemed with them under different names, and up to different dates, and in different grades. It was the natural rule of warlike existence. It was the necessary and natural phase of society in earlier times, pretty nearly all the world over. It has yielded differently to the march of civilisation in different places. To attempt to revive it and import it into modern institutions would be a retrograde policy indeed. We have long, long since outgrown it.

3. I was no party to the Board's Proceedings on which Mr. Logan comments, because, from having special work to do, I had no time to read them; and I think his criticisms on those Proceedings ought to be submitted to Government, the subject being one of importance.

4. The illustration is sound that on the East Coast the ryots have been given occupancy rights,—not of inherent right but of sound policy as a *gift*; and such being our policy here, it militates very strongly against our pursuing a different policy on the other side of India, and withholding the same *gift* from West Coast tenants,—a gift that it is sound policy to give these also. Indeed so persistently, and for so long a period, has this gift been given that many have confounded it with a legal right, which, in practice, we have out of policy allowed it to grow into, and we should continue to do so. This having been our policy consistently followed everywhere else in Southern India for the last thirty years, we should follow it equally on the West Coast, not precipitantly and unnecessarily, but just as Mr. Logan proposes, whenever there is an opening given. We do not want to oust any one in favor of it, but neither can we allow any one to be exclusive. The State that has grown up is paramount, and the intervention of the old polygar is no longer necessary or desired as regards others, though as regards all he holds and pays for himself, he should be none the worse for our power.

9th December 1885.

(Signed) H. S. THOMAS.

APPENDIX G (4).

PRÉCIS
OF
PAPERS ON MALABAR LAND QUESTION.

ARRANGEMENT.

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EXPLANATIONS.

The following terms are used in the Précis with the following specific meanings, in accordance with the usage adopted in the papers referred to:—

"Actual cultivator" was used by Mr. Logan to describe the cottier tenant, actually engaged in the cultivation of the land, with no sub-tenant below him, though he may employ hired labor to assist in the work of cultivation.

"Kánakkar" is a tenant of land on the kánam tenure; this tenure, in the absence of any stipulation to the contrary, endures for 12 years and is the usual tenure between the janmi and tenants contracting directly with him; the kánakkar is therefore now often an intermediary, sub-letting his land on verompáttam to the actual cultivator. In Mr. Logan's Report, "Kánakkar" generally denotes the same class as the "Kudian" of the Commission's Report.

"Kudian"—literally "inhabitant"—is used by the Commission and elsewhere to describe that class which, holding land direct from the janmi, in former times was actually engaged in cultivation, but which has now become mainly a class of middlemen, generally holding on kánam or superior tenure from the janmi, and sub-letting on verompáttam to the "actual cultivator."

"Verompáttam" is a simple lease running only for a single year unless otherwise specified. —(A Manual of Malabar Law by C. Ramachandra Aiyar.)

PRÉCIS OF PAPERS ON MALABAR LAND QUESTION.

I.—MR. LOGAN'S REPORT.

Origin of Inquiry.—The present inquiry into the land system of Malabar began in the year 1881, and was undertaken under the following circumstances. In September 1880 a murder was committed by a Mappilla in the Walawanád amshom of Malabar, of which the ostensible cause was the defection from Muhammadanism of a Cheruman boy, aged 16, who had embraced Islam when nine years old. This boy was also the only victim, for the Mappilla, on going on to the house of a wealthy Nair landowner, was there shot; but it was the opinion of Mr. McWatters, then Acting

G.O., dated 19th October 1880, No. 2500.

Collector of Malabar, that the murder was primarily due not to religious fanaticism, but to agrarian discontent, and this view was accepted by the Government. In the next month (October) the Government received an anonymous petition purporting to come from "certain Mussulmans, Nayars, Tiyyans, and men of other castes inhabiting Malabar," which predicted that "a terrible outbreak was going to occur," and ascribed

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

it mainly to the existing bad relations between landlord and tenant in Malabar. This petition was referred by the Government to Mr. Wigram, then Judge of South Malabar, to Mr. Logan, the Collector, and to Mr. MacGregor, a former Collector, and these officers agreed in ascribing the occurrence of such outrages as that of September 1880 to agrarian discontent, which they considered undoubtedly existed. Meanwhile, apprehensions of another outrage in the same amshom (Walawanád) had been entertained in December 1880, and in January

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

1881 the Government determined to appoint Mr. Logan as Special Commissioner, with a view to a thorough investigation of the grievances of Malabar. While

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

using his own discretion as to other matters calling for investigation, he was to specially inquire into and report on—

- (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 a measure seemed to him called for.

He was further to submit suggestions for the remedy of any grievances which he considered well founded.

Mr. Logan's Report.—Mr. Logan submitted the report of his commission, accompanied by 22 Appendices, in June 1882, and in the first chapter of the report will be found an account of the method of inquiry which he pursued. Passing on from the method to the conclusions arrived at, Mr. Logan's opinions as to the past and present state of Malabar, which are scattered through the report, may be thus summarised. He believed that the three classes connected with the land—the janmi, the

Report, pages 16—18.

kánakkar, and the actual cultivator—had, prior to British rule, been entitled each to one-third of the net produce; that the early English inquirers, and the English Courts had mistaken the janmi for a landlord of the European type, had endowed him with the full European rights of ownership, especially with the power of ouster, and

had misunderstood and misconstrued the kánam and other tenures. Thus the old customary relations between the three classes had been upset, the janmi having thriven at the expense of the kánakkar and cultivator; evictions, crime, and discontent had increased concurrently, until, at the present time, matters had reached a crisis, and the cultivator, on whom the ultimate burden fell, was rapidly degenerating into a state of insolvent cottierism. His proposals for legislation are noticed below.

Page 27 of Report.

Page 32 of Report.

The contents of the Report.—The last and longest of the appendices to

Appendix XXII.

Mr. Logan's report contains the register of the petitions—2,199 in number—which were presented to him as Special Commissioner, and throughout his report itself Mr. Logan uses these petitions as a text on which to write, and tacks on to each division and sub-division of his subject an examination of a certain number of petitions. The result of this method is that the statistics, which supply the most reliable evidence on the questions raised, are mixed up with speculations and remarks on the various petitions. The report contains no index, but the following is a table of its contents:—

- CHAPTER I, § 1—12.—“The Commission,” contains an account of the method of investigation pursued.
- CHAPTER II, § 13—19.—“Arrangement of the Facts,” contains the number of petitions received, their arrangement in Appendix XXII, the castes of petitioners, how far full expression of grievances was obtained from each caste.
- CHAPTER III, § 20—72.—“Historical Matter:” with this has to be read Appendix I.
- CHAPTER IV, § 73—216 is headed “Agriculture and Agriculturists,” but contains various matters:—
- Preliminary Observations, § 73—80: Statistics of cultivation, with 13 diagrams.
- § 81—87: Statistics of the proportions of classes.
- Section I, § 88—97.—“Matters Personal,” relates chiefly to the financial position of the cultivators.
- Section II, § 98—100.—“Matters Social,” concerning honorific forms of address exacted by Brahman landlords, &c.
- Section III, § 101—216.—Tenures:—
- A. “Tenures, Preliminary observations,” § 101—143—
- § 102—104.—Janmam.
- § 105—110.—Kánam.
- § 111—120.—Kulikkánam.
- § 121—123.—Verompáttam.
- § 124.—Permanent Tenures.
- § 125—143.—Statistics as to existing tenures.
- B. Tenures “Tenures,” § 144—216—
- Sub-section I, § 145—159.—Evictions.
- Do. II, § 160—176.—Rents and Renewal fees.
- Do. III, § 177—203.—Compensation for Improvement.
- Do. IV, § 204—216.—Miscellaneous matters
- CHAPTER V, § 217—252.—“Proprietors and their Agents,” contains some statistics as to the numbers of the several classes of proprietors, &c.:—
- Section I, § 217—234.—“Personal.”
- II, § 235—241.—“Religious Institutions.”
- III, § 242—252.—“Estate Management.”
- CHAPTER VI, § 253—286.—“Government and Official action”:—
- Section I, § 253—264.—“Civil Courts.”
- II, § 265—269.—“Officials.”
- III, § 270—286.—“Land Revenue.”
- CHAPTER VII, § 287—317.—“Class Dissensions, Crime, &c.”:—
- Section I, § 287—304.—Classes.
- II, § 305—317.—Crime.
- CHAPTER VIII, § 318—511.—“Proposals for Legislation and other Suggestions”:—
- 1st.—Conclusions arrived at—
- § 320—333.—The actual cultivator.
- § 334—353.—The insecurity of the actual cultivator's present position.
- 2nd.—Proposals—
- § 354.—Proposed Statutory Tenure for small holders.
- § 355—378.—Detailed consideration of the conditions of this proposed Statutory tenure.
- § 374—402.—The same, considered clause by clause (i—xvi).

- § 403—417.—The main principle embodied in these proposals.
- § 418—437.—Forecast of the effect of introducing the proposed Statutory tenure.
- § 438—452.—Proposals regarding the creation of a class of small gardeners.
- § 453—463.—Proposals for the formation of an experimental garden and of a garden school.
- § 464—466.—Proposals regarding rent receipts.
- § 467—475.—Proposals regarding Land Agents.
- § 476—480.—Proposals for a Survey and preparation of a Land register.
- § 481—488.—Proposals in regard to *Marumakkáttayam* (the law of inheritance through females):
- (a) disposal of self-acquired property by will, § 485-86.
- (b) a man's children to get one-third of his separate estate if he dies intestate, § 487-488.
- § 489—506.—Proposals in regard to mosques and burial-grounds.
- § 507—511.—Conclusion.

There are thus two parts to the Report:—

- (1) CHAPTERS I to VII, § 1—317, in which the evidence collected is treated.
- (2) CHAPTER VIII, § 318—511, in which the results and proposals are set forth.

FIRST PART—EVIDENCE COLLECTED.

The Chapters I and II of the Report are introductory. Chapter III begins the actual evidence and is historical; this is the most complicated part of the subject, and the least important; it is therefore treated last: the following *Précis* begins with Chapter IV:—

1. Statistics of Cultivation.—This statement (from Appendix XVI) shows that out of the total area, 66 per cent. is culturable; and of the culturable area, 44 per cent. is cultivated.

	ACRES.
Area cultivated, assessed ..	790,746
Do. unassessed ..	336,434
Total ..	1,127,180
Area culturable, but uncultivated ..	2,558,867
Do. unculturable ..	1,869,760
Total ..	5,555,807

Mr. Logan (p. 22), in other words, states that the number of *cultivated* acres to each cultivator and laborer is 2·30; while the number of acres of *culturable* area to each is 5·21 acres; there is thus

a large culturable area not under cultivation.

Of the land revenue, the marginal figures show the proportion in which the various classes of land yield. The general proportion between grain and garden lands for the district is therefore about 66 per cent. grain to 32 per cent. garden:

66 per cent. from wet lands.
32 " from garden lands.
1 " from upland rice lands.
1 " from hill rice lands.

but, taken by taluks, we find that the four taluks—Ernád, Walawanád, Pálghat, and Ponáni—together contain 70 per cent. of the total grain area, while in those taluks the percentage of revenue derived from gardens is respectively 28, 8, 3, and 36 per cent.:

these taluks are thus the chief grain taluks, and they are also the chief seat of discontent: suggesting that grain lands are more rack-rented than garden lands. (See Report, § 134—137.)

2. Proportion of Classes.—Mr. Logan gives the following tables:—

	In Malabar.	In Presidency.
Proportion of laborers to total male population	27·4	13·1
Do. of do. to adult do.	44	21·7
Do. of cultivators to total do.	15·9	31·1
Do. of do. to adult do.	25	51·3
Do. of laborers and cultivators to total male population	43·3	44·2
Do. of do. do. to adult do.	69	73

These figures are from the Census of 1871, and agricultural are not distinguished from other laborers.

[NOTE.—The following figures of the Census 1881 do not bear out those of Mr. Logan. (See Census, Vol. II, Final Census Table XII). The total number of

males in Malabar is given at 1,174,274 of whom 30 per cent. are classed as engaged in agricultural occupations—

Occupations.				Males.
Class I—Professional	...	...	...	37,137
" II—Domestic	...	...	...	5,623
" III—Commercial	...	...	...	49,267
" IV—Agricultural	...	...	...	359,950 or 30 per cent. of total male population.
" V—Industrial	...	...	...	216,645
" VI—Indefinite	...	...	...	505,482
Total				1,174,274

Again the numbers of the several agricultural and laboring occupations are :—

Class IV—	Land proprietor	...	...	...	13,068	} 14,728
	Landlord	...	...	...	1,660	
	Agriculturist	...	...	...	...	
	Tenant	...	...	...	...	
	Agricultural laborer	...	...	...	...	
	Herdsmen and ploughman	...	...	...	...	
	Others	...	...	...	...	
Total						359,950

The following figures belonging to Class VI may be compared :—

Class VI—	General laborer	...	...	...	...	27,506
	Of no occupation	...	...	...	...	458,890

It is not possible to get any definite conclusions out of these figures.]

3. Classes among Cultivators and Laborers.—Mr. Logan gives the following percentages :—

Cultivators—						} these figures are also from the Census of 1871.
	Vellalars (Nayars)	...	...	...	...	
	Shanars (Tiyars)	...	...	...	...	
	Mappillas	...	...	...	...	
Laborers—						}
	Shanars (Tiyars)	...	...	...	...	
	Pariahs (Cherumars)	...	...	...	...	
	Mappillas	...	...	...	...	

4. Financial Position of the actual Cultivators.—The information as to the indebtedness of the actual cultivators is derived from two sources—

- (1) the petitions, Appendix XXII, see Index Vol. III "Debt;"
- (3) Statistical Register, Appendix IV, a register of the financial condition of 7,994 actual cultivators examined. (Report, p. 23).

Concerning this subject the information afforded is thus summarized :—

Number of actual cultivators examined	...	...	...	...	7,994
Do. of these not in debt	...	...	...	...	3,593
Do. of actual cultivators who were in debt	...	...	...	...	4,401
Total of their debts					Rs. 17,38,718
Do. who had money out at interest	...	...	...	1,406	
Amount of money thus out on loan	...	...	...	Rs. 7,51,241	
Debit balance against the 7,994 actual cultivators	...	...	...	Rs. 9,87,477	

From these figures it would appear that 56 per cent. of the actual cultivators are in debt, owing on an average Rs. 395 per head; while 17 per cent. have money out on loan, and 27 per cent. are neither in debt nor have lent money.

5. Evictions.—The following statement shows the action of the Courts on the land in quinquennial periods :—

Period.	Average annual number of suits instituted.	Average annual number of persons against whom rent was decreed.	Average annual number of persons against whom decrees of eviction were passed.
1862—1866	2,039	1,473	1,891
1867—1871	2,547	2,549	3,483
1872—1876	3,974	4,314	6,286
1877—1880 (4 years)	4,983	6,498	8,355

These figures show that—

- (1) the number of suits filed annually is $2\frac{1}{2}$ times as numerous as was the case 20 years ago;
- (2) the number of persons against whom rent is decreed is $4\frac{1}{2}$ times as numerous as was the case 20 years ago;
- (3) the number of persons against whom evictions are decreed is $4\frac{1}{2}$ times as numerous as was the case 20 years ago;

The figures do not show what proportion of the decrees of eviction was executed, but Mr. Logan states that the decree often acts as a means of raising the rent, without recourse being had to actual eviction (§ 152).

The following statement shows in percentages the classes of persons against whom these decrees were obtained :—

Period.	Ejectments decreed.			Rent decreed.		
	Hindus.	Mussulmans.	Others.	Hindus.	Mussulmans.	Others.
1862—1866	65	35	..	66	33	1
1867—1871	66	34	..	67	32	1
1872—1876	64	35	1	66	34	..
1877—1880	62	38	..	62	38	..

If these percentages are compared with the Census percentages of classes among cultivators, it will be seen that, whereas there are 72.13 Hindus and 27.80 Mussulmans in every 100 cultivators, there are 62 Hindus and 38 Mussulmans in every 100 persons against whom eviction is decreed. It thus appears that—

- (1) a disproportionate number of Mussulmans are sued,
- (2) the disproportion has increased in recent years.

Some further particulars are given in Appendix XI. In the Report, paragraph 159 (*q. v.*), Mr. Logan deals with some alleged grounds for eviction.

6. Manner of Tenure of Land.—Mr. Logan (Report, paragraph 125, *et seq.*) examined 14,034 pieces* of land, of which 8,860 or 63 per cent. were grain lands, wet or dry, and 5,174 or 37 per cent. garden lands. These pieces of land were thus held—

(a) direct from the janmi—

grain lands	...	5,936 or 67 per cent., held by 3,073 persons.
gardens	...	4,392 or 85 " " 2,772 "
Total	..	10,328 or 73 " " 5,845 "

(b) through intermediaries—

grain lands	...	2,924 or 33 per cent., held by 1,612 persons.
gardens	...	782 or 15 " " 537 "
Total	...	3,706 or 27 " " 2,149 "

* NOTE.—By a "piece," Mr. Logan seems to mean merely a separate block without reference to size.

Then turning to the periods for which these lands were held—

(a) actual cultivators holding direct from janmi—

leases for more than 1 year and less than 12 years; and kánam tenure	... lands 6,224 or	60 per cent.
leases for 1 year or at will	 2,589 or	25 "
permanent tenures	 338 or	3 "
other tenures	 1,177 or	12 "
Total	 10,328 or	100 "

(b) intermediaries holding from janmi—

leases for more than 1 year and less than 12 years; and kánam tenure	... lands 3,085 or	84 per cent.
leases for 1 year or at will	 37 or	0.9 "
permanent tenures	 86 or	2 "
other tenures	 498 or	13.1 "
Total	 3,706 or	100 "

(c) actual cultivators holding from intermediaries—

leases for more than 1 year and less than 12 years; and kánam tenure	... lands 6.76 or	18 per cent.
leases for one year or at will	 2,360 or	64 "
permanent tenures	 7 or	0.0 "
other tenures	 663 or	18 "
Total	 3,706 or	100 "

These figures show that leases from one year to twelve in length and kánam leases form the bulk of the tenures in which the actual cultivator holds directly from the janmi; but that where there is a middleman between the janmi and the cultivator, the latter in 64 per cent. of the cases holds for less than a year or at will.

Mr. Logan then gives (Report, paragraph 140,) the length of possession of the actual cultivator, which is as follows:—

Grain lands ...	43 per cent.	in possession for less than 12 years.
	34 "	in " for over 30 years.
	18 "	in " between 12 and 30 years.
	4 "	in immemorial possession.
	1 "	not reported.
Garden lands.	30.6 per cent.	in possession for less than 12 years.
	43.0 "	in " for over 30 years.
	22.3 "	in " between 12 and 30 years.
	4.0 "	in immemorial possession.
	0.1 "	not reported.

It appears from these figures that holders of garden lands are in possession longer than holders of grain lands: from this fact it would again seem that grain lands are more harshly treated and probably more rack-rented than garden lands.

7. Numbers and Classes of Janmis.—Mr. Logan divides the janmis into two classes—principal and minor—including in the first class only those who hold not less than "100 pieces of land in an amshom." The following statement shows generally his results (Report § 232, *et seq.*):—

A. Principal Janmis—

Malabar Bráhmans	... ..	370
Nairs	... ..	339
Religious institutions (of which 249 are Hindus)	... ..	250
Mappillas	... ..	37
Rájas	... ..	61
Other Bráhmans	... ..	9
Tiyars and other Hindus	... ..	12
Europeans	... ..	1
Total	... ..	1,079

B. Minor Janmis

Total ... 23,635

8. Statistics of Crime.—These are clearly shown in Appendix XII. The results are tabulated in the margin. It is to be noted that the increase has not occurred in dacoities and robberies, but in house-breakings and thefts. The last period of four years includes the famine years.

Mr. Logan further illustrates the increase in crime by comparing it with the figures of population, thus—

Periods.	One grave crime per heads of population.								
	District.	Calicut.	Walawa-nád.	Ernád.	Pálghat.	Ponáni.	Chirakal.	Kóttayam.	Kurumbra-nád.
1865—1866	2,256	2,314	4,365	3,999	3,045	1,695	1,920	1,450	2,119
1867—1871	2,540	2,062	3,749	4,720	3,017	1,535	2,599	2,610	6,668
1872—1876	2,124	1,722	2,776	2,760	2,774	2,216	2,474	2,271	2,021
1877—1880	1,168	672	1,247	1,299	1,543	1,480	1,248	1,336	1,889

Mr. Logan states that the most marked increase in crime has occurred in the four taluks, Calicut, Ernád, Walawanád and Pálghat, and he points out that three of these are the great grain-producing taluks of the district, where the pressure on the agricultural classes is believed to be greatest.

9. General Statistics of Population.

1856-57	... ..	1,602,914
1861-62	... ..	1,709,081
1866-67	... ..	1,856,378
1871	... ..	2,261,250
1881	... ..	2,365,035

Thus the population of Malabar, in twenty-five years, has increased by 762,000, or by nearly one-half.

To sum up the results of these nine sets of tables—

- (1) there has been a very large increase in population—nearly 50 per cent. in 25 years;
- (2) only 44 per cent. of the cultivable land is under cultivation;
- (3) the laboring class is twice as numerous as in the rest of the Presidency, and the class of cultivators half as numerous;
- (4) the janmis (landlords) number some 23,600; out of 1,079 large landlords, only 37 are Mussulmans;
- (5) 73 per cent. of the actual cultivators hold direct from the janmis; 27 per cent. hold from a middleman;
- (6) of the former, 60 per cent. hold on leases not exceeding 12 years; 25 " " on leases of one year or less;
- (7) of the latter, 18 per cent. hold on leases not exceeding 12 years; 64 " " on leases of one year or less;
- (8) there has been a very large increase in the suits for eviction and in the decrease of eviction, which have increased by 250 and 450 per cent. in the last 20 years;
- (9) more Mussulmans are sued than Hindus relatively to the proportions of these classes who are cultivators;
- (10) meantime, one actual cultivator in every two (56 per cent.) is in debt, his debts averaging Rs. 395;
- (11) crime (thefts and house-breakings) have increased largely;
- (12) crime has increased most largely in the grain-growing taluks, where discontent is known (from the outrages committed and from the petitions) to be greatest;
- (13) and, again, the tenure of land is shorter in grain-growing lands, and presumable evictions are more frequent.

Mr. Logan adduces various other circumstances, supported by more or less evidence, in illustration of the condition of the agricultural industry in Malabar:—

1. Inadequacy of compensation for improvements. (Report § 177, *et seq.*)—Here some evidence is derived from the petitions (see heading “Improvements,” Appendix 22), many of which complain that the rates being fixed long ago by custom are now inadequate; other evidence is found in the rates themselves, which are tabulated in Appendix V, which show both enormous variation and great inadequacy, *e.g.*—

rates for cocoanut tree vary from 10 pies to 14 rupees;
for a jack tree vary from one pie to 40 rupees.

The rates—(1) were always very low even when first adopted by the Courts: Mr. Logan, paragraph 116, suggests that they were compensation only for the janmi's share in the value of the land;
(2) have become still more inadequate, because in recent years prices have risen while the rates have remained fixed.

Moreover it is stated that—

- (1) landlords, seeking to evict a tenant, always tender ridiculously insufficient sums as compensation, and then are awarded their costs on the ground of this tender;
- (2) costs thus often swallow up the whole sum awarded as compensation;
- (3) the awards are determined by Court Commissioners, who are grossly corrupt and whose returns are unreliable and their awards discrepant; thus three commissioners estimated the same improvements thus:—

						RS.	A.	P.
First commissioner at	...	...	...	...	...	983	6	9
Second „ at	...	...	...	...	...	1,073	9	9
Third „ at	...	...	...	...	...	1,472	0	8

2. Excessive sums demanded as renewal fees on kanam tenure.—Mr. Logan says that the renewal fee was originally fixed by custom, and that the rule was to reduce the original kanam amount each time by 13 per cent., but that, owing—

- (1) to the erroneous view of the kanam theory adopted by the courts,
- (2) to the incident of renewal every twelve years introduced by the courts,
- (3) to the disappearance of the old customary relations between landlord and tenant,

the renewal fee is now fixed by competition at whatever the landlord can extract; often the whole twelve years of rent is thus paid in advance, and the cultivator has to raise this from the money-lender, who alone profits by the transaction (paragraphs 110—169).

3. Habit of inserting a provision in the kanam deed, providing for the surrender of the land on demand.—By this provision, Mr. Logan says, although all the incidents in the kanam tenure, which bear hardly on the tenant, especially the payment of several years' rent in advance, are retained, the solitary advantage of a sure tenure for twelve years is lost: and the courts have upheld such clauses (paragraph 171).

4. Net share of cultivator.—An examination of the gross produce of certain pieces of land showed that the actual cultivator, after paying rent, Government assessment, and after recouping himself the sums paid as fines on entry or renewal, has left to him a share very much less than the early British administrators intended.—See Appendix IV, columns 222 to 225 (paragraphs 160—162).

5. Social grievances.—

- (1) Mappilla tenants forced to use humiliating forms of address to Nambutiri landlords.—See Appendix XVIII.
- (2) Hindus, when tenants, threatened and punished with excommunication, for any show of independence or any resistance to their Nambutiri landlords.
- (3) Generally the Brāhmans use their religious sanctity as a weapon to subdue their tenants (paragraph 98), to exact gifts, subscriptions, &c. (210).

6. Mappilla difficulty in procuring ground for mosques.—The Mappillas often do not possess any land, and the Hindus refuse to sell any for a mosque: sometimes land on which mosque stands is held on kanam, which the Hindu landlord can, at the expiration of any twelve years, refuse to renew: in some cases, Mappillas have to go eight miles to a burial-ground.

Hence great friction between the Mappillas and Hindus. If a janmi chooses to let his land to Mappilla tenants, he should be bound to give them all reasonable facilities for religious worship and burial of their dead.

7. Mappillas outrages have in several instances sprung directly from the mosque grievance. In other cases, they have been produced by acts of oppression committed by Hindu landlords.

Mr. Logan says (paragraph 340)—“The Mappillas saw and realized the fact (that the landlords are employing our courts to raise their rents) many years ago, and organised the Mappilla outrages to put a stop to it.”

This appears to be an extreme way of stating the theory that the outrages are due to agrarian discontent. In paragraph 290 Mr. Logan states that the elements which produce an outrage are—

- (1) some case in which a man of influence has been suffering from the janmis, working through our courts;
- (2) a general under-current of discontent among the people, generally due to the action of the courts;
- (3) some such religious pretext as may induce a few ignorant and fanatical men to take up arms.

8. Finally, Mr. Logan considers that there is a constant under-current of discontent, due to the repetition of petty wrongs, among the Mappillas. They are habitually over-reached by the more educated and subtle Hindu; on the death of the father, the widow and orphans are evicted; they are threatened with eviction just as their trees begin to bear or their crops ripen; receipts for rent are refused them; promises to renew contract are broken; they are unable to get at the janmi and deal only with a middleman; and hence arises a general condition of mind favorable to commission of outrages.

The above headings summarise Mr. Logan's account of the *actual existing state* of affairs in Malabar, the causes and the evidence of that general ill-feeling between landlord and tenant, which he considers to be the origin of the “Mappilla outrages.”

Historical.—It is not necessary, for the argument of Mr. Logan's report, to examine at length his historical investigations, because present action must be guided by the present state of affairs, without enquiring minutely into the historical causes; but a brief account of Mr. Logan's historical theories is necessary to supplement some of his remarks on land tenures. The following is a condensed account of Mr. Logan's remarks:—

When the Nair and the Nambutiri—both foreign races—colonised Malabar, the country was divided—1st, for military purposes, into dēshams under the command each of a dēsavāli, and nāds under the nāduvāli; 2nd, for civil purposes, into taras (*Tam. teru*) or villages, and nāds.

Every tara and nād was ruled by a kūttram or assembly of elders (kāranavar). In each tara were certain taravād (tara and pādu-authority) or chief houses, and each taravād house sent one male representative to the tara kūttram. The several tara kūttrams formed the nād-kūttram.

Another name for the members (kāranavar, elders) of the nād-kūttram was “the Six Hundred” (see Appendix I, Vol. 2, enclosure 2, p. 58, note).

Such were the ancient local territorial divisions and bodies. Over each nād ruled a Rāja (or Udayavan); while at the head of the whole was a Perumal, or Emperor.

Chêramân Perumal was the last of the emperors, was converted to Islam, went to Arabia and died there about A.D. 825. From that date, the several Râjas ruled over their nâds, without any lord paramount above them.

Such then was the political organization—Emperor; Râja; Six Hundred, or Nâd-kûttam; Tara-kûttam; Tarapad.

But with the political organization was intimately connected the distribution of the land. The Malabar Hindu did not look to the land primarily as a subject of property: it was rather the connecting link between the people on the land—[See Mr. Logan's letter A, 12th February 1883, (c).]

Thus in each local territorial division was a Janmi. He did not own the land, but rather held an office (sthânam); he was the religious head of the community in his local division, a sort of ecclesiastical squire or laird. He presided over the kûttam and received, as his dues, one-third of the produce of the land. He was originally a Nambutiri (Brâhman). Next below the Janmis came the Kânakkars. The Kânakkars were the Nairs—the “protectors” of the land. Kânam comes from the verb, kâna, to see, look after, and so protect. The Nairs were thus the “protecting guild,” forming the local militia: the chiefs of this guild were the Kâranavar or elders, who made up the tara and nâd-kûttam, and were also the Six Hundred. The kânam was not a land tenure at all, but an office (sthânam); the Kânakkars did not own the land, any more than did the Janmis, but like the Janmis, they took as their due a one-third share of its produce. Lastly, below the Kânakkars were the actual cultivating classes—Tiyar, who managed the garden lands, Vellâlar, and the artisan classes. They again did not own the land, but had a right to one-third of the produce.

Thus “Janmi” and “Kânam” were political offices, carrying a right to a share in the land produce, not mere land tenures. The political system and the distribution of the land and of its produce were closely connected.

Mr. Logan's account thus continues: The arrival of the Portuguese in Malabar in A.D. 1498 was followed by a series of intestine struggles between the several Râjas; and in the confusion thus produced, the communal rights of the Protector Guild of Kânakkars or Nairs became broken up. There was a gradual transfer during the succeeding centuries of the communal rights of the Protecting Guild or Kânakkars to the Janmi (Nambutiri or Nair), and Janm came to be more and more looked upon as a right in the land, and came to be used as equivalent to Nir-atti-peru.

Still throughout these centuries, custom still regulated all relations, nor was it to the interest of the Janmi to drive out the Kânakkars who protected him, and also looked up to him.

Then followed the entire disruption caused by the Mysorean invasions (circa 1750—1780), and when the English took possession of the country, it was no easy matter to find out what were the true rights of the several classes.

The early English inquirers and the Courts were misled. In the Janmi they thought they saw a landlord, and they invested him with all the powers which a feudal-born English land law has bestowed on an English land-owner. In the Kânam they thought they saw a species of lease or mortgage, and they attached to it all the English ideas connected with a lease or mortgage. They made the Janmi sole owner, with full power of ouster. They made a Kânakkars his lease-holder or mortgagee. They looked on the Kânam fine-money as an advance repayable: they declared that the Kânam held good for twelve years only, and was then renewable or terminable. Finally, all these changes, which were themselves based on an entire misconception of the true relations of Janmi and Kânakkars, were carried out with the rigid and unyielding process of English law; the old customary rates of rent and renewal fees were allowed to be superseded by higher rates, based on contract. Rents were pushed up, evictions increased, until the present state of affairs was reached.

SECOND PART—CONCLUSIONS AND PROPOSALS.

Conclusions.—Mr. Logan's main position is that the person who ought to be protected is the actual cultivator.

The Kânakkars may have lost much through the misapprehension of his position by the English Courts, but he is a capitalist who can protect himself and it is too late now to attempt to reinstate him. The Janmi may have got much that does not belong to him, but it is too late to reverse the policy of ninety years.

But the actual cultivator, whatever his historical rights were, stands in urgent need of protection: he is the most numerous class: at present, he is at the mercy of the landlord: and agrarian discontent can only be satisfied by giving to him an increased security of tenure.

Shortly, therefore, Mr. Logan's conclusions are:—

- (1) The only person interested in the soil with whom the Government need concern itself is the actual cultivator.
- (2) The landlord's power of ouster must be curtailed.
- (3) The tenant must have the full value of his improvements.

Proposals.—*I. Proposed statutory Tenure for small Holders.*—The actual cultivator of every holding not exceeding 25 acres (or 5 acres garden land) shall have a right of permanent occupancy, at a rental of $\frac{2}{3}$ the gross-produce and not more, with power to sell or transfer but no power to mortgage or sublet his holding. On the other hand, the landlord of such a holding is to be allowed to sell, to the actual cultivator on entry, the right to improve at the highest price he can get. This is intended as a set-off against the loss caused to the landlord by the rent being fixed.

This proposal is stated in paragraph 354, and dealt with in details in paragraph 374, *et seq.*

Further proposal—That the tenants should be paid for their agricultural improvements at current market rates (paragraph 436).

II. Proposals for the creation of a class of small Gardeners.—Government to have power to grant to any person a maximum of 2 acres of any waste land which has not been permanently assessed, to be held permanently as above, not mortgaged or sublet, on condition that such person lives on the land, and pays, 6 annas per acre assessment to Government and 6 annas per acre rent to the Janmi.

By these cowles, to be called Sirkar Kudiyirippu, a class of gardeners would be created.

III. Proposed formation of an experimental Garden.—Paragraphs 453—463.

IV. Proposals regarding rent-receipts.—These are borrowed from Chapter IX of the Bengal Tenancy Bill, 1880, and are intended to force the giving of receipts for rent by landlords.

These proposals would provide—

- (1) the instalments in which rent is to be paid, and interest (12 per cent.) payable on arrears;
- (2) the form of receipts;
- (3) penalty of landlord of refusal to give a receipt;
- (4) that rent may be deposited in a public treasury, if tendered and refused, or if receipt refused;
- (5) receipt of treasury officer to act as a full acquittance, etc.

V. Proposals regarding Land Agents.—“Pseudo-legal agents” the pest of Malabar Courts. Proposal that the High Court shall organise a body of responsible practitioners, to do the work which in England falls to attorneys and solicitors, who shall not be allowed to plead in court.

At present it is the interest of a vakil to encourage litigation; this to be avoided by having these “responsible practitioners,” who would arrange matters out of court. Security for good behaviour should be given by these practitioners, which the District Judge should have power to realize in the event of proved misconduct.

VI. Proposals for a Survey and preparation of a Land Register.—(Paragraphs 475—480.)

VII. Proposals regarding the Marumakkattayam, Law of Inheritance.—

Description of present law—paragraph 482.

Proposals—

- (1) to confer on all adults, male or female, the power to dispose of their self-acquired property by will.
- (2) in case of intestacy, $\frac{1}{3}$ of a man's self-acquired property to descend to his own children.

VIII. Proposals as to Mosques and Burial-grounds—

- (1) The erection of a mosque for public worship prohibited without official sanction: two sections—13 and 14—to be added to the Mappilla Outrages Act, No. XX of 1859, for this purpose.
- (2) Land required for burial-grounds to be deemed to be land required for a public purpose under Act X of 1870, and to be so taken up by Government.

II.—THE COMMISSION.

The Commission.—Mr. Logan's report, which was submitted to Government in June 1882, having been circulated during 1883 for the opinions of several officials and non-officials, a Special Commission was appointed in January 1884 to consider the whole question and advise the Government as to the lines on which legislative action should proceed. The Commission consisted of Raja Sir T. Madhava Rao, K.C.S.I., President, and Messrs. Logan, Wigram, C. Sankara Nayar and P. Karunagara Menon, and the result of its labors was four draft Acts.

The Four Acts.—Of these four Acts, two were submitted with the Commission's letter, dated 8th July 1884, and consisted of a draft "Malabar Marriage and Succession Act" for Hindus, following the *Marumakkátayam* law, and of a draft "Places of Public Worship Act." These two Acts—which dealt with Nos. 7 and 8 of Mr. Logan's proposals (Report paras. 481—506)—have been favorably received by the High Court and need not be further mentioned here. The two remaining Acts consist—the first, of a draft Malabar Stay of Execution Act, submitted with Sir Madhava Rao's letter, dated 11th March 1884; the second, of a draft Malabar Tenancy Act, submitted with the main report of the Commission, dated 17th July 1884.

The Stay of Execution Act.—This Act was intended "essentially" as a temporary measure, which was to have taken effect from 1st June 1884, and was designed to maintain the existing relations between landlord and tenant, pending the revision of the law regulating those relations by the Legislature. By its provisions the execution of decrees of eviction obtained by a janmi against his tenant was stayed for so long as the Act remained in force, on condition that all arrears of rent were paid into court and security given (when required) for the future payment of rent. This Act has stood over so long that its *raison d'être* has disappeared; its definitions of "tenant" and "janmi" may be compared with those of the draft Tenancy Act.

The Malabar Tenancy Act.—This Act, and the main report of the Commission, dated the 17th July 1884, remain to be noticed. The report is divided into three parts:—

Part i, paras. 1—23, after some preliminary observations, indicates the necessity for legislation and explains the lines on which the Commission thought legislation should proceed.

Part ii, paras. 24—56, contains a popular commentary on the draft Act.

" iii, " 57—66, sums up the result of the proposals and contains some concluding remarks.

Part i of the Report.—The subject of this part is two-fold—first, the necessity for legislation; secondly, the principles which the legislation is to follow.

The necessity for legislation is stated by the Commission in the following sentence: "The political necessity [for interference with the janmi's rights] we

Report, para. 6; Land Tenures, p. 122.

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 janmies and apprehended from others." It will be seen that this sentence contains several statements, viz.:—

- (1) that grave discontent prevails among the agricultural classes.
- (2) that this discontent relates to the insecurity of their tenures.
- (3) that the insecurity of tenures is increasing.
- (4) that the Mappillas are ready at any moment to break out into outrage.
- (5) that the cause of this is "agrarian discontent fanned by fanaticism."
- (6) that a system of tyrannies is practised by some janmies and is "apprehended from others."

These statements show "the necessity for legislation:" the evidence on which the statements are based is not adduced, and no more is said on the subject.

The second subject treated in Part i is the principles which are to guide legislation. The argument adopted is mainly historical, and the general position advanced by the Commission appears to be that their proposed legislation is an attempt to re-define rights of property on the basis of ancient custom. The theory of the courts, say the Commission, that the janmam was a proprietary interest in the soil, kánam a usufructuary mortgage thereof, and verompáttam a simple lease, is erroneous, due to mistaken application of English names to Indian tenures. Both páttam and kánam were originally revenue paid to the State. The páttam (i.e., the share of the pád or paramount authority) was the tax of one-fifth on produce of lands levied in times of public exigency: the kánam was a contribution levied by the Rájas on extraordinary occasions as a loan. Passing on from this origin to the state of things at Hyder Ali's invasion in 1765, the Commission say that there were then two classes interested in the land—the janmi, a limited aristocratic non-cultivating body; and the kudian, who

Note.—This refers, of course, to the *past* only. See explanations.

was then the actual cultivator, cultivating by means of slaves or hired labor. One-third of the gross produce went to the janmi, and two-thirds to the kudian, who had to pay cultivation expenses out of his share. 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 to the janmi, were the grounds on which a kudian might be evicted, but not the mere arbitrary desire of the janmi: if a refractory kudian was to be got rid of, the janmi brought his case before the kuttam of the tara, who sanctioned the eviction. There was no original material difference between kánam and verompáttam tenure: the former was regarded as of greater permanency, but under neither could the kudian be removed except for cause shown. In the kánam tenure, the renewal fee was in the nature of a succession fine and was payable at the death of either janmi or kánamkar, or once in twelve years at the feast of Mahamagam. The early English inquirers were misled, because they probably derived their information from interested janmis, and because their inquiry was directed rather to the best mode of collecting a land revenue than to ascertaining accurately the rights of the people *inter se*. The janmi was christened a landlord, and the kudian a tenant; in 1856, the Sadr Court first defined a kánam as a redeemable mortgage for twelve years, and thus completed the revolution in the ancient land law. It is from this year that the janmi's power of ouster really dates.

This is the Commission's theory of the formerly existing relations of janmi and kudian, on which their draft Act was based. They state the arguments *pro* and *contra* their theory in paragraphs 14 and 15 of their report as follow:—

First.—Circumstantial evidence in favor of their theory, that the kánam tenure was a fixed tenure:

- (1) private family temples and houses built by kudians on kánam lands;

- (2) cases of purchase of land by Nayars in the name of a Nambutiri, from whom the land is then held by the Nairs on kánam;
- (3) kánam deed specifies no time for redemption and contains no covenant to surrender;
- (4) old kánam interests sold in the market for prices far in excess of any sum which the purchaser would get from the janmi if evicted;
- (5) general practice of praying for redemption in a suit not on the ground that the term has expired but on the ground that a forfeiture has arisen by non-payment of rent or renewal fees.

Second.—Main objections, which may be made to the theory, refuted:

- (1) that the language of the sale-deeds proves that the janmi claimed an absolute property in the soil:
some force must be admitted in this objection, but the vendor really only conveyed certain rights over the soil, not the property in the soil; this was settled by the customary law and the language used, therefore, though now misleading, was then so understood;
- (2) that when a janmi did confer permanent rights of occupancy, he used terms which were quite appropriate and different from those used in the kánam deeds:
but the language of the two sorts of deeds does not differ so very much, and it does not follow because one kind of deed did confer fixity of tenure that therefore another did not;
- (3) that the use of the words janmam, kánam, and pattam, as applied to slaves, indicates the idea of selling, mortgaging, and letting:
but the slaves were attached to the soil and were resumable only if the land was resumable.

Part ii of the Report.—Having laid down the principles on which their Bill is founded, the Commission go on to explain the Bill itself. Its provisions may be thus roughly summarised:—

- (1) No tenant holding, direct from the janmi, the same land on any tenure not inferior to verum-pattam for 30 years' continuously, or for 15 years, provided that the land was reclaimed within the last 30 years, or so holding through himself or another land which has been held on customary tenure (i.e., kánam or other superior tenure) for 30 years, and no tenant who may hereafter acquire the rights of such a tenant, shall be evicted except for wilful denial of his janmi's title, grave insult to his janmi, or persistent refusal to pay rent: such are occupancy tenants; and no non-occupancy tenant, holding direct from the janmi, shall be evicted, except for denial of his Janmi's title, non-payment of rent, waste or illegal transfer of his holding, until the determination of the tenancy.
- (2) Every occupancy tenant shall pay renewal fees every 12 years, not to exceed one year's net produce less the land revenue.
- (3) Every non-occupancy tenancy in future shall be for a term not less than 10 years.
- (4) The occupancy tenant can transfer his holding, but the non-occupancy tenant can never lease or mortgage his holding, and no transfer by either is valid, unless the janmi has had the option of pre-emption, and, in the case of the occupancy tenant, unless he assents to the transfer.
- (5) Rent is never to exceed the following proportions of the net produce less the land revenue:—

In case of occupancy tenants ... $\frac{1}{4}$ or $\frac{1}{3}$	According as they hold on customary (i.e., kánam, &c.,) or ordinary tenure.
„ non-occupancy tenants $\frac{1}{3}$ or $\frac{2}{3}$	
„ sub-tenants ... $\frac{1}{4}$	
- (6) If the person to whom rent is tendered will not grant a receipt, the tenant may pay the amount into the Civil Court.
- (7) Full value to be given as compensation for all improvements.
- (8) Collector to have power to grant waste land for reclamation on cowle on a rent equal to the land revenue, and similarly to grant sites, not exceeding two acres, for dwelling-houses.

These are the more important features of the Draft Tenancy Bill, very roughly stated. In paragraphs 24 to 56 will be found the Commission's own commentary on their Act.

Compared with Mr. Logan's Proposals.—

- (1) In comparing this Bill with that drafted by Mr. Logan, and forming the 1st of his proposals, by far the most important difference is in the fact that, while Mr. Logan desired and intended to benefit "the actual cultivator," the Commission has endeavoured to benefit exclusively the class of kudian. This essential difference is introduced by the definition of "tenant" in the Bill, which limits the application of the term to those *directly* contracting with the janmi. This difference is recognized by the Commission in paragraphs 23 and 63 of their report.
- (2) Thus Mr. Logan proposed to confer *his* occupancy right on the actual cultivator of any holding not exceeding in extent 25 acres of grain land or five acres of garden, regardless of the tenure of which the land might be held—
while the Commission would confer *their* occupancy right only on tenants holding direct from janmis, after 30 years' occupancy, regardless of the extent of the holding.
Mr. Logan, wishing to protect small cultivators, used the size of the holding as the principle on which occupancy rights were to be conferred; the Commission, deferring to "the historical pretensions of the kudian," restricted their rights of occupancy to that class, and based a claim thereto on length of occupation.
- (3) Mr. Logan stopped short at securing his occupancy tenant one-third of the net produce; the Commission, after a complicated distinction between tenants, secured to their occupancy tenants three-fourths or two-thirds of the net produce.
- (4) Mr. Logan provided that the occupancy right should be put up for sale, thus practically obliging the tenant to pay a considerable addition to his rent in advance: the Bill of the Commission makes no such provision.
- (5) On the other hand, the Commission impose the payment of a renewal fee on every occupancy tenant.

These and all other differences spring from the initial difference of purpose between Mr. Logan and the Commission.

Part iii of the Commission's Report.—The concluding paragraphs of the Commission's report—57 to 66—do not contain any new matter: but are mainly occupied in summing up some of the effects to be expected from their measure, and in anticipating criticism. A note by Sir Madhava Rao states that he does not coincide in the historical theory put forward in Part I of the Commission's report, but agrees in the practical conclusions arrived at.

III.—MR. LOGAN'S ALTERNATIVE SCHEME.

Subsequent to the submission of the report of the Commission, an alternative scheme, with an explanatory note, was prepared by Mr. Logan and forwarded to Government in August 1884, through the President of the Commission, Raja Sir Madhava Rao. Separate memoranda on this scheme were recorded by each member of the Commission, and the discussion was closed by Mr. Logan in a note replying to the objections raised.

Although Mr. Logan signed a report of the Commission, dated 17th July 1884, he was far from satisfied with the draft Tenancy Bill. Of those sections indeed, 6 to 14, which deal with occupancy tenants, he was ready to approve, for these sections deal with the class representing the kánakkaran of his own report (*vide* § 330-331)—the kudian of the Commission's report. But Mr. Logan again and again repeated in his report that the class which first merited the attention and protection of the Legislature was that of "the actual cultivator of the soil" (*vide* § 332-333,

et passim). The sections of the draft Tenancy Bill—namely, 15 to 20—which deal with classes other than the kudian or kánakkaran appeared to him quite insufficient, and he therefore prepared an alternative draft for those sections, accompanied by an explanatory note.

Mr. Logan's Note explaining his Alternative Scheme.—Mr. Logan begins his Note with a criticism of the sections 15 to 20 of the Bill. He says—

- (1) that limitation of rent (which is accorded by sections 20 and 25) will be useless unless accompanied by fixity of tenure, which is not given [see section 15 (e)];
- (2) that there is thus nothing to secure to the non-occupancy tenant, i.e., the actual cultivator of the soil, the one-third share of the produce theoretically supposed to be his;
- (3) that the provisions of section 17 as to ten-year leases will easily be evaded, and the tenant treated simply as a tenant-at-will;
- (4) that if ten-year leases do come to prevail, the worst feature of the kánam system—prepayment of rent—will be reproduced;
- (5) that sections 38 to 41, intended to encourage the formation of small gardens, though useful, are insufficient by themselves, unless the tenant is also protected in his holding.

The sections 15 to 20 of the draft Bill will, therefore, Mr. Logan considers, prove useless, and “simply mean slavery and starvation and stealing.” But the actual cultivator does require and deserve protection—

- (a) because it has also been the intention of the English Government, shown in the Land Revenue Settlements, to preserve one-third share of the gross produce to the actual cultivator;
- (b) because the actual cultivator now no longer gets that share;
- (c) because the new *quasi*-janmies, the occupancy tenants, the “historical” kudian, will prove no better landlords than the old janmis;
- (d) because the increase of population is driving cultivation back on to the poorer soils, while it is also forcing up rent, crushing down the wages of the agriculturist, and leaving him with a choice only of starvation or stealing.

To check these evils, says Mr. Logan, it is necessary to give the actual cultivator of the soil an assured share of the produce, sufficient for him to live on, and Mr. Logan then proceeds to explain in detail his alternative scheme.

The Alternative Scheme.—Under this scheme, a species of occupancy right will attach to every piece of land which is under settled cultivation; the test of settled cultivation being that a Government putta has issued for it. This occupancy right will accrue, on the coming into operation of the Act in the following order—

- (1) to the occupancy tenant, created by sections 6—14 of the draft Bill;
- (2) to the tenant, who holds the putta for the land, except when he holds for an occupancy tenant;
- (3) to the janmi, in the absence of the above two classes.

Thus, on the Act coming into operation, this species of occupancy right in all lands in which there is such a person will accrue to the occupancy tenant created by sections 6 to 14 of the Bill, that is, to the “historical” kudian, kánakkaran or middleman. Where no such occupancy tenant exists, the right will accrue to any tenant holding the putta. Where there is no tenant holding the putta, it will accrue to the janmi.

This will be the result immediately on the Act coming into operation. The further result will be as follows. Every cultivator, let into possession of land for agricultural purposes, subsequent to the passing of the Act, whether he hold from an occupancy tenant created under sections 6 to 14 of the Bill, from a tenant having the putta, or from a janmi, *ipso facto* obtains this species of occupancy right, and, if the putta is not issued in his name, he may claim to have it so issued.

Such will be the way in which this species of occupancy right will accrue. But it has to be mentioned that this species of occupancy right is not the same as that created by sections 6 to 14 of the Bill. To distinguish it, Mr. Logan calls it the “settled cultivator's right.” This right—

- (1) is heritable and transferable, but may not be mortgaged, nor sublet (except by the janmi or occupancy tenant created under sections 6 to 14) unless the settled cultivator is temporarily unfitted for the work of cultivation;
- (2) is subject to the provisions as to rent in Chapter IV of the Bill.

The settled cultivator cannot be evicted—

- (1) unless the rent or renewal fee is one year in arrear;
- (2) unless he has insulted his janmi or denied his janmi's title;
- (3) unless he has been guilty of waste;
- (4) unless the janmi, etc., *bona fide* requires the land, either for any purpose other than agriculture, or for improvements in the agricultural cultivation, and has paid the price of the settled cultivator's interest as fixed by agreement or by the Civil Court.

If the settled cultivator's interest is transferred at a Court sale, the janmi shall have the option of pre-emption.

The settled cultivator, if evicted, shall have compensation for improvements.

Such is Mr. Logan's alternative scheme. He claims that it is founded on historical grounds (namely, the actual cultivator's immemorial right to one-third share of the produce), as well as on grounds of public policy (namely, that unless this share is assured to the actual cultivator, he can never be contented).

He reviews the scheme in detail in paragraphs 13—21 of his note. He especially claims for it that, at the outset, it does not disturb existing relations; but it may

be pointed out that this is incorrect, for the right created accrues at once to tenants happening to hold the revenue putta.

Criticism of the Alternative Scheme.—Each member of the Commission reviewed the Alternative scheme in a memorandum to be separately noticed.

Malabar Land Tenures, pp. 180—203.

(1) **Sir Madhava Rao.**—Considers the Alternative scheme to be open to many grave objections, as follows:—

- (1) the interference with the rights of the landlord is excessive; it ignores the terms on which the landlord may have parted with his land; gives the cultivator an indefeasible right of possession against him, and turns the landlord into a mere rent-receiver;
- (2) the remedy proposed goes far beyond the disease complained of; the complaints from Malabar refer only to a particular class of evictions, namely, those of kánakkars, who have held for generations on what had become practically a permanent tenure;
- (3) no class of actual cultivators in Malabar has ever asked for anything like such a concession;
- (4) if such a scheme is applicable to Malabar, it is applicable to every district;
- (5) but besides being injurious to janmi, permanent tenant, and occupancy tenant under clauses 6—14 of the Bill, the Alternative scheme will even injure those whom it is intended to benefit—the actual cultivators. In the first place, they will be liable, on the expiry of their present lease, to be refused re-entry on the lands on any terms, lest they should therefore acquire the permanent rights of a “settled cultivator.” In the second place, these actual cultivators are generally without capital; their credit, always low, will be reduced to zero by the prohibition of mortgage; they are nevertheless now to be responsible for the revenue as well as for the rent; and the probable result will be that the actual cultivator will be knocked over by the first bad season and will be sold up again and again;
- (6) Government has never guaranteed to the actual cultivator a one-third or any other fixed share of the produce.

These are Sir Madhava Rao's chief general objections: he also criticises the details of the scheme as follows:—

- (a) the definition of cultivator is faulty;
- (b) the distinction between a tenant who has, and one who has not, obtained a putta would create great injustice, for it has hitherto been a matter of indifference who held the putta;

- (γ) explanations II, III and IV to Section 2 would lead to endless litigation ;
- (δ) the provisions of Sections 4 and 8 are too complicated ;
- (ε) Sections 8 and 9 will give too much power to subordinate revenue officials.

(2) **Mr. Wigram.**—Mr. Wigram, although considering the Alternative scheme a considerable improvement on the original scheme sketched by Mr. Logan in his report, holds it to be open to several grave objections :—

- (a) it converts *all* landlords into rent-receivers, nationalizing the land without offer of compensation, and is so an excessive interference ;
- (β) it goes beyond what the cultivating classes have ever expected or asked for ; if it applies to Malabar, it would apply to the whole Presidency. The actual cultivator no worse off there than elsewhere ;
- (γ) it confers occupancy rights on men with no capital ;
- (δ) it confers the occupancy right on the arbitrary criterion of the possession of the revenue putta ;
- (ε) the junior member of a tarwād may acquire the rights of a settled cultivator against his karnaven ;
- (ζ) the power granted to the revenue authorities is enormous—by issuing puttas to manufacture “settled cultivators ;”
- (η) it will not encourage thrift, for easy terms and freedom from interference is most likely to make cultivators careless and lazy ;
- (θ) tenants who pay large sums in advance for the “settled cultivator’s right” will start encumbered and be soon sold up ;
- (ι) there is a loophole by which the janmi can get out of the Act altogether, for the definition of cultivator is faulty.

(3) **Mr. C. Sankara Nair.**—In his memorandum, Mr. Sankara Nair first proceeds to defend the Sections 15—20 of the draft Act framed by the Commission, and remarks :—

- (1) if some of the evils of the kánam were reproduced, as Mr. Logan asserts, the kánam would still be preferable to the verompattam tenure ;
- (2) if the janmi does not wish to give ten years’ leases, he must keep on the tenant who is already in possession, and in either way arbitrary eviction will be restrained.

Passing on to the proposals now made, he observes that the Government is believed to have under consideration a Bill for defining the rights and liabilities of the landlord and tenant throughout the Presidency, and he would prefer to await the result of that Bill. But Mr. Sankara Nair is ready to approve of one part of Mr. Logan’s Alternative scheme, namely, that which would protect the cultivator, if a man of substance, from arbitrary eviction. For Mr. Sankara Nair considers it is “the duty of the Government to see that the actual cultivator is a man of substance.” His view is :—

- (1) that the actual cultivator should be a substantial man ;
- (2) that the more intermediaries there are between the janmi and the actual cultivator, between the man at the top and the man at the bottom of the scale, the worse will be the position of the latter ;
- (3) that therefore sub-letting should be, as far as is possible, restricted ;
- (4) that endeavours should be made to restore the old state of things, when they were only two classes connected with the soil, the janmi and the kudian ;
- (5) that the actual cultivator does represent the “historical” kudian, in the sense that he occupies the same position in the body politic ;
- (6) that the putta is generally only given to a tenant when he has some substantial interest in the land ;
- (7) and that therefore, finally, Mr. Logan’s Section 1, Class (b), may be accepted, and the settled cultivator’s right conferred on those tenants who hold the revenue putta. This would also protect the cowle-holders under § 38—41 of the draft Bill.

But Mr. Sankara Nair is not prepared to approve of the *future* puttadars contemplated by Mr. Logan’s Alternative scheme, nor of the power, which the ability to call

these puttadars into existence, would vest in the revenue officials. He further points out that Sections 2—5 will have the effect of keeping land out of the market ; he concurs in Raja Sir Madhava Rao’s criticism of the prohibition of mortgage and in the anticipation of its effects on the actual cultivators’ solvency ; and, finally, he thinks the Clauses (a) and (c) of Section 1 of the Alternative scheme, which confer the settled cultivator’s right in the first place on the occupancy tenant created by Sections 6—14 of the Bill and on the janmi “will generally create dissatisfaction instead of allaying discontent.”

The upshot of Mr. Sankara Nair’s remarks therefore appears to be that he would confer the “settled cultivator’s” occupancy right on all actual cultivators (not being tenants of the occupancy tenant created by Sections 6—14 of the Bill), who hold the putta at the date on which the Bill may come into force, but on no others, either then or thereafter.

(4) **Mr. P. Karunakara Menon.**—This member of the Commission singles out for approval the same portion of Mr. Logan’s Alternative scheme, namely,

Section 1, Clause (b), as Mr. Sankara Nair, but for a different reason. Mr. Karunakara Menon is ready to accept this clause, because he considers it a mere “surplusage” and so harmless.

Otherwise he entirely disapproves of the scheme ; he points out that it is intended to benefit a class who have not complained, and he believes all Sir Madhava Rao’s criticisms to be correct, and the Alternative scheme to be hurtful to janmis, kánakarars, and actual cultivators alike.

Mr. Karunakara Menon would be willing, however, to enact that “actual cultivators” shall in future have the right to hold for at least ten years.

This concludes the criticism of the Alternative scheme by the other members of the Commission, and Mr. Logan then closed the discussion by a note referring to the objections taken.

Mr. Logan’s Reply.—Mr. Logan’s

Malabar Land Tenures, pp. 209—217.

reply is mainly directed against the criticisms of Sir Madhava Rao, as follows :—

- (1) it is not correct to state that the scheme “would prevent *all* evictions ;” nor to say that it would reduce the landlord to a mere rent-receiver, because an improving landlord can always get back his land (see Section IX) ;
- (2) the Alternative scheme was not founded on a supposition that the British Government had “guaranteed” a third share of the produce to the actual cultivator, but on the ground that the British Government wished the actual cultivator to have that share, expected he would get it, but omitted to guarantee to him ;
- (3) Sir Madhava Rao’s anticipation, that the “settled cultivator” will be knocked over by the first bad season and sold up again and again, is groundless :
if the actual cultivator can pay his present rents, why should he fail any the more, when he has a reduced rent under the Act ?
if the revenue is now secure, when it is indirectly paid by the actual cultivator, why should it be less secure, when it is directly paid by him ?
remissions will be granted, in bad years, by Government, as at present, and the actual cultivator can hardly be worse off, with an assured share of the produce, than he now is without it ;
- (4) the argument, that no complaint has come from the actual cultivators, is a “shallow” view of the evidence ; although the complaints come from the kánam holders, the ground of the complaints is the enhancement of the ancient easy customary rents ; and this applies to the actual cultivators as well as to the kánam witnesses ;
- (5) the proposal to convert *present* putta-holders into “settled cultivators,” on the injustice of which Sir Madhava Rao mainly insists, is merely a subordinate detail, and not essential to the scheme ;
- (6) Sir Madhava Rao’s sole idea has been to protect that class which least needs protection—the “historical” kudian.

With regard to Mr. Wigram's Memorandum, Mr. Logan replies:—

- (1) that the actual cultivator in Malabar is worse off than elsewhere in the Presidency, because of the continual accumulation of lands in a single hand in that district;
- (2) that the definition of cultivator does not afford a loophole by which the janmi can get out of the scheme altogether.

Finally Mr. Logan observes:—

- (1) that his main argument, "fixed rent useless without fixed tenure," has in no way been answered;
- (2) that the creation of peasant proprietors has been proved to be economically successful by experience in France.

He adds a revised draft of his Alternative scheme: in this the chief alterations are:—

- (1) "raiya" and "raiya-wari right," are substituted for "settled cultivator," and "settled cultivator's right;"
- (2) the addition to Section 1 of a sub-clause (a) dealing with permanent tenants;
- (3) section 7 is omitted, and the rest re-numbered, &c.

IV.—SIR CHARLES TURNER'S MINUTE.

Sir Charles Turner's "Minute on the draft Bill relating to Malabar Land Tenures"

"Malabar Land Tenures, page 168.

" " " " page 226."

was recorded in consequence of the draft Tenancy Bill being referred by Government to the High Court for opinion in G.O., 31st July 1884, No. 504. The Minute was submitted to Government on

the 20th July 1885. It is divided into seven chapters as shown by the index prefixed.

Chapter I.—"Court-made Law."

Para. 1.—Mr. Logan's inquiry was onesided in method and only the argument of the discontented is at all represented by it.

Paras. 2—4.—The Commission, to whom Mr. Logan's report was referred, was composed of individuals who admittedly had formed their opinions before they joined, and who were all enlisted on one side of the question.

Para. 5.—The janmi's case has never been stated at all; hence the reason for the present Minute.

Paras. 6—10.—Mr. Logan has denounced the existing law as Court-made; has accused the Courts of allowing contract to over-ride custom; has complained that the Courts have not checked the demands for increased renewal fees; and has asserted that the liability of the kánam to renewal every twelve years was an invention of the Courts.

Paras. 11—14.—But the Courts must follow the evidence before them as to what is the law: all the early inquirers agree in supporting the view which the Courts have adopted; and the law is only Court-made in that it was ascertained by the Courts.

Paras. 15—19.—It is said that the early British inquirers were misled by obtaining their information from Nambutiris and Janmis, and were chiefly anxious to fix the land revenue, not to investigate tenures; but there were no Nambutiri officials, the inquirers were in direct contact with the cultivators, and they took great pains in the investigation of tenures, as shown in Mr. Ellis' Collection of Papers on Mirasi Right.

Paras. 20—21.—In 1854—1856, the Sadr Court made an inquiry into the Malabar Land Tenures, but no suggestions as to erroneous and Court-made law were then made.

Paras. 22—23.—Early Sanskrit works support the early British inquirers, and the view taken by the Courts. It is said that such works were written solely by Brahman authors; but no other authorities are offered us; and after all the Brahmans were the ultimate interpreters of the law.

Moreover the evidence supplied by the early deeds, when correctly interpreted, also supports the view of the Courts.

Paras. 24—27.—The action of our regular Courts has tended to define rights more sharply and to enforce them more strictly; it has also not always succeeded in equitably applying the law, as in the matter of compensation for improvements. But the sharp definition of rights has told both ways, and it is improbable that Courts presided over by Nairs and Menons have failed to discover the true law of their own country.

Chapter II.—"Property in the Soil"

Paras. 1—18.—Mr. Logan's account of the history of Malabar, after stating that the Nair preceded the Nambutiri, and that the Nair organization was military and suited to a colony in a hostile country, goes on to assert that the Hindu in Malabar did not look to the soil but to the people on the soil—that there was no absolute property in the soil:

but (1) Malabar was never separated from the rest of Southern India, and it is a mistake to suppose that there is anything mysterious or unusual about its condition.

(2) So far from this being so, nowhere in India has Brahmanical and Sanskrit influence been stronger than in Malabar.

Paras. 9—18.—Now it is proved that the general Hindu law of India fully recognised individual ownership in land—*vide* many passages in Manu, Colebrooke on the Mimansa, and the Dayavibhaga.

Paras. 19—36.—We should therefore expect to find individual ownership recognised also by the Hindu law in Malabar, and we do find it so; the traditional view of Malabar law thus recognises it; the absence of a land-tax supports it; the very terms of the deeds collected by Mr. Logan expressly imply the fullest private ownership; and all the early British inquirers—the Joint Commissioners, Dr. Buchanan, Mr. Warden in 1801, the Board of Revenue in 1803, Mr. Thackeray in 1807, the 5th Report, Mr. Ellis in 1816, Sir Thomas Munro in 1817, Mr. Graeme in 1822, and the Court of Directors in 1825—agree in regarding the janmi as full owner of the soil.

Paras. 37—40.—It may therefore be regarded as proved:—

- (1) that Hindu law generally recognised individual property in the soil;
- (2) that in this respect Malabar law resembled the general Hindu law.

Paras. 41—57.—But there were other points in which they differed:—

- (a) the holding of land in common by the village community was not known in Malabar. Mr. Logan's opinion is here contradicted by that of Sir William Robinson;
- (b) the cultivation was largely done by slaves; hence the class corresponding to the Maurusi [? Mirasi] Asami is absent, and perpetuity of tenure unknown;
- (c) contract and written engagements were unusually developed in Malabar;
- (d) prior to the Muhammadan invasion, no land-tax existed; this view is supported by the evidence of Mr. Murdoch Brown, Major Walker, Mr. Thackeray, the 5th Report, Sir Thomas Munro, and the Board of Revenue in 1818; the absence of a land-tax is probably explained by the fact that the Brahman—the landowner—was exempt from taxation by Hindu custom. Mr. Logan's etymology of the word "páttam" criticised.

Chapter III.—"Land Tenures."

Paras. 1—8.—The land tenures of Malabar are more minutely systematized than elsewhere in India, and in many features are superior:—

- (1) the right of compensation for improvements is granted even to a trespasser;

- (2) no provision exists for distraint, owing to the payment of rent in advance as kánam ;
- (3) the common form of mortgage could not be foreclosed ;
- (4) rent was fixed by competition, not by custom ;
- (5) in the absence of express prohibition, the tenant has a right to sell or subdivide his holding ;
- (6) he is liable to ouster for denying his janmi's title.

Paras. 9—23.—A list of the several tenures is here given.

Paras. 24—29.—The kánam tenure: this was originally probably a lease with a payment of rent in advance, and later developed into a mortgage. Two questions arise concerning it :—

Paras. 30—31.—1st. Was it renewable? This is admitted by the Committee, the renewal fee being deducted from the kánam amount.

Paras. 32—36.—2nd. Was it redeemable? This is proved by the Proclamation of the Joint Commission in 1793 ; it is also supported by Dr. Buchanan, Major Walker, Mr. Warden, Mr. Graeme, &c., and is further stated by the Vyavaharamala.

Paras. 37—42.—Other points as to kánam tenure are :—

- (1) that the length of the term used to vary, and the adoption of twelve years by the Court was really a boon to the kánakkar ;
- (2) there is no evidence at all to support the assertion of the Committee that a janmi, if he wished to get rid of a refractory tenant, was bound to bring his case before the kuttam of the Tara ;
- (3) the janmi can go to another party for a further advance, if the kánakkar cannot give it, and thus creates mélkánam, the holder of which can evict the kánakkar at the end of the kánam term.

Paras. 43—51.—The Commission's arguments, to prove the existence of an occupancy right in the kánam tenant, examined :—

1st.—The fact that houses and temples are built by kánakkars on kánam land, may be explained by the scarcity of suitable land, by fancy for a particular site, by the fact that the janmi could not redeem without paying the value of the building, and perhaps by the fact that the janmi was, at one time, generally too much embarrassed to be expected to redeem.

2nd.—The fact that Nairs have been known to purchase land in the name of some Nambutiri and to take a kánam demise from him ; the special circumstances of each case might explain it, but the cases are rare.

3rd.—The fact that the kánam deed specifies no time for redemption, while the pányam deed does ; this may be explained by the fact that the liability to surrender was a well understood customary incident of kánam tenure, like the payment of compensation for improvements, while the pányam is redeemable at pleasure, unless a specific term is mentioned.

4th.—The fact that old kánam interests are sold for prices far in excess of any sum which the purchaser would get from the janmi if evicted : to this it may be answered that such cases occur only in towns, and they may be explained by the scarcity of land in the market and the competition for it.

5th.—The fact that to this day in praying for redemption, it is not alleged that the term has expired, but that a forfeiture has arisen for non-payment of rent or renewal fees ; to this it may be answered that no such practice exists, and cases to the contrary can be pointed out ; but two arguments on the other side may be mentioned here—

(a) That no kánakkar has ever set up a right to hold after expiry of his term.

(β) That in some cases kánams have been created without delivery of land to the kánakkar, as a mortgage without possession ; does the kánakkar here acquire an occupancy right ?

Paras. 52—55.—Mr. Logan has complained that arrears of rent in excess of the sum recoverable as a contract debt are allowed by the Courts to be deducted from the kánam amount on redemption. But in the settlement of account between janmi and kánakkar, only such sums are allowed to be set off against the kánam amount as are actually connected with the transaction.

Mr. Krishna Menon's statement that, under the old law, rent in arrear could not be recovered, is a mistake ; jammabhogum or first fruits could not be recovered, michavaram or rent could.

Paras. 56—63.—The Otti tenure and its several deeds explained.

Paras. 64—67.—Other forms of mortgage found in Malabar enumerated.

Paras. 68.—The deeds collected by Mr. Logan have not been dealt with, because the interpretations, on which he bases his argument, are disputed.

Chapter IV.—“Decrees for Redemption—Moplah Outrages.”

Paras. 1—7.—(1) The argument founded on the increase of decrees of eviction criticised : in the first place, we do not know how many of the decrees were executed, in how many cases the person evicted was a cultivator, in how many an intermediary ; and in the second place, the increase means simply that the janmi has at last paid off his mortgages, cleared himself from debt, converted his kánam tenures into verompáttam, and tried to get the best bargain he could in doing so.

Paras. 7—10.—(2) The argument founded on increase in crime : doubtless the peculiar system which prevents the alienation of Illom or Tarawad property, and the great latitude of the law of adoption, prevent land from coming into the market ; and this (besides increasing the eagerness to get it) tends to increase crime ; but with regard to the Moplahs—in the first place, it is well known that their turbulence dates from the time of Tippu ; in the second place, the alleged agrarian origin of the outrages has not been proved, and the perpetrators at least have clearly acted from fanaticism ; in the third place, it would be fatal to make concessions in return for crimes.

Paras. 11—13.—Many of the petitions referred to by Mr. Logan have not been tested, many proved false, many were insufficiently examined.

Para. 14.—The native judicial officers of Malabar—their ability, &c.

Chapter V.—“The Bill to amend Land Tenures.”

This chapter follows the provisions of the Bill in such detail, that it can hardly be summarized ; it contains a full criticism of the Bill as drawn up by the Commission.

Paras. 1—3.—General : chief object of the Bill to improve the position of the kánam holder ; general objections to such a plan—(1) the kánakkar sometimes a mere mortgagee and not an agricultural tenant at all ; (2) confusion of incidents between the kánam and the other superior tenures.

Paras. 4—6.—The definition of “Tenant” in the Bill criticised ; its object, namely, to exclude all except the kánakkar class.

Paras. 7—43.—The occupancy clauses of the Bill criticised :—

Section 6 (a) ...	Paras. 7—9
„ 6 (b) ...	„ 10—13
„ 6 (c) ...	„ 14—23
„ 6 (d) ...	„ 24
„ 7 ...	„ 25
„ 8 ...	„ 26—29
„ 9 and 10 ...	„ 30—35
„ 11 ...	„ 36—37
„ 12 ...	„ 38—40
„ 13 and 14 ...	„ 41—43

Paras. 44—48.—The non-occupancy clauses of the Bill (Sections 15—21) criticised.

Paras. 49—70.—The clauses of the Bill regarding rent (Sections 22—27).

Paras. 71—81.—The clauses of the Bill regarding compensation for improvements (Sections 28—35).

Paras. 82—87.—The miscellaneous clauses of the Bill (Sections 36—44).

Paras. 88—93.—Summing up—

- (1) the Bill works a revolution in the tenure of landed property in Malabar, and in the interests of a single class—the intermediaries;
- (2) the effect of the Bill will be to multiply the already too numerous land tenures of Malabar—to confuse instead of simplify;
- (3) while adopting length of possession as the ground for an occupancy title, the Bill proposes to give this title to persons who have quite recently acquired possession, on the ground of long possession by others;
- (4) it would increase the dearth of land in the market;
- (5) it would benefit one class, and injure all the rest.

Chapter VI.—“Mr. Logan’s Alternative Scheme.”

Paras. 1—8.—General remarks on the Alternative Scheme. Sir Charles Turner generally agrees with Mr. Logan in his sympathy for the actual cultivator of the soil, and agrees that this is the class which stands in need of some legislative assistance. Sir Charles Turner also agrees that the draft Bill, proposed by the Commission, would leave this class mainly unprotected; that no obstacle should be placed in the way of cultivators acquiring land; and that compensation for improvements should be secured to the tenant on simple lease.

Para. 9.—But though sympathising with Mr. Logan’s main objects, Sir Charles Turner is unable to accept the scheme proposed.

Paras. 10—25.—Objections:—

- (1) arbitrary distinction between those who have, and those who have not, obtained a revenue putta;
- (2) persons holding under an occupancy tenant excluded from the benefits of the scheme;
- (3) definition of cultivator would include rent-takers, who receive their rent in kind;
- (4) explanations 3 and 4 to Section 2 criticised (paras. 14—17);
- (5) the prohibition of mortgage by settled cultivator criticised (paras. 18-19);
- (6) the landlord’s right of pre-emption (Section 4) criticised;
- (7) the provision under which a cultivator of land can claim a putta for it, (Section 5) criticised (para. 21);
- (8) the provisions as to partition and the prohibition of subletting (Sections 6 and 8) criticised (paras. 22-23);
- (9) the provisions as to ejectment and as to limitation of rent and renewal fees (Section 10) criticised.

Chapter VII.—“Suggestions.”

Para. 1.—It will be granted that freedom of contract should only be interfered with on well proven necessity.

Para. 2.—Therefore no tenure superior to kánam should be interfered with, for no argument for such interference has been produced and many of such are contracts between mere borrowers and lenders.

Para. 3.—Nor should we interfere between the janmi and the kánakkar, where (1) the kánakkar is not a mere cultivator but a man of substance; and (2) his title has originated within the present century.

In cases where the kánakkar’s title originated before 1792, some slight ground exists for granting him protection, because, under native rule, he practically enjoyed fixity of tenure though he had no theoretical claim to it. But this class of cases must be so limited that interference would do more harm by unsettling relations of classes than good.

Para. 4.—The remaining case is that of the tenant, whether holding on kánam or inferior tenure, who is an actual cultivator dependent on his own labor expended on a small area of land. Here Sir Charles Turner thinks that there is evidence that rents and renewal fees are oppressive, and that there are sufficient grounds for interference.

Paras. 5—9.—He therefore proposes—

- (1) to divide all actual cultivators, on whatever tenure they may hold their land, whether on kánam or verompáttam into two classes—namely, into—
 - 1st.—“Tenure-holders,” holding more than a certain area of land;
 - 2nd.—“Cultivators,” holding less than a certain area of land;
 the area to be fixed with reference to the amount held in Malabar by tenant cultivators. Compare Bengal Tenancy Act, VIII of 1885, 5-(5), where the area is, in similar circumstances, fixed at 100 standard bighás = 62½ acres;
- (2) “tenure-holders,” *i.e.*, who hold more than the fixed area, would not be affected by the legislation;
- (3) “cultivators,” *i.e.*, who hold less than the fixed area, would obtain a right of occupancy in respect of any land held by them for fifteen years;
- (4) the holding, with the occupancy right to be heritable and transferable; but if any portion came into the hands of a person who was not an actual cultivator, or who held in all more than the fixed area, the occupancy right would cease;
- (5) no cultivator having the occupancy right to be evicted unless the rent be one full year in arrear; and under Sections 112 and 114 of the Transfer of Property Act (IV of 1882) relief against forfeiture should be granted if the rent is paid in full into Court, or on proof of distress having issued for such rent, or other act show an intention on the part of the lessor to treat the lease as subsisting;
- (6) no cultivator with occupancy right to be required to pay an enhanced rent, except under such circumstances as justify an enhancement under the provisions of the Bengal Tenancy Act (Sections 27—37); and every such cultivator to be entitled to a reduction of rent under the circumstances mentioned in the same Act (Section 38);
- (7) no cultivator to be required to pay a renewal fee, except to make up the advance to its original amount; and no deduction allowed from the advance except on account of an arrear of rent or waste;
- (8) provisions of Bengal Tenancy Act as to right to demand written engagements and receipts, to be adopted (Section 56 *et seq.*);
- (9) Bengal Regulation VII of 1822, Section 8, to be enacted for the whole Presidency (*re* disposal of waste lands by Government);
- (10) every tenant to be entitled to compensation for improvements at their market value, &c.

Paras. 10-11.—Conclusion: these proposals would both keep land in the market, and protect the actual cultivator. A limitation on rent will only keep land out of the market. But any legislation must be cautious.

CONCLUSION.

There are thus not less than four distinct programmes for Legislation before the Committee:—

1st.—Mr. Logan, in his original proposals contained in his report, says—"I represent the actual cultivator of the soil, and especially the cultivator whose holding is small. I propose to give to every actual cultivator, holding not more than twenty-five acres of grain land or five acres of garden, a right of permanent occupation, on condition that he pays two-thirds of the produce in rent, does not commit waste, and does not mortgage or sublet. But the landlord shall be allowed (1) to put up the cultivator's occupancy right to sale and get the best price he can for it, or to buy it in himself; (2) to recover the land at any time for *bona fide* improvement; (3) to exercise a veto on any proposed sale or transfer of the holding by the tenant."

Thus the principle here followed is that it is politically necessary and economically right to secure permanency of tenure to the non-capitalist cottier cultivator tilling with his own hands a small extent of land.

2nd.—The Commission, appointed in January 1884, speak differently: "We represent," they say, "the historical claims of an historical class, namely, the hereditary raiyat or kudian; we believe the janmi's claim to a right of ouster against the kudian to be unsupported by ancient usage or theory; we propose therefore to limit it. We propose to give an occupancy right to every tenant holding direct from a janmi, who has held the same land for thirty years on any tenure not inferior to verompattam, or who has held for fifteen years land which was reclaimed within the last thirty years; and to give a like right to tenants holding, by themselves or another, land for thirty years on tenure not inferior to kanam; and finally to tenants who may hereafter buy an occupancy right. These occupancy tenants will pay rent not to exceed one-third or one-fourth of the rent fund; they shall pay renewal fees, not to exceed one year's rent fund; and they shall not be evicted except for persistent refusal to pay rent.

"Other tenants (non-occupancy) shall pay rent which ought not to exceed two-thirds of the rent fund, shall only be evicted for non-payment of rent or waste, until their tenancy determines, and shall then, in a fresh tenancy, be allowed to claim a ten-year's lease." (Sections 15—20).

Here the protection to occupancy tenants is based almost entirely on historical grounds, the occupancy right resting on a length of possession which will carry back the tenant to 1856, or a period before the landlord's claim to a right of ouster is said to have been made. The protection to non-occupancy tenants is slight.

3rd.—Mr. Logan, in his Alternative scheme, renews his advocacy of the cause of the actual cultivator of the soil. He says: "The protection of the occupancy tenant, the kudian, is well enough; but leaves the class, which really needs protection, unaffected, for it is useless to give ten-year leases, when no limit is put on rent or renewal fees, or to recommend that rent should be limited unless fixed tenure is also given. In the Alternative scheme therefore I propose, in substitution of Section 15—20 of the Commission's draft, immediately on the Act coming into force, to give an occupancy right, to be called the "settled cultivator's right" to every actual cultivator (not holding under the occupancy tenant of Sections 6—14), who holds the revenue putta of his land; and hereafter to give this right to every actual cultivator let into possession, for purposes of agriculture, of any land, for which a revenue putta exists. This right includes permanent possession, subject to a payment of two-thirds of the produce in rent, and the settled cultivator shall not be evicted unless the rent is a full year in arrears. The right may be transferred but not mortgaged, and the landlord can always resume for *bona fide* purposes of improvement."

This scheme, unlike Mr. Logan's first proposals, abandons any attempt to distinguish between the capitalist and non-capitalist cultivator, but gives all actual cultivators permanent tenure on payment of fixed rent, and turns all landlords into rent-receivers.

Criticising this scheme—

Sir Madhava Rao rejects it *in toto*, and especially objects to section 1 (b).

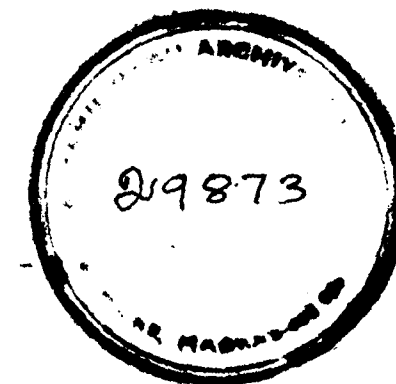
Mr. Wigram considers it goes too far, but appears to be ready to entertain a modification.

Mr. Sankara Nair would accept Section 1, Clause (b), giving occupancy rights to present putta-holders, but no more.

Mr. Karunakara Menon also accepts Section 1 (b), but only because it is harmless, and otherwise objects to the scheme *in toto*.

4th.—Sir Charles Turner accepts the position originally put forward by Mr. Logan, that the person to be protected is the non-capitalist cottier cultivator. His plan is therefore analogous to Mr. Logan's first programme. He would divide all actual cultivators into two classes, one holding more, the other holding less than a fixed amount of land; to the latter class he would give an occupancy right in respect of all land which had been held for fifteen years, and would not allow eviction unless the rent was a full year in arrear. He would not attempt to fix the rent, but would forbid it to be raised except on definite grounds, and he would forbid renewal fees. This proposal adopts Mr. Logan's original proposition to give fixity of tenure to the non-capitalist cultivator, but limited to those cases where he has been in possession for fifteen years.

Finally, all four schemes provide for the grant of compensation for improvements at their market value to any tenant evicted.



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