Judicial Confidential (1)

Revenue (1894) Department.

MISCELLANEOUS SERIES.

G.O., No. 2374

Confidential 134

Dated 1 10 94.

[Despatch Abstract.]

Evictions in Malabar. Passing ders on certain questions connected with —

29-1-95

Proceedings of the Board of Revenue

(Land Revenue)

Dated 11 May 1894.

~~Forest~~ No. 2588 Mis.

READ letter from Herbert Bradley Esquire, Acting Collector of Malabar, dated 31st January 1894, No. 161 P./Gb. to the Secretary to the Commissioners of Land Rev:

Resolution

The Collectors report on the working of the Malabar Compensation for Tenants Improvement Act I of 1887 will be submitted to Government with reference to para 4 of Government Order, No. 2530/11-12-91. (Judl)

Para 3 702/4-2-92

2. The report proves little beyond the facts that the number of eviction suits has enormously increased; that the tenants are dissatisfied with the amount of compensation awarded while the Jenmies have been seeking

and

and are supposed to have found a means of evading the act; that there is no uniformity in the methods adopted by the Courts for determining the amount of compensation to be awarded, and that the percentage of cases in which compensation is granted has remained almost stationary at about 24 per cent of the number of evictions.

3 In the opinion of the Board proposals for the revision of the Malabar act are not called for pending the passing of the draft Tenancy Bill into law; and questions affecting the relations between landlord and tenant are likely to arise during the progress of the Settlement of the District now being undertaken the decision on which it might be as well to await.

(True Extract)

Secretary

To The Secretary to Govt.
R. D. (with Collectors' letter & one enclosure to be returned).

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(3)

Malabar Collectors office
Camp Mannarghat 31st January 1894

MADRAS GEN. REG. No 231 OF 1894
LAND REVENUE

From,

Herbert Bradley Esq.
Ag Collector of Malabar

To,

The Secretary to the Commissioner
of Land Revenue, Madras.

Sir,

I have the honor to submit the report called for in G.O dated December 11, 1891 No 2530 Judicial upon the working of the Tenants' Improvements Act Malabar. I forward my report through the Board of Revenue because Mr Winterbotham's report, which led to the correspondence upon which the G.O was based was addressed to the Board.

x G.O 702 / 4-2-92

2 The enclosed statement for the three years ending 1892 shows the number of evictions &c and has been prepared from figures furnished by the District Judges on the same lines as the statement printed at page 7 of the G.O under reply which formed the enclosure to the High Courts' letter printed at page 6. It shows that there has been a very considerable increase in the number of eviction suits, that the percentage of cases in which compensation was granted remains about the same, just under 24 per cent for the three years, and that the compensation granted amounted to over 5 lakhs of rupees. The amount of compensation granted per case has increased from Rs 148 to 169.

3 It is therefore clear that the avowed object of the act, namely to check evictions, has not been attained. I have no statistics, and I fear that it would not be easy to obtain them for the 12000 eviction suits which have been before the Courts during the last 3 years to show how many cases the Jenmi himself was the plaintiff or in how many cases the Kanomdar himself was cultivating. But there must be many

cases

taking to entering a very considerably increased rent in renewed leases, and they insert a clause to the effect that a portion of the rent has been remitted for improvements to be effected. Then under Clause (C) of Section 6(1) of the Act the compensation will be materially reduced at eviction. The tenant knows that he will be evicted if he does not consent to the landlord's terms, for the present he has only to pay the old rate of rent, and the next renewal is 12 years off, and without considering the future consequences he can easily be got to consent. In other cases the Jenmi allows the tenant to retain the land for a few years beyond the period of the Kanom and then persuades the tenant into executing a lease in which all or nearly all the trees are entered as Landlords' improvements. I believe therefore that by one means or another after all the Kanoms in the district have been renewed once since the Act was introduced, it will be found that the percentage of eviction suits in which compensation has to be paid will be very small.

9 Upon the whole then I am of opinion that the Act has worked so far favorably for the tenants, but I do not believe its effects will be permanent nor has it tended to give the least additional security to the tenants. It has not checked the practice of giving Melcharths in the very slightest degree. I fear that no legislation will have any permanent effect unless it secures to a Kanomdar freedom from eviction so long as he pays his rent and the customary renewal fees. This can I fear only be done by prohibiting Melcharths, the number of which is said

to be

to be on the increase. The present Act would be considerably improved by the repeal of Clause (C) of Section 6(1) which puts a very dangerous weapon into the hands of the Jenmis.

10 I do not think that the tables of rates are in any way necessary so long as the method of applying them is left entirely to the Courts. It is stated that one of the Munsiffs has recently adopted a practice of deducting half the ascertained value of the improvements by way of compensation to the Jenmi for the capital invested in the land. As long as such a thing is ~~is~~ possible no tables of rates can be of much effect.

I have the honor to be,
Sir,
Your most obedient Servant
Herbert Bradley
Ag Collector

Reg 7/2

BOARD'S SEL. R.S. No 231 OF 1894
LAND REVENUE.

From

The Collector
of Malabar

To

The Secretary to the
Commissioners of Land Rev:
Madras

Dated 31st January 1894
Despd 6 - 2 - 94
Recd

Enclo: one

Reporting on the working of the
Tenants Improvement Act
Malabar

To be returned
to Revenue Board
with reply.

1894
REVENUE DEPARTMENT.
Enclosure No. 2
Current No. 2574

Statement show the years 1890 to 1892

5C-5

Name of Court	1890 1 No. of evictions	2 No. in which no Compensation was awarded	3 Per centage of Col. 2 to 1	4 No. in which compensation was awarded	5 Proportion of Col. 5 to 4	Remarks
North Malabar						
Sub Court N. M. Tellicherry	17	10	58.82	7	1240.53	
Dist Muff Court Cannanore	61	44	72	17	98	
" Tellicherry	210	161	76.6	49	68	
" Taliparamba	83	71	85.54	12	35	
" Badagara	333	235	70	98	138	
" Payyoli	"	"	"	"	130	Established on 1st March 1892
" Koilandy	226	171	75.6	55	63	Redemption suits are not included
" Panur	325	226	69	99	88	
Total	1255	918		337		
South Malabar						
Sub Court Calicut	4	2	50	2	925	
" Palghat	7	5	71.4	2	"	
" Cochin	11	11	100	-	46	
2 Principal Dist Muff Calicut	138	90	65.25	48	130	
3 Additional " "	114	54	47.36	60	100	
4 Dist Munsif Shernad	343	263	76	80	313	
5 " Ernad	246	205	83.3	41	289	
6 " Betutnad	401	348	86.7	53	179	
7 " Kutnad	278	237	85	41	156	
" Chavakkad	314	242	77.07	72	18	
" Angadipuram	258	166	64.3	92	111	
0 " Nedunganad	271	225	83	46	680	
1 " Palghat	335	286	85	49	107	11
2 " Temelprom	251	215	86	36	176	
" Vayitri	1	1	100	"	-	
" Anjengo	-	-	-	-	-	
Total	2972	2350		622		
Grand Total	4227	3268	77	959	166	

1/ G.R. 231/94

Malabar Collr
Calicut 6 Feb

Ag Collector

0/18 5,000—7-9-93.

G.O. No. 2774

Judicial Deptt.

(1894.)

~~REVENUE DEPARTMENT.~~

Current Number. 3577.

Rev. G.O. 890 d/10.10.93 5c
Judl. 2530: 11-12-91 dzt.
" .. 329 : 21.2-89 mis
& papers marked in it.
I.L.R. XIII mad.

From

The Board of Revenue
(Land Revenue).

CHIEF SECRETARY
2 JUN. 1894
GOVERNMENT OF MADRAS

Dated 11 May

Received 16 —
Recd. 2. June

Enclosures 2
Regd — 2 June

No. 2588.

SUBJECT.

Submg. to Govt., with remarks, the Collr's. report on the working of the Malabar compensation for Tenants' Improvements Act, I of 1887.

P.T.O.

6 R

ABSTRACT.

Endorsement No. 2140. Mis.

Transferred to the Judicial Department.

2. With reference to para 3 of the Board's Proceedings read above, the attention of the Judicial Department will be invited to Section 3 of the Madras Tenancy Bill, from which it will be seen that the provisions of the proposed Act will not apply to the Malabar District until they are extended thereto by a notification.

Ootacamund
31st May 1894

R. Ellan

Under Secretary to Govt.

To

The Judl. Deptt.

The Bd. of Rev. (Land Rev.)

No. 176.

Forbes

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15 (9) 7c

Submitted

th June 1894, No. , Judicial.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

G.O. 2774/92. also

~~Read—the following paper :—~~

Proceedings of the Board of Revenue (Land Revenue), dated 11th May 1894, Mis. No. 2588.

Read—the following letter from H. BRADLEY, Esq., Acting Collector of Malabar, to the Secretary to the Commissioners of Land Revenue, dated Camp, Mannarghat, 31st January 1894, No. 161-P. Gl. :—

I have the honour to submit the report called for in G.O., dated 11th December 1891, No. 2530, Judicial, upon the working of the Tenants' Improvements Act, Malabar. I forward my report through the Board of Revenue because Mr. Winter- botham's report, which led to the correspondence upon which the Government Order was based, was addressed to the Board.

2. The enclosed statement for the three years ending 1892 shows the number of evictions, &c., and has been prepared from figures furnished by the District Judges on the same lines as the statement printed at page 7 of the Government Order under reply which formed the enclosure to the High Court's letter printed at page 6. It shows that there has been a very considerable increase in the number of eviction suits; that the percentage of cases in which compensation was granted remains about the same—just under 24 per cent. for the three years; and that the compensation granted amounted to over 5 lakhs of rupees. The amount of compensation granted per case has increased from Rs. 148 to 169.

3. It is, therefore, clear that the avowed object of the Act—namely, to check evictions—has not been attained. I have no statistics, and I fear that it would not be easy to obtain them for the 13,000 eviction suits which have been before the Courts during the last three years, to show in how many cases the janmi himself was the plaintiff or in how many cases the kanomdar himself was cultivating. But there must be many cases in which the person who really expended time and labour upon the improvements was a sub-tenant and in perhaps more than half the cases the plaintiff is the holder of a melcharth.

4. Considering that less than seven years have elapsed since the passing of the Act, and the ordinary period of a kanom lease is 12 years, the full effect of the Act has not yet been reached, because there has, as yet, been no occasion for eviction suits in respect of 5/12 of the leases subsisting before the Act was passed. But I firmly believe that eviction suits will increase steadily until 12 or 13 years have passed since the introduction of the Act and that the position of tenants will, for the reasons given below, be found not to have improved at all when the end of the century arrives. The janmi is anxious that the compensation to be paid upon evicting a tenant should be as low as possible, and it is not difficult to devise a means of keeping it low, or in any case it can be determined once for all at the next renewal and care taken that all future improvements shall be described in the leases as his property.

5. There is no doubt that as things are at present tenants are far better off than they were before the passing of the Act. They are getting much better rates of compensation, but they do not consider that the rates they obtain compensate them in full. The janmis on the other hand look upon the Act with disfavour, as it has appreciably reduced their hold upon their tenants. In some cases it is reported that the amount given in the way of compensation exceeds the janmam value of the land, and it is, I believe, a fact that execution is not taken out at all in a fair proportion of eviction suits owing to the amount that has to be paid as compensation.

6. In North Malabar it is stated that Courts very frequently give higher rates of compensation than those sanctioned in the Government order under reply, but this is attributed to the personal views of the present Judge, who joined the Court in May 1890 and who has his own method of working out the compensation payable. In South Malabar there are no sanctioned rates. But it will be seen at a glance that the average amount of compensation awarded is much greater in South than in North Malabar. The general opinion amongst officials appears to be that the rates of compensation now awarded, though far more favorable to the tenants than the old customary rates, are not high enough to cover the real value of the improvements. But there is, of course, the danger if they become too high of the cost of evictions becoming prohibitive and of janmis thereby losing all control over their tenants.

7. In considering the number of evictions that have taken place since the introduction of the Act, there are two points which require special consideration—one is the impetus to evictions given by the janmis' fear lest Mr. Logan's proposals relating to permanency of tenure should be brought into force which very probably might account for some of the increase in the number of eviction suits; the other is the ruling of the High Court reported at page 454 of Vol. XIII of the Indian Law Reports (Madras Series). Under this ruling, as interpreted by the Courts, the cost of instituting an eviction suit for garden land has very considerably increased. This, of course, would tend to keep down such suits.

8. I now proceed to explain why I believe that the effect of the Act will have almost entirely passed away by the end of the century. As soon as the janmis began to understand the bearing of the Act, they began to devise means of evading it, and they have accordingly taken to entering a very considerably increased rent in renewed leases; and they insert a clause to the effect that a portion of the rent has been remitted for improvements to be effected. Then under clause (*c*) of section 6 (1) of the Act, the compensation will be materially reduced at eviction. The tenant knows that he will be evicted if he does not consent to the landlord's terms; for the present he has only to pay the old rate of rent, and the next renewal is 12 years off, and without considering the future consequences he can easily be got to consent. In other cases the janmi allows the tenant to retain the land for a few years beyond the period of the kanom and then persuades the tenant into executing a lease in which all or nearly all the trees are entered as landlord's improvements. I believe, therefore, that by one means or another after all the kanoms in the district have been renewed once since the Act was introduced, it will be found that the percentage of eviction suits in which compensation has to be paid will be very small.

9. Upon the whole, then, I am of opinion that the Act has worked so far favorably for the tenants, but I do not believe its effects will be permanent nor has it tended to give the least additional security to the tenants. It has not checked the practice of giving melcharths in the very slightest degree. I fear that no legislation will have any permanent effect unless it secures to a kanomdar freedom from eviction so long as he pays his rent and the customary renewal fees. This can, I fear, only be done by prohibiting melcharths, the number of which is said to be on the increase. The present Act would be considerably improved by the repeal of clause (*c*) of section 6 (1), which puts a very dangerous weapon into the hands of the janmis.

10. I do not think that the tables of rates are in any way necessary so long as the method of applying them is left entirely to the Courts. It is stated that one of the munsifs has recently adopted a practice of deducting half the ascertained value of the improvements by way of compensation to the janmi for the capital invested in the land. As long as such a thing as this is possible, no tables of rates can be of much effect.

ENCLOSURE.

STATEMENT showing the Eviction suits in the North and South Malabar during the years 1890 to 1892.

Name of Court.	1890.						1891.						1892.					
	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6
	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.
					RS. A. P.						RS. A. P.						RS. A. P.	
North Malabar.																		
1. Sub-Court, North Malabar, Tellicherry ..	17	10	58·82	7	8,754 8 5	1250·64	14	7	50	7	2,674 2 2	382·01	22	19	86·36	3	3,721 9 8	1240·53
2. District Munsif's Court, Cannanore	61	44	72	17	1,479 0 0	87	54	33	61	21	2,704 0 0	128	40	13	32	27	2,651 0 0	98
3. District Munsif's Court, Tellicherry	210	161	76·6	49	3,937 4 9	80	201	164	81·09	37	6,546 4 10	176	141	117	82·97	24	1,639 7 9	68
4. District Munsif's Court, Taliparamba ..	83	71	85·54	12	1,038 1 10	86	96	87	90·62	9	564 6 4	62	129	112	86·82	17	601 10 6	35
5. District Munsif's Court, Badagara.	333	235	70	98	10,247 0 0	104	294	188	64	106	8,363 0 0	78	351	221	62	130	18,063 0 0	138
6. District Munsif's Court, Payyoli *.	..	..	..	..	..	..	..	..	..	..	..	..	279	171	61·29	108	14,048 13 5	130
7. District Munsif's Court, Koilandy†	226	171	75·6	55	2,778 4 11	50	174	138	79·3	36	2,630 12 7	73	143	106	74·1	37	2,366 2 1	63
8. District Munsif's Court, Panur ..	325	226	69	99	10,243 0 2	103	267	166	62	101	8,480 7 2	83	232	161	69	71	6,275 7 0	88
Total ..	1,255	918	73·1	337	38,477 4 1	114	1,100	783	71·2	317	31,963 1 1	101	1,337	920	68·8	317	49,367 2 5	156
South Malabar.																		
9. Sub-Court, Calicut	4	2	50	2	4,246 6 3	2,123	3	3	100	..	..	..	6	2	40	3	2,776 2 0	925
10. " Palghat	7	5	71·4	2	9,286 14 9	4,643	3	1	33·3	2	1,050 4 8	525	4	1	..	..	..	..
11. " Cochin.	11	11	100	..	..	..	7	6	85·6	1	146 0 0	146	8	6	75	2	93 0 0	46
12. Principal District Munsif, Calicut .	138	90	65·25	48	5,836 8 6	121	161	103	63·97	58	5,543 0 2	95	176	133	75·56	43	5,617 0 0	130

* Established on 1st March 1892.

† Redemption suits are not included.

87

Statement showing the Eviction suits in ~~the~~ North and South Malabar during the years 1890 to 1892—*cont.*

Name of Court.	1890. 1 Number of evictions.	1890. 2 Number in which no compensation was awarded.	1890. 3 Percentage of columns 2 to 1.	1890. 4 Number in which compensation was awarded.	1890. 5 Total amount of compensation when given. RS. A. P.	1890. 6 Proportion of columns 5 to 4.	1891. 1 Number of evictions.	1891. 2 Number in which no compensation was awarded.	1891. 3 Percentage of columns 2 to 1.	1891. 4 Number in which compensation was awarded.	1891. 5 Total amount of compensation when given. RS. A. P.	1891. 6 Proportion of columns 5 to 4.	1892. 1 Number of evictions.	1892. 2 Number in which no compensation was awarded.	1892. 3 Percentage of columns 2 to 1.	1892. 4 Number in which compensation was awarded.	1892. 5 Total amount of compensation when given. RS. A. P.	1892. 6 Proportion of columns 5 to 4.
South Malabar—cont.																		
13. Additional District Munsif, Calicut ..	114	54	47·36	60	7,071 0 0	118	158	71	44·93	87	9,632 0 0	111	121	46	38·01	75	7,515 0 0	100
14. District Munsif, Shernad ..	343	263	76	80	13,887 0 0	173	319	264	82	55	6,753 0 0	122	387	346	89	41	12,873 0 0	313
15. District Munsif, Ernad ..	246	205	83·3	41	7,792 10 6	190	218	183	83·9	35	20,230 3 5	578	296	253	85·4	43	12,465 14 11	289
16. District Munsif, Betutnad ..	401	348	86·7	53	26,206 10 2	494	331	249	75·2	82	15,522 3 3	189	355	289	81·4	66	11,877 12 4	179
17. District Munsif, Kutnad ..	278	237	85	41	7,232 0 0	176	328	279	85	49	11,285 0 0	230	310	273	88	37	5,786 0 0	156
18. District Munsif, Chavakkad ..	314	242	77·07	72	8,929 1 9	124	328	225	68·59	103	13,339 14 5	129	329	224	68·08	105	1,930 15 3	18
19. District Munsif, Angadipuram.	258	169	64·3	92	10,190 7 4	92	279	164	58·7	115	6,786 13 7	115	340	230	67·6	110	4,566 13 10	111
20. District Munsif, Nedunganad.	271	225	83	46	16,550 0 0	360	328	287	87	41	30,722 0 0	749	353	279	84	54	36,697 0 0	680
21. District Munsif, Palghat ..	335	286	85	49	5,853 0 0	119	292	250	86	42	6,734 0 0	160	287	240	84	47	5,052 0 0	107
22. District Munsif, Temelprom ..	251	215	86	36	9,790 5 8	272	267	235	88	32	9,062 7 10	283	306	282	92	19	3,337 11 8	176
23. District Munsif, Vayitri	1	1	100	..	..	..	8	8	100	..	..	..	5	5	100	..	..	..
24. District Munsif, Anjengo ..	..	..	..	..	..	..	2	2	100	..	..	..	..	..	..	..	..	..
Total ..	2,972	2,350	79·1	622	1,32,872 0 11	214	3,032	2,330	76·8	702	1,36,806 15 4	195	3,283	2,609	79·5	645	1,10,588 [illegible] 0	171
Grand Total ..	4,227	3,268	77	959	1,71,349 5 0	178	4,132	3,113	75	1,019	1,68,770 0 5	165	4,620	[illegible]	76·4	962	1,59,965 8 5	166

86 36

4620) 353[illegible] (76·4

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19 (11)

Resolution—dated 11th May 1894, Mis. No. 2588.

The Collector's report on the working of the Malabar Compensation for Tenants' Improvements Act I of 1887 will be submitted to Government with reference to paragraph 4 of G.O., No. 2530, dated 11th December 1891.

2. The report proves little beyond the facts that the number of eviction suits has enormously increased; that the tenants are dissatisfied with the amount of compensation awarded, while the janmis have been seeking, and are supposed to have found, a means of evading the Act; that there is no uniformity in the methods adopted by the Courts for determining the amount of compensation to be awarded, and that the percentage of cases in which compensation is granted has remained almost stationary at about 24 per cent. of the number of evictions.

3. In the opinion of the Board, proposals for the revision of the Malabar Act are not called for pending the passing of the draft Tenancy Bill into law; and questions affecting the relations between landlord and tenant are likely to arise during the progress of the settlement of the district now being undertaken, the decision on which it might be as well to await.

(True Extract.)

(Signed) L. M. WYNCH,
Secretary.

To the Secretary to Government, Revenue Department.

Mis. No. 2140.

Transferred to the Judicial Department.

2. With reference to paragraph 3 of the Board's Proceedings read above, the attention of the Judicial Department will be invited to section 3 of the Madras Tenancy Bill, from which it will be seen that the provisions of the proposed Act will not apply to the Malabar district until they are extended thereto by a notification.

(Signed) R. C. C. CARR,
Under Secy. to Govt.

OOTACAMUND,
31*st May* 1894.

To the Judicial Department.
„ Board of Revenue (Land Revenue).

(12)

Jud^l. DEPARTMENT.

21

No. 2774.

R. D.

From

Dated 31 May 1894.

FOR ORDERS.

This current contains the views of the Collector of Malabar upon the working of the Compensation for Tenants' Improvements Act, I of 1887. The delay in submitting it is due to its having been put in type & to its having been incompletely referenced in the first instance. As the matter is one of considerable importance it seems advisable to give a short history of the enactment. Fuller particulars appear on pages 129–155 of the Report of the Malabar Land Tenures Committee.

2. In 1880 a Moplah outrage occurred in the Walavanad Taluk & Mr. MacWatters, the Collector, gave it as his opinion that the outrage was due primarily to agrarian discontent. This view receiving confirmation from other sources, the Govt., in *G.O. of 5 Feb. 1881, No. 281, Jud^l., placed Mr. Logan on special duty to report on

(1) the general question of land tenure;

It is quite impossible for me to take up a complicated question of this kind while I have the Tenancy Bill on hand — I should have thought that this would have been known in the Office.

I should say that, under the Cir^ces the papers had better go to the Hon. Mr. [illegible] first —

30/7/94

It seems to me quite clear from the Currents that the Act I of '87 (wh. was intended to secure to Malabar tenants the market-value of their improvements, & so to check evictions) needs amendment, though "at present tenants are far better off than they were before the passing of the Act" & the amount that has now to be paid as compensation is so great "that execution is not taken out at all in a fair proportion of eviction suits." The matter is an important one

* In volume "Malabar Land Tenures", p. 28.

2

(2) the question of compensation for tenants' improvements; &

(3) the question of granting sites for mosques & burial grounds.

Mr. Logan submitted in June 1882 a lengthy report, the burden of which was that legislation for the protection of the tenant against the landlord was essential. The report is summarized in the Précis printed at pp. 129–155 of the Malabar Land Tenures Committee's Report.

An enormous mass of opinions* regarding Mr. Logan's Report having been obtained by Govt., it was decided in G.O.* of 29 Jan. 1884, No. 53, Pol., to appoint a Committee consisting of Sir T. Madhava Rao, Mr. Logan, Mr. Wigram, C. Sankaran Nayar & P. Karunakara Menon to advise Govt. on the whole matter. The Committee met at once &, so critical did it consider the state of affairs to be, that in March 1884 it forwarded to Govt. a draft Bill designed to stay all evictions pending settlement of the general question. This Bill which is printed on pp. 116 & 117 of "Malabar Land Tenures" was kept on the stocks so long that its raison d'être disappeared & it was never passed into law. It is unnecessary to allude to it

& I know so little of the peculiarities of Malabar that I should hesitate to take action on Mr. Bradley's sole opinion. The Board thinks the revision of the act should be deferred till further information has been acquired in the course of the Settlement. The subject has, however, been fully reported on by two powerful committees & there is an immense mass of information & opinion on record which has been obtained from persons as well qualified as any we can select now, so that I do not think anything would be gained by further inquiries or by waiting for the Settlement. The Bd says, too, that the revision is not called for pending the passing of the Tenancy Bill into law, but in the first place the Tenancy Bill is not yet settled & is not likely to pass into law soon, and in the second place the idea now is that it will not apply to Malabar. The papers seem to me to show that the Compensation Act may be amended at once, & that Moplah outbreaks are ~~[illegible]~~ fostered by the exactions of the landlords, so that speedy action is desirable.

The points to which Mr. Bradley calls attention are 1st that the

500—20-6-91.

main object of the act, viz the checking of evictions has not been attained; 2d that in renewing leases the jenmis enter a considerably increased rent, & insert a clause to the effect that a portion of the rent has been remitted for improvements to be effected, whilst they sometimes let the tenant retain the land for a few days years beyond the period of the kanam & then get him to execute "a lease in which all or nearly all the trees are entered as landlord's improvements; and 3d, that a kanamdar should be freed from eviction so long as he pays his rent & the customary renewal fees, that Melcharths or Melkanams shd be abolished, & that renewal fees should be regulated & fair rents insisted on.

As regards the first point, there is some doubt as to the statistics, but I do not think we need wait for them to be corrected or supplemented. It is evident that evictions have not been much checked and are increasing in number, though the extent to which they have increased is uncertain. One reason is the low value of compensation. Tables of Rates have been laid down under Sec 6 (2) for 6 out of the 20 Munsiffs' charges of Malabar, but they do not represent the market value. The wording of the clause makes it uncertain as to what

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further.

In July 1884 the Committee submitted its main report which is printed on pp. 120–160 of "Malabar Land Tenures". It also submitted a subsidiary report (printed on pp. 160–168 of the same compilation) dealing with Malabar marriage & the Grant of sites for mosques. This subsidiary report need not be considered any further; of the Bills it gave cover to one (to control the erection of mosques etc.) has been abandoned & the other (relating to marriage) is still a matter of debate.

The essence of the main report is given on pp. 140–143 of the Précis appended to the Malabar Land Tenures Committee's Report. It gave cover to a Bill of a far-reaching character the main objects of which were (1) to secure the occupancy right of certain tenants, (2) to regulate the amount of rent demandable, (3) to provide for the payment of compensation

* All printed on pp. 29–115 of "Malabar Land Tenures".

* Printed at p. 116 of "Malabar Land Tenures".

for improvements effected by tenants & (4) to authorize the grant of waste on cowle by the Collector.

This main report, with the draft Bill annexed thereto, was referred to the High Court & the Adv: General for opinion in G.O.* of 29 July 1884, No 500, Pol.

A few weeks after, Mr Logan proposed to amend the Malabar Tenancy Bill prepared by the Committee in view to rendering its provisions even more extensive & his proposals,* with the remarks* of the other members of the Committee thereon, were also sent to the High Court & the Adv: Gen: for opinion.

After a delay of a year the High Court reported adversely to the proposals of the Committee for the enactment of a Malabar Tenancy Act & the Govt, thereupon, appointed another Committee to reconsider the question in G.O.* of 17 Sept. 1885, No 650, Pol.

This, the Second, Committee* reported on the 19th Feb. 1886 that it had decided that legislation ought to be undertaken for the purpose of securing due compensation to evicted tenants & forwarded a draft Bill, designed with this object, to Govt. But the Second Committee's main Report is dated the 22nd Feb. 1887 & is to the following

kind of value the compensation shd be calculated & the High Ct has decided how compensation is to be fixed when there is no evidence as to market-value. I don't think it will be of any use to fix rates. They must fail to have the desired

* printed on p. 160 of "Malabar Land Tenures".

effect so long as the method of applying them is left entirely to the Courts. As Mr Bradley says, "it is stated that one of the Munsiffs

* Printed on pp. 169–207 of "Malabar Land Tenures".

has recently adopted a practice of deducting half the ascertained value of improvements by way of compensation to the Janmi for the capital invested in the land". I believe it will be best to add an additional clause to Sec 6(1) like that in Sec 137(1)

* printed on pp. 227–228 of "Malabar Land Tenures".

* Committee's letter printed in G.O. of 19 Feb. 1886, No 37, Leg.

of the Tenancy Bill viz "d. In the case of trees or plants the probable market value of the same". If assessors are appointed at all under Sec 5(2) R 5 a day seems too much to give them as pointed out in Ramakrishna's [illegible] book the system is very

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seldom resorted to & it is thought that it adds unnecessarily to the costs of the trial without any adequate return." The Malabar Courts generally appoint a Commissioner to assess the value of improvements under Sec 392 CPC. There seems to be no objection to this but the High Court might be asked if they advise any rule under Sec 392 CPC, wh gives the local government power to make rules as to the persons to whom such commissions shall be issued.

As regards the second point to wh Mr Bradley calls attention I do not think any action is required. Sec 6(1) c says remissions of rent granted on account of improvements are to be taken into consideration in calculating compensation, but this is only to be one of the circumstances taken into consideration, & I think the Courts can be trusted to deal properly with cases in which fictitious rents are entered in leases with a view to evade the law. Like the C.S. I do not quite understand the second mode of evading the law described by Mr B. but it cannot be often put in force & may be disregarded. In such cases it will be fair to let the tenant take care of himself.

As regards regulating renewal fees & ensuring fair rents something must be done

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ffect:—

(1) the Committee divided the subjects under discussion into two groups, viz, those relating to compensation for improvements & those relating to occupancy right;

(2) the Committee was unanimous that legislation as to compensation for improvements was called for but divided on the question whether any further legislation was requisite;

(3) the majority however decided in favour of further legislation & drafted a Bill of a very mild character which contained provi regarding (i) notice pri to eviction (ii) payment rent into Court in a ance of forfeiture (iii) gra of waste by the Collect on patta to small cultivators & (iv) the preventi of capricious evictio of persons holding w

on cowle or patta granted by Govt.; the Bill made, however, no attempt to deal with the question of occupancy right a matter which the Committee considered it expedient not to touch.

Thus the outcome of the laborious investigations & voluminous corres[illegible]ence between the years [illegible] & 1887 consisted of two small Bills, the one to regulate the grant of compensation for improvements, the other to prevent the locking up of waste & to give some slight security against capricious evictions. The fate of the two Bills was different for, whereas the former, after undergoing certain modifications, became Madras Act I of 1887, the latter, after being introduced into the Legislative Council & after being referred to & reported on by a Select Committee, was allowed to lie over for several years, was adversely criticised in para. 9 of G.O. of 3 Dec. 1891, No. 1152, Rev., & was finally removed from the list of Legislative business at the end of 1893 by H.E.'s order & with the approval of the Hon Messrs Garstin & Bliss.

The circumstances which led to the enactment of Act of 1887 having been described few remarks regarding the [illegible]ture of that law will not

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be out of place.

It begins by declaring that its object is to secure for tenants the market value of their improvements. It then proceeds to define 'Tenant', 'Landlord' & 'Rent' & the only point to notice here is that the definition of 'Tenant' is so broad as to cover the holder on 'Otti' tenure i.e. the usufructuary mortgagee who pays no rent or a merely nominal one. Section 3 gives a list of the works which are to be presumed to be improvements in the absence of proof to the contrary. This list includes the three classes of improvements known as 'plantations, fixtures & tillage' which are recognized both in English & old Malabar law. The most important points to notice in sec. 3 are that compensation is not payable for improvements which are unsuitable or inconsistent with the purpose for which the land was let & that compensation is pay

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but this matter may be left for future consideration. It is evident that the Jenmi can do what he likes in the way of imposing oppressive exactions on tenants at renewals unless renewal fees are limited. The tenants must get land, so there is no freedom of contract & the law ought to protect them. The first Committee proposed that renewal fees shd be restricted to a maximum of one year's net produce minus the land revenue. At the meeting of the second Committee reported at page 81 of the book the following section was agreed to by Mr Sankaran Nair Mr Muthusami Ayyar "Section 6. [illegible] renewal fees shall be the fees fixed by the parties by express agreement between them, if any, & in accordance with the custom of the country — Provided that the renewal fees shall in no case exceed 20% of the kanam amount, or in other cases than those of kanam the renewal fee shall in no case exceed one year's net produce less the land revenue. Four members voted in favour of the motion & 4 against it. The proposal of the first committee seems to me to be the best, but I wd ask the High Court & the Collr about this. The circumstances of North & South Malabar may call for different treatment. As regards fixing fair rents, this may possibly be provided for by extending some of the provisions of the Tenancy

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From

Act to Malabar. The Jenmis seem to intend to impose all the settlement increase on their tenants and this must be prevented. I observe that in para 16 of the Note printed at page 49 of the Book on Malabar Land Tenures Sir C. Hutchins said that when the Act VIII of 1865 came to be revised the propriety of so modifying it as to suit Malabar shd be considered, that the right of distraint shd not be introduced unless it exists by ancient rule, that the revenue officials shd be made to enforce the terms of tenancy instead of the Courts, & that it might be declared in Sec 11 that the local usage of Malabar is that the cultivator shall pay 2/3rds of the net produce. He also says in para 17 that parts of the Bengal Tenancy Act shd be applied to the whole of the Presidency including Malabar. I agree with what is said in the Note as to the undesirability of prohibiting melcharths.

To recapitulate —

I would add a clause to Sec 5(1) of Act I of 87 distinctly providing for calculating compensation for trees on their market value.

I would cancel the Tables of Rates now sanctioned under Sec 6(2) & ask the High Court if any ~~raites~~ rules should be promulgated about compensation

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To recapitulate —

I would add a clause to Sec 5(1) of Act I of 87 distinctly providing for calculating compensation for trees on their market value.

I would cancel the Tables of Rates now sanctioned under Sec 6(2) & ask the High Court if any ~~[illegible]~~ rules should be promulgated about compensation even for a natural growth of trees if the same have been protected or maintained by the tenant. Sections 4 & 5 declare that Courts decreeing eviction must determine the compensation payable & make eviction conditional upon payment thereof, notwithstanding any custom to the contrary. Section 3 also empowers Govt. to make rules for the appointment of assessors for the purpose of estimating the value of improvements & rules have been framed accordingly (vide G.O. of 16 Apl. 1888, No 900, Ltd). Section 6 explains the principle upon which the amount of compensation is to be fixed & empowers Govt. to prepare tables showing rates of compensation for trees & plants; acting under this section, Govt. has (G.O. of 11 Dec. 1890, No 2530, Ltd) fixed the rates payable for trees & plants in the Munsifis of Tellicherry, Cannanore, Kavai, Badagara, Painad & Nadapuram. These rates, it should be noticed, have only a presumptive force. Section 7 prevents a tenant from contracting himself out of the benefits conferred by the Act & Sec. 8 saves all existing rights to compensation for improvements not falling within the scope of the Act. Inasmuch as the question whether the Act needs amendment has now to be settled, it will not be out of place

Commissioners under Ch. 32 C.P.C.

Further I wd. take into consideration the propriety of extending some parts of the Tenancy Bill to Malabar, of limiting the renewals fees & of fixing fair rents.

J.G.
13/8

With refce. to my hon. Colleague's suggestion that in S. 11 of Act VIII of 1865 (or the corresponding section of the new law, if passed) a provision might be inserted that the local usage of Malabar was that the cultivator should pay (as rent) 2/3 of the net produce, it appears to me that any refce. in the law of the future to the net produce will lead to a great deal of litigation; and that it would be far better if we could base the cultivators' rent on the assessment to be fixed in the new settlement. The position of the Malabar tenants is in many ways similar to that of the sub-tenants of Bengal, whose case we considered the other day in refce. to the Tenancy Bill – I then held (and I think my hon. colleague agreed) that in our ordinary districts we have no sub-tenants & whose case we could apply the Bengal rule that a subtenant cannot be charged more than a certain proportion (50% I think, if on a written doct., & 33% otherwise) more than the rent paid by the person under whom he holds. But, though we do not require the rule elsewhere, it strikes me that it would exactly fit the circs. of Malabar. The Bengal proportion generally over the original rent to be charged to the subtenants would probably be too low. But a law that a Malabar tenant should not be charged more than double the assessment imposed on the land by Govt., except under the special orders of the Collr. in consideration of improvements made or acquired by the Jenmi & let with the land (e.g. a lot of bearing trees acquired by the Jenmi on payment of compensation on the ejectment of the former occupant), would, I think, be equitable. If the tenants' rent could be fixed in this way, instead of by refce. to the net produce, the position wd. be pretty simplified.

I have noted on the other points raised in the papers, below.

W.S.

I have noted more than once that I think the points raised in these papers shd. be referred to the High Court for their opinion. We should get the statistics called for from the Collector & I.G. of Regisn. & if they show that the Jenmis are making their tenants liable for any additional assessment wh. may be imposed, ask them what remedy they wd. propose. In referring the tables to them, they shd. be asked how they wd. suggest the improvement of Act I. of 87 generally – giving them the figures wh. we shall now get from the Collector as to the real number of evictions. The other amendments proposed & the legal points raised should also be referred to them.

When these points are answered, I think we shall be in a better position to judge how to deal with the vexed

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to mention here some of the principal objections which were taken to the measure before it was passed into law. Before doing so, however, it is considered advisable to draw attention to two points, viz;—

(1) the principle of the Bill was not novel although its effect was to extend the scope of the law; the right of a Kánomkár or any superior tenant to compensation for unexhausted improvements was undisputed & had been acknowledged for centuries, but the rights of the 'Verumpáttam Kár', or holder on a yearly lease, & of other inferior tenants were denied; the Bill set the matter a rest by putting all ten on the same footing.

(2) a copy of the B originally drafted by the Committee in 1886 forms Enclosure to the original of G.O. of 19 Feb. 1886, No 37, Lg; this Bill declare

that the Court shall decree a fair compensation having regard to the present market-value of the improvement & with reference to certain other considerations & defined the word "improvement" to mean a "work, tree or plant"; but the Advocate-General proposed an amendment which had the effect of defining improvement as a 'work' merely & omitted the distinct reference to market-value; the Adv.-General's proposals were referred to the Committee for remarks & it will be seen from the correspondence printed in G.O. of 22 March 1886, No. 53, Leg., that Mr. H. S. Stokes & Sir T. Madhava Rao objected strenuously to the Adv.-General's proposals on the ground that they would obscure the fact that the outgoing tenant is Entitled to the full market-value of the trees & plants; in spite of these protests, however, the Bill was passed into law in, substantially, the form proposed by the Adv.-Gen. turn now to the objections ged by parties interested . the Bill was before the Council. A few of ections raised were met alterations in the Bill & need not be alluded to; the it may be summarized as

question of landlord & tenant in Malabar, for so far as I can judge we have not sufficient information wh. wd. enable me to decide whether we should simply amend Act I. of 87 or introduce a Malabar Tenancy Act or both.
The information required shd. be expedited, as the Malabar Settlement is coming on for final orders.

W.

4 Sep

Let the hon Mr. Grose see this.

W

I agree with HE that after obtaining the statistics and information to wh. he alludes we shd get the opinion of the High Court.

I am inclined to agree with the Hon Mr Bliss that we shall need a separate Tenancy Act for Malabar, dealing with renewal fees & fair rents; but it will take time to get this through the Legislative Council, & in the meanwhile — if the information we are now to get satisfies us that Jenmis are imposing all the Settlement increase on their tenants by contract — we shd get a short Act* passed declaring all such contracts null & void.

JG 8/9

* Such an Act as well as I of 1887 could ultimately be repealed & re-enacted as a part of the more comprehensive Malabar Tenancy Act.

22/9/94

follows:—

(1) it has always been the custom, when calculating the sum payable to the outgoing tenant as compensation for improvements, to deduct a certain proporti which might be as much as 50 per cent & varied according to locality as the Jenmi's share;

This objection appears to be correct to some extent for, although the member in charge of the Bill (S. Subramanyam) says in the Statement of Objects & Reasons that the antiquity & certainty of the alleged custom of division is not established, there is ~~[illegible]~~ evidence to the contrar See, for example, Wigram's "Malabar Law & Custom"—page 140, & pages 319-358, passim, of the Appendices to Mr. Logan's Report. The existence of the custom must be admitted, apparently, but it was evidently not universal.

(2) The principal complaint in Malabar is, not that the rates of compensation allowed by custom are inadequate, but that the valuation of improvements is made by ignorant or dishonest Commissioners appointed by the Courts;

The Courts are vested with power to appoint Commissioners for the purpose of valuing improvements etc. by secs 392 & 393 of the Civil Procedure Code. Act I.

If not universal, how was it a custom?

DB

Apparently it was the custom in certain localities, but not in all. W

1887 leaves this power unaffected although sec. 11 thereof ~~gives the Court power~~ requires the Court to associate assessors with itself in accordance with rules to be framed by Govt. These rules (G.O. of 16 Ap. 1888, No. 902, Jud.) declare that Assessors shall be appointed on requisition of any of the parties in cases where the compensation exceeds R. 250, provide for their making a local investigation if the Judge considers it necessary & allow for a payment of R. 5 per diem to the Assessors for their services. It might have been anticipated that these rules would sufficiently meet the objections urged against the appointment of Commissioners but it is not so apparently, for on pages 20 & 21 of Rama Krishna Aiyar's annotated edition of Act I of 1887 it is shown that the provisions of the law relative to the appointment of Assessors have remained to all intents & purposes a dead letter, mainly, it would seem, in consequence of the high rate of remuneration allowed by the rules to Assessors.

(3) It is not just to allow the full market-value of trees of spontaneous growth to the tenant; he spends nothing on them & their growth may be simply the result of his

want of husbandry;

There is obviously weight in this objection but the Select Committee was so far from accepting it as valid that it amended the draft Bill so as to make it still clearer that full compensation must be paid for trees of spontaneous growth protected or maintained by the tenant.

i.e. Sub Cl 2 (i) of Sec 3
JG

Other objections were, of course, urged, e.g., that the landlord might be improved out of his holding & that the tenant might make improvements in opposition to the landlords' wishes. Objections of this kind attend all legislation relating to tenants' improvements & do not need to be specially considered here. ~~Another objection to the Bill which was not pressed so forcibly as it might have been was that it ignored the distinction between those tenures of [illegible] & [illegible]~~

The Report of the Select Committee & the discussions in the Legislative Council regarding the Bill are brief & unsatisfactory but it must be assumed that the objections urged by the Janmis received due consideration. It has, however, been deemed advisable to allude to them in this note, because they ought not to be lost sight of when deciding upon the propriety or other of amending Act I of 1887 so as to enhance the security of the tenant.

4. It is now time to turn to the current.

In December 1889 the High Court forwarded for the sanction of Govt. under sec. 6(2) of the Act, six tables of compensation-rates to be paid for trees & plants in the munsifis of North Malabar.

The tables were referred to Mr. Winterbotham, Collector of Malabar, for remarks; he replied, & the Board agreed with him, that the proposed rates were utterly inadequate. After a further reference to the High Court, the Govt. sanctioned the proposed rates but observed that the Act seemed to afford inadequate protection to the tenant & that it might be necessary to resort to further legislation. The Collector was then directed to report again upon the matter at the close of 1893 & his report forms Current No. 2774.

The questions now to be decided are the following:—

(1) What is the object of the Act?

(2) Has this object been attained?

(3) If not, what is the cause of the failure?

(4) Should steps be taken to ~~supply~~ prevent such failure in future?

(5) If so, what should these steps be?

These questions are discussed below.

5. What is the object of the Act?

It will be seen from the Hon. Mr. Master's letter read in G.O. dd 19 Feb. 1886, No. 37, Leg, & from the Report dd 22 Feb. 1887 of the Committee upon Malabar Land Tenures that the object of the Act was twofold, viz,

(1) to secure to tenants the full market value of their improvements &,

(2) by securing to tenants the full value of their improvements, to check the growing practice of eviction.

6. Has this double object been secured?

(1) Firstly, have tenants been secured the full market-value of their improvements?

[illegible]

This question is of course unanswerable for, though we know what the tenants have received, there are no means of ascertaining to what they were entitled. It would be fair to assume that a sudden increase in the number of cases in which compensation was paid & in the sums so paid, occurring in 1887 was due to the action of Act I of 1887; but, unfortunately, we have no statistics whatever for the years preceding 1887 & cannot, therefore, say whether compensation is now awarded more freely than it was before the passing of the Act. The statistics for the years subsequent to the passing of the Act present nothing significant. They show that, in 1887, compensation was awarded in 24·5 per cent of the eviction cases & that the average sum awarded in each case amounted to R.109; while, in 1892, the corresponding figures were 24 per cent & R.166, this last figure being lower than those reached in 1889 (R.202) & 1890 (R.178).

(2) Secondly, has the tendency to evict received a check?

We know from Mr. Logan's Report (p. xxxvii) that the average number of persons against whom decrees of eviction were annually passed was 1,591 in 1862–66, 3,480 in 1867–71, 6,286 in 1872–76 & 8,356 in 1877–80 & it was these figures which were mainly depended upon as a demonstration of the necessity for legislation. For the period 1881–86 we have, unfortunately, no figures & the statistics

for 1887–1892 do not admit of immediate comparison with those for 1862–80 for, whereas Mr. Logan's figures indicate the number of persons against whom eviction was decreed, the figures in G.O. of 11 Dec. 1891, No. 2530, Judl., & in the current seem to relate to the number of suits in which eviction was decreed. During the period 1887–92 there has certainly been no decline in the number of suits wherein eviction was decreed; indeed the figures for 1890–2 are much higher than those for 1887–9 as shown below:—

1887	2,819	1890	4,229
1888	2,441	1891	4,132
1889	2,629	1892	4,620.

If then, as we must assume to be the case, Mr. Bradley's figures for 1890–92 refer to the same facts as the High Court's figures for 1887–9, it is clear that Act I of 1887 has failed to check evictions to the extent that was anticipated, though, for want of figures, we cannot say whether it has not been productive of some effect upon the eviction returns.

On the other hand Mr. Bradley's opinion that tenants are far better off than they were before the passing of the Act & that execution is in many places not taken out at all in consequence of the magnitude of the compensation awarded is* testimony that the Act has not

* But in para. 8 of his letter on the Moplah outrages (d/ 6 June 94) Mr. B. says that Act I of 1887 has been of little use.

been altogether ineffective.

27. What are the causes of the partial failure of the Act?

The most obvious cause is that inadequate compensation is being awarded to the tenant. Mr. Winterbotham was of opinion (*vide* his letter read in G.O. of 11 Dec. 1891, No. 2530, Judl.) that the Act is being construed in the most illiberal spirit, & that the Explanation to Section 6 enables the Courts to ignore the intention of the Legislature to give the full market-value of the improvements to the tenant. As regards "fixtures & tillage" we have no means of ascertaining the truth of Mr. Winterbotham's strictures but it is highly probable that they are just, for we find Mr. Twigg, in his letter read in the aforesaid G.O., expressing views as to the compensation due to the tenant which are quite inconsistent with the intention of the Act & we further find the *High Court (p. 424 et seq. I.L.R. XIII, Madras) deciding how compensation should be calculated in the absence of evidence as to the market-value of the improvements, whereas it was intended by the Legislature that the market value should be ascertained in every case.

As regards "plantations" there is no doubt that the scale

* It appears too from ~~[illegible]~~ Mr. Hindley's letter that one of the Dt. Munsifs has actually so far overlooked the intention of the Act as to divide the compensation in equal shares between the landlord & the tenant.

39

of rates sanctioned by Govt. in G.O. of 11 Dec. 1891, No. 2530, Judl., does not represent the market-value or anything like the market-value of the trees. Take, for instance, the Tellicherry Munsifi; here the value of the very best class of cocoanut tree (Âttuvappu) is fixed at R.3, which, as Mr. Winterbotham remarks, is but little more than the value of one year's produce. Seeing that a cocoanut palm on Âttuvappu land bears for* 30 years at least & costs less than* 4 annas (a year) to maintain after the seventh year, it is plain that its market value must be infinitely more than R.3 when less than 12 years old (12 years is mentioned as that is the period of the Kánom lease). It may be asked why such extraordinarily inadequate rates for trees were proposed. The answer is, I think, not far to seek. It has already been observed that the principle of compensation for improvements was fully recognized before Act I of 1887 was passed but, before that enactment, the rates of compensation for trees were fixed according to an ancient, arbitrary & utterly inadequate scale. This scale varied locally to a great extent but the main distinc

* For particulars see pp. 396 & 397 of Vol. II of Mr. Logan's Report.

cy between North & South Malabar, the rates in the South being generally far higher than those prevalent in the North. Whether this difference was attributable to the distinction between the Kánom (mortgage with possession) of the North & the Kánom (lease) of the South, or whether it was due to the maintenance of the old customary rates in the North & the gradual adoption of a more reasonable scale in the South, is not certain & does not matter much. The important fact is that this difference did exist & does still exist; for the statistics now furnished show that the average compensation awarded in the South is far higher than in the North although ~~[illegible]~~ the rates show a tendency to approximate.* The ingrained idea§§ that tenants in the North of Malabar are entitled only to low customary rates of compensation for trees & not to their full market value may account for the extraordinarily inadequate rates of compensation proposed by the District Munsifs of North Malabar & accepted by Govt.

Another cause for the partial failure of the Act which has been suggested is the impetus given to evictions by the fear lest Mr Logan's proposals to give the tenant occupancy-right should be acted upon. It is doubtful if this suggested cause can have had any effect for the idea of legislating to give the tenant fixity of tenure has been abandoned since the Committee on Malabar Land Tenures reported against it in February 1887.

Mr Bradley also considers that the custom of granting mélkánom (or, as he calls them, mélcharths) prevents the Act from conferring its full benefits. Regarding the mélkánom please see p. 120 et seq. of Wigram's "Malabar Law" & p. 63 of Rámákrishna Aiyar's annotated edition of the Act. A mélkánom is a mortgage of the equity of redemption of a holding. That is to say, if A, the janmi, wants to raise a further sum upon a holding & the mortgagee (Kánomkár), B, refuses to advance it, A may apply to a third party C for the amount & C then becomes entitled to the possession of the holding upon repaying to B the sum originally advanced by him as consideration for the Kánom. It is highly probable that a transaction of this character will generally lead to eviction or the raising of the Kánomkár's rent for t mélkánomkár is a specu whose object must usua be either to obtain t

* The increase in the average compensation paid in the North is very likely due to some extent to the influence of Mr. A. Thompson who is known to be an advocate of the tenants.

§§ How strong this idea is may be gathered from the fact that one of the Dt. Munsifs deducts, according to Mr. Bradley, half the ascertained value of the improvements by way of compensation to the janmi. This is the old janmabhogam of course &, though quite illegal now, was formerly admitted.

or to squeeze money out of the Kánomkár. But it is necessary to observe that the mélkánomkár has no power to oust the Kánomkár until the Kánom has run its term which is generally 12 years but may be more (*vide* p. 101, under 'mélkánom', of Vol. II of Mr. Logan's Report) &, of course, he is just as much bound to compensate the Kánomkár for improvements as the janmi is. Still there is no doubt that the system of mélkánom is a dangerous one which may become a powerful instrument in the hands of landjobbers.

Another reason for the partial failure of the Act is the ease with which it is evaded. Mr. Bradley gives two instances. Section 6 declares that the amount of compensation shall be estimated ~~[illegible]~~ ~~[illegible] ([illegible])~~ with reference to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement. The landlords have therefore begun to make a nominal increase to the rent on renewal of the Kánom & to remit the amount of the increase in consideration of improvements to be effected. The result is that compensation payable to the t on expiry of the renewed is reduced in consideration its apparently favorable

I don't see how the system can be interfered with

My Hon. Colleague doesn't think that any action is required on this point. I cannot so see. It is obvious that the provision [illegible] to enables the landlords to defy the Act. I admit that the repeal of clause (c) of the explanation under s. 6(1) would effectually prevent a landlord from joining with, or aiding, a tenant in carrying out improvements. But the question is do Malabar jenmis [illegible] do the [illegible] nothing on the other. I cannot pretend to have read all the papers put up, but so far as I have been able to do so, I haven't found any suggestion of such a thing ever having been done. If not, the question arises Ought we not to strike out any a provision the retention of which promotes, in practice, no useful purpose, but enables a tenant to contract himself out of the Act in spite of s. 7? I think we should, and I don't believe that any harm would be done to any Jenmi by reason of our doing so. The case will, of course, be altered if we legislate to bring Malabar under so much of the Tenancy Act of the future as will enable a tenant to go to the Collr. & get a fair rent fixed.

We must get the statistics called for on p 26 first:

I suppose the Malabar jenmi is not to be trusted. Otherwise it wd. seem only fair to allow him to make a contract with his tenant in wh. due allowance is made in the rent for improvements wh. the tenant may himself have made. It looks as if we must deprive the Malabar landlords of the right of free contract & bring them all into one mould, the operations of wh. will have to be conducted by the Collector.

W.

The only way that I can see, to protect tenants from dodges of this kind, is to allow them to go to the Collr. to get their rent fixed as tenants of Zemindars in other districts can.

terms. ~~[illegible]~~ This mode of evading the law is so easy, safe & effectual that Mr. Bradley's prophecy that it will ultimately render the Act inoperative seems not altogether groundless. Another mode of evasion brought to notice by Mr. Bradley is that of allowing the tenant to retain the land for a few years beyond the period of the Kánom & then persuading him to execute a lease in which the trees are entered as landlord's improvements. I do not quite understand the nature of this second mode of evasion but it cannot, one would imagine, be very often resorted to or be very effective.

8. Should steps be taken to render the Act more effective in its working?

This question can hardly be answered otherwise than in the affirmative. Men of great local knowledge have asserted again & again that the frequency of evictions constitutes a serious menace to the peace & prosperity of Malabar & the necessity for remedial measures has been recognized by Govt. in the passing of the Act now under consideration. In this connection the question whether Moplah outrages are attributable to the conduct of the Janmis naturally arises. See para. 6 of G.O. 27 3 Dec. 1891, 1852, Rev., the Govt. expressed a doubt whether there is any connection between agrarian discontent & Moplah outrages but there is no doubt that many competent observers have come to the conclusion that the connection is established. On this subject a good deal of information will be found in Chap. VII of Mr Logan's report & on pages 47–49 of the first Appendix thereto. Mr Logan observed that between 1836 & 1857 there were 38 Moplah outrages, & between 1858 & 1880 nine more outrages or attempts at or threats of outrages, that things were just as bad in 1881 as they ever had been & that these outrages would continue till measures were taken to guarantee fixity of tenure to occupants of land. Since Mr Logan's report was written there have been several more outbreaks, one of a very serious character, but in the 36 years since 1858 there have been nothing like as many outbreaks as in the 20 years between 1836 & 1857, & this is, no doubt, the result of the passing of the Moplah Act. The peculiar point about these outrages is that they almost invariably occur in the Ernád & Walawanád Taluks which are great grain-producing areas & ~~then~~ one of the results of Mr Logan's enquiries was to prove that the grain-lands are held on shorter tenure ~~more frequently rack-rented~~ than garden-lands, that they are probably more frequently rack-rented than garden-lands & that, relatively, more Muhammadans than Hindus are sued for eviction (vide pp. 134–5 of the 'Report of the Malabar Land Tenures Committee'). These facts are decidedly significant & now we have Mr Bradley reporting in para 17 of his letter* dated 6 June 1894 that we shall not be free of Moplah disturbances till the position of the Malabar tenant is improved. It is worth noting, too, that, at a meeting held at Calicut on the 20th May last, some 600 Muhammadans concurred in attributing the lawlessness of the Moplahs to the exactions of the landlords among other things (See Proceedings under cover of Dt. Magte's letter of 6 June 1894).

There is so large a body of opinion to support the view that Moplah outrages are connected with agrarian discontent, that it seems impossible to resist the conclusion that some such connection exists &, if so, then there is every reason for amending Act I of 1887 so as to render it more effective.

9. Assuming, then, that steps ought to be taken to remedy the defects in Act I of 1887, what shall those steps be?

Almost, or quite, everyone who knows the District is of this opinion, I think – DS

I think we might ask for statistics to show how far this is still the case. DS

JG

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*Subm^d in proof. This paper is awaiting receipt of Col. Porteous' report on the outbreak. When that is received it will be subm^d for orders.

The Board of Revenue says in the present current that nothing need be done till the Draft Tenancy Bill passes into law & observes that it would be well, before taking any action, to see what questions as to the relation between landlord & tenant arise during the progress of the settlement. But the Boards' remarks do not seem to be well-judged. In the first place, the Tenancy Bill is not likely to be passed for a long time; in the second, the Bill, when passed, will not apply to Malabar until extended thereto (this is a trifle) and, in the third, the ~~[illegible]~~ extension of the proposed Tenancy Law to Malabar will not have the desired effect. It is necessary to explain this last remark. The Tenancy Bill divides landlords into two classes, viz., owners of Proprietary Estates & ryotwári holders. The Malabar Janmi falls under the latter class & the Bill does not purport to grant occupancy right to the tenants of this class of landlord nor, as far as can be seen, any other privilege which the Malabar tenant does not already enjoy. The extension of the Tenancy Act to Malabar would not therefore improve the position of the tenant in any way.

As to the remarks that Govt. should wait to see what

GW

I do not agree with the Bd. It seems to me that if we wait until the Settlement is concluded we may find ourselves in a very awkward position. The evidence seems clear that the majority, at least, of the Malabar tenants are rackrented, that is, they pay already as much as they can pay, and this. But now we are told that the Janmis have for some time past been inserting in their leases a provision that the additional assessments arising from the settlement shall be paid by the tenants; that is, that such an addition will be levied to their rents that they will not be able to make a livelihood out of their farms. I think we should at once make enquiries as to how far this assertion is accurate. The best proof would be the production from the Registration offices of leases containing this condition. I do not know however how far leases in Malabar are registered — leases for short terms & small amounts probably are not regd., for they are exempt under the Notifn. of May 30, 1871; but many leases must be regd. As to them I would ask the I.G. of Regn. to report, as to the others the Collr. should enquire. If then we find that of late years the insertion of the condition in question has been frequent, it will be apparent that on the completion of the Settlement, (by which the assessments will be pretty well doubled) the position will be a very risky one; for considering the history of the district, we cannot hope that the tenants will endure in silence what will be a crushing addn. to the burdens they already bear. For myself, I should anticipate a considerable disturbance, but whether it would take the shape of Moplah outrages or of such an outbreak of dacoity as there was 12 or 14 years ago, I cannot predict. I think therefore it will be necessary to legislate to the effect that all conditions in documents executed within so many years that the tenants shall pay any addl. assessments imposed on the fields shall be null & void. The principle of such retrospective legislation has already been accepted by Govt. in the Tenancy Bill in regard to setting aside agreements ~~[illegible]~~ in violation of occupancy right based on Chokalinga Pillai's case. Unless some preliminary precaution of this kind is taken I fear that it may be dangerous to the public peace to proceed with the Settlement. HW

Let us get the information called for.

We ask the I.G. (D.O.) if he can go to Malabar & [illegible] up his inspections & take [illegible] to his [illegible] inspect as many recent leases as possible [illegible]

Not unless Janmis are included in Class a of Sec 4

JG

It would be easy to include Malabar Janmis in the list of landlords, but I am afraid that the occupancy would but intensify our difficulties, this tenants' rights would thereby be confirmed — as the [illegible] I doubt whether such a measure as the [illegible] of occupancy right on the Malabar

GW

more than this is wanted. The compensation tables already published not only fix ~~possible~~ ridiculously inadequate ~~[illegible]~~ values, but they are not uniform and consistent. It is admitted that they ~~[illegible]~~ are based on the old customary rates, that is, they are framed without regard to the principle of the Act that the full market value shd. be given as compn. Moreover, with regard to fruit trees, there is no attempt to value them with reference to the length of time during which it may reasonably be expected that they will continue to yield fruit. To take cocoanut trees, for instance, and the first list (B.P. of B.O. $\frac{2530 \text{ Judl.}}{11.12.91}$), it may be fair to value them at 2 to 12 annas apiece before they reach the fruiting stage, though as to this I remark that the mere cost to rear a tree is must cost 2 annas at least, without allowing anything for rearing or buying the young plant. But when the fruiting stage has been reached should the valuation of the tree be the same, whatever its age & the consequent expectation of yield for a greater or less number of years? An [illegible] tree is taken to yield fruit worth Rs 2½ a year, & costs 4 annas to keep up. Say its net value is Rs 2, & that it is 10 years old. The estimate is that it will continue in full bearing for 40 years. Now the present value at 7% of an annuity of Rs 2 for 40 years is Rs 26·66 according to a table I find in Whitaker's Almanac — what the value at 10% wd. be I do not know & haven't the knowledge to calculate — say Rs 20. That, then, would be the sum the tenant should get for such a tree, not Rs 3, as in the table now in force. No doubt to this it would be objected that it wd. be the janmi who would be "improved" out of existence, and it may be admitted that it wd. not be fair to him to charge him these exact theoretical values. He might however be charged a percentage, say one half, of the theoretical value of an annuity amounting to the net annual yield of the tree. At this rate, to take my example, the tenant would get Rs 10, for which sum the janmi wd. get a tree which wd. yield him Rs 2 p.a. for 40 years. I don't think the latter wd. have cause for complaint, while the position of the former wd. be greatly bettered. In this connection I wd. refer to the frequent [illegible] of more than Rs 100 per tree for [illegible] of a lower class than the best — vide [illegible] 5 (3) of Mr. Winterbotham's letter

The approach in Sec 13 the Madras Tenancy Bill but not in Sec 83 of the Bengal Tenancy Act

JG

uestions arise in the cou
of the Settlement, it is suffici
observe that the relation
of the Malabar landlord &
tenant has formed the subjec
and such prolonged enquiries
on previous occasions tha
it is highly improbable
that the Settlement will bri
out anything new. If Gov
is not in a position now
deal with Malabar Land
tenure it never will be.
If, therefore, the Board's pol
of delay is rejected, it rem
to be decided what step
ought to be taken to remedy
admitted defects. Certain
suggestions on this subjec
appear below & it is a
well to explain that no a
has been made to discuss
policy of Act I of 1887 b
that policy having been a
~~[illegible]~~
~~discussion~~ after prolong
discussion, it would be fu
to attempt now to balanc
the conflicting claims of la
& tenant. The object of the
Act is to prevent eviction
by insisting upon the pay
of the full market-value
all improvements, this obj
has not been attained & the
only question is how effe
can best be given to the
intentions of the Legislat
(1) In the first place it must
made clearer that the tenan
entitled to the full marke
value of his improveme

To Board

Mr. H. S. Stokes anticipated that doubts would arise on this point if the Advocate-General's proposals for the amendment of the Draft Bill prepared by the Committee were accepted & this anticipation have been realized. ~~[illegible]~~ It is, however, doubtful if it is necessary actually to amend the Act with this object, although it would be easy to do so by adding to sub-section (1) of sec. 6 the following clause "& in the case of trees or plants, the probable market value of the same" (a similar clause appears in the Bengal Tenancy Act, sec. 83). The doubt as to whether the full market value is to be allowed will generally arise in connection with the valuation of trees & plants & it will therefore suffice if, instead of revising the Act, proper tables showing the full market value of trees & plants are issued under sub-section (2) of sec. 6. The present tables ought certainly to be cancelled. They are absolutely misleading as they do not in any way represent the market values [illegible] the sums of paying that are insufficient is therefore [illegible] upon the tenant, greatly to his disadvantage. [illegible] doubt, to his disadvantage. [illegible] tables at all would be

tenants is either ~~[illegible]~~ necessary or advisable. Indeed, the [illegible] of substantial compensation for improvements seems to me [illegible] right [illegible] tenancy [illegible] Bill [illegible] compensation for improvements [illegible] apply to occupancy [illegible] tenants [illegible] can be rejected [illegible] it is clear that the cases in which [illegible] of compensation [illegible] must be very few indeed [illegible] compensation for improvements [illegible] be paid to non-occupancy [illegible] that the Kanam [illegible] (occupancy) [illegible] a Kanamkar [illegible] term of 12 [illegible] at the end of the Kanam [illegible] of improvements [illegible] distinct [illegible] Verumpattam [illegible] occupancy [illegible] compensation for [illegible] Malabar [illegible] the District [illegible] (e.g. [illegible]) [illegible] conditions.

WB

Let us first get the opinion of the High Court. State the difficulties of the position & ask their advice. W

[illegible]

I think it will be better to amend the Act, [illegible] by substituting the words "tree or plant" [illegible] in S. 6(1) which [illegible] S. 6(1) [illegible] by adding the proposed [illegible] explanation [illegible]

on p. 2 of the G.O. of 11/12/91.

When, therefore, asking the H.C. to get fresh compens. tables prepared, Gov.d sh'd also lay down rates of capitalization according to the length of time the fruit tree or plant might be ~~and~~ considered likely to continue to ~~[illegible]~~ bear. The new tables sh'd, therefore, to meet this, give not the value of the tree or plant, but ~~also~~ the value of its annual estimated yielding

WB

"Calculated on its probable existence."

W

Yes - but see p. 22 of this note

WB

?

Yes WB

W

49 (26)

better than those now in force.

The first step to be taken seems therefore to be to ask the High Court to direct the Dt. Judges of Malabar to prepare in consultation with the Collector tables of the market values of trees for each Munsifi in the Malabar District. The present tables apply to only 6 Munsifis out of a total of 20.

(2) Secondly, it seems necessary to take steps to prevent landlords from evading payment of compensation by entering fictitious rents & then claiming the benefits of clause (c) of section 6(1). This is a very important & delicate matter regarding which the Judges of the High Court & the Advocate General might be consulted. The amendment might perhaps take the form of a clause declaring that nothing in clause (c) of sec. 6(1) shall apply to leases made after a given date. No less drastic measure will probably suffice to cure the evil which is growing up.

(3) Mr. Bradley's suggestion that melkanoms should be prohibited seems scarcely As remarked by Mr. Wig p. 125 of his "Malab the right to mortgage of redemption is the undisputed right it absolutely & as has, on his part,

to assign absolutely or sub-mortgage his holding (p. 126 of the book cited), it would be a violent measure to withdraw the corresponding power enjoyed by the Janmi.

(4) But there is a still more important change which would have, undoubtedly, a great effect upon the tenant.

It is admitted by all authorities that one of the most serious disadvantages under which the tenant labours is the unrestricted power of the landlord in regard to the levy of renewal fees upon termination of the lease. Mr Logan says (p. xxix of his Report) that these fees are in many cases outrageous, amounting in some instances to nearly the full amount of rent for the whole period of the lease. Of course this means the extinction or impoverishment of the tenant for either he must borrow the money from the sowcar at a ruinous rate or he must compromise for the reduction of the renewal fee in consideration for the payment of an enhanced rent.

first Committee which
to consider the subject agreed
Mr Logan that something
to be done to rectify this
& proposed (*vide* para.
Report at p. 132 of
Malabar Land
that renewal fees
restricted by law
years

net produce less the land-revenue. The Committee calculated that this proposal would add $8\frac{1}{3}$ per cent to the rent & proposed to make the payment of renewal fees compulsory on occupancy tenants but, of course, if tenants are
t given occupancy rights
reason for making the payment of renewal fees compulsory in all cases disappears, for there is no *quid pro quo*.

The *Second* Committee came, as already stated, to the conclusion that the proposals of the First Committee were too drastic but there were many dissentients to this view & no fewer than half the members of the Second Committee were in favour of a Bill which contained a clause restricting renewal fees to 20* per cent of the Kánom amount or, in other cases, to one year's net produce less land revenue. This Bill being abandoned, however, the question of limiting renewal-fees, which was not discussed separately was dropped.

It seems high time to t
it up & to obtain the
of the High Court & t
of Malabar as to t
of limiting renew
in the manner
by the First Com
ssible that

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* The First Committee showed strong reasons why renewal fees should *not* be fixed at a proportion of the Kánom amount.

Yes - This is a matter which wd. find a place in the separate Malabar Tenancy Act which I have recommended at pp. 26 & 27 of this note. W. J.

This may very likely be the solution but as I have said before, let us hear what the High Court has to say
W.

the tenures of North & South Malabar will necessitate different methods of fixing the maximum renewal-fees & this is a point which might be brought specially to the notice of the Hon. the Judges.

10. If the Compensation-table & the Act are amended as suggested above, a substantial improvement ought to take place in the position of the Malabar tenant &, if the Hon. Members decide that the High Court should be consulted as proposed, the opportunity might be taken to ask for statistics of the number of evictions & of the amount awarded in compensation for improvements during each of the years 1877–86; without these statistics it is impossible to ascertain what the exact effect of the Act has been. Mr. Bradley may also be asked whether his figures under "number of Evictions" represent persons against whom or suits in which eviction was decreed.

There is one more point. It seems ...isable to reduce ~~the~~ the daily ...istence rates payable to Assessors ... Rules framed under sec. 5(2) ... because they are* said to ... ty, to the costs that ... e hardly ever ap- ... Complaints as ... r of the Commission... the Cou...

Yes – and at the same time let us get infn as the proportion of Hindu & Mohammadan defts.
WS
W
JG

WS
W
JG
The report on this is very sketchy

*: Vide Supra page 12.

I think it wd. be worth while to spend a little money on offl. Comrs. – we might ask how many wd. be required –
WS
JG

And ask how their status can be improved.
W

value improvements were so bitter as to suggest that dishonesty is a very common trait of their character. The ~~Committee~~ Committee of 1884 evidently considered that there were good grounds for complaint for it proposed (para. 50 of its Report on p: 137 of Volume 'Malabar Land Tenures') to limit the discretion of the Courts by requiring them to appoint ~~either~~ a public servant, a practising vakil or an official Commissioner (appointed by the Dt. Judge) to do the work of valuing improvements. In the Statement of Objects & Reasons attached to the Bill which became Act I of 1887 it is observed that it was not thought expedient to adopt the suggestions of the Committee of 1884 on this subject but no reasons are assigned.

If the grievance is real it should be removed & this can be done in two ways, viz,

(1) by reducing the subsistence allowance of Assessors, so as to encourage the employment of them instead of Commissioners;

(2) by framing rules under the proviso to sec. 392 Civil Proc: Code so as to restrict the Courts in their choice of Commissioners.

Probably the desired effect could best be obtained by using both methods but the High Court may be consulted about it.

W
4 Sep
WS
1/9/94
JG

LA 27/7 WS 14/9/94 ... 10 July

Evictions in Malabar

H. M. Teire

(Forwarder)

To the Sec. to Govt, Rev Dept, for favour of consideration

~~value improvements we do better that there is obviously good reason for preventing the appointment of them as far as possible. The best plan would be to declare in Act I of 1887 itself that, notwithstanding anything contained in the Civil Procedure Code, certain classes of persons only shall be appointed as Commissioners to value improvements but the reduction of the subsistence allowance of Assessors will perhaps serve to some extent as a remedy. It is submitted that the High Court may be asked its opinion on this point.~~

10 July

X vide note (a) infra.

I have said what I have to say on this subject in my Note as to the revision of Act I of '87. I have come to the conclusion that that act shd be amended at once as to the rate of compensation. I am inclined to think that some provision will be necessary with regard to limiting renewal fees & fixing fair rents, but this may be left for future consideration.

As to giving occupancy rights to tenants of Jenmis I am in doubt. The second Committee reported against it but half the number voted for it. Govt accepted this conclusion in 1887. If renewal fees are limited & some provision is made to secure fair rents the giving of occupancy right may not be necessary. If it is decided that occupancy right shd be given, it may be done by including Jenmis under the category of the a landlords in Sec 4 of the Tenancy Bill, but I doubt whether the [illegible] stated in the Rev. [illegible]

Note

With reference to the Honorable Mr Grose's remarks (Quoted below) under G.O. dated 8-6-94 No. 2244.

"Malabar is exempted X "from the Tenancy Bill because "Act VIII of 1865 was never enforced there, because the Collector "reported that very few of its "provisions were at all applica-"-ble to the district, and because "it was held that it would "destroy peace and order to "give the power of distraint to "the Jenmis. I am very much "inclined to think, however, that "some legislation will be needed "to protect under tenants and "cultivators in Malabar. The "subject is brought to notice in "the Govt of letter of 15-5-83 "No 534 R. Mr Moberly tells "me that the Jenmidars are "now taking engagements "from their tenants binding "them to pay any increase that "may be made in the Assess-"-ment and that they already pay

"pay as much as they possibly "can. I will bear this in "mind in going through the "Malabar papers which will "soon come before us. In "the meantime I shall be "obliged if the secretary will "send me any papers throwing "light on the subject. I "believe Logan submitted "a report which would be "useful."

2. It is presumed that the reference in the first sentence of the remarks is to para 1 of the Malabar Collector's opinion printed at page 64 of the file of "Opinions of Collectors and Judges on the Madras Tenancy Bill".

3. With reference to the remaining portion of the Honorable Member's remarks, it is submitted that the information asked for is contained in the note for orders on Judicial Current No. 2774 with which this paper is put up. It will be seen from para 2 of that note that in the beginning of 1881 Mr Logan was placed on special duty to report (among other points) on

(1) the general question of the tenure of land and of tenant right in Malabar, and on

(2) the question of compensation for tenants' improvements (para 3 (1) of G.O. d. 5-2-81 No. 281 Judicial, at page 28 of "Malabar Land ~~Revenue~~ Tenures"

that his report and recommendations on these points were referred to a Committee which proposed the early passing of a tenancy law for Malabar for the purpose of securing to the tenants of Janmis occupancy right, fair (fixed?) rent, ~~freedom~~ protection from arbitrary eviction and proper compensation for improvements when evicted; and that the recommendations of this Committee were referred to another Committee which recommended

vol print.

12 years is not too short. The first committee thought 20 years should be the period taken. The second committee thought 60 years shd be taken.

JG

13/8

"recommended only ~~the~~ two measures of legislation, one of which took shape finally as Act I of 1887 (Malabar Compensation for Tenants' Improvements Act) and the other was a Bill to control evictions and monopoly of waste lands in Malabar which was recently removed from the list of legislative business.

4. The remaining portion of the note discusses Act I of 1887, explaining what was intended to be secured thereby, why the expectations have not been fully realized and what measures should now be adopted to remedy the defects in that enactment.

5. The note deals mainly with the Report of the Collector of Malabar on the working of the above Act, which was written by him under date the 31st January last.

Since the submission of

'x' Otherwise called 'Mel Kano'

51

(31)

of that report, however, the Collector has sent in a report dated 6th June in which he submits some general remarks regarding the recent Mappila outbreak &c. . . (proof copy submitted with that note and referred to in the margin at pages 17 and 25 thereof) in which he urges (para 17 of the report) the necessity for undertaking a large measure of legislation on behalf of Malabar tenants = "something in the nature of a tenancy law which shall give permanent rights to old tenants, shall abolish the Melcharth^x and substitute a fair annual rent for the oppressive renewal fees, and (in view to prevent the landlords from imposing on the tenants the burden of paying any increase that may be imposed by the new settlement rates) something in the nature of a land court to fix rents", are

some

some of the measures which the Collector considers necessary. The present Compensation for Improvements Act is, he says, practically of little use.

6. If this larger question of a Comprehensive tenancy law is to be re-considered now, the question of the Amendment of Act I of 1887 will naturally be merged therein.

7. In the Hon. Member's remarks quoted in para 1 supra, reference is made to the Govt of India's letter d/ 15-5-83 No 534 R. It is presumed that the number meant is 538 and that the letter referred to is the one printed in G.O. d 8-8-83 No. 961. The reply to that letter is contained in G.O. d 16-7-84 No 859-60 in para 8 of which this Govt stated (with reference to the enquiry made by the Govt of India "Whether the condition of the actual cultivators of the soil in Malabar was such as to call for special remedies"), that on that question this Govt was not then able to give a decided opinion as Mr Logan's report on the Subject was still before the Committee appointed to report thereon and it could not be determined until the Committee's report had been received and considered by the Govt whether special remedial measures should be provided by legislation or not. It will be noted that it was with reference to Mr Logan's report that the Govt of India made the enquiry to which the above reply was sent (vide pages 3-4 of G.O. d 8-8-83 No. 961.

Yes – 538
R

8. The final decision on the Subject was communicated in the Despatch to the Secretary of State d/ 30-6-87 No. 2 in which while forwarding copies of the Bill to control evictions &c, this Govt stated that that Bill

Bill was the second of the two legislative measures recommended for adoption by the Malabar Land Tenures Committee, the first, a bill to provide for compensation for tenants' improvements having been passed into law as Madras Act I of 1887; that the Committee after a full consideration of the question of Malabar Tenancy had recommended that no further legislation should be undertaken beyond those two measures and that the Govt. had then no intention of going beyond their recommendation.

9. The circumstances which led to the dropping of the Bill to control eviction &c, (F) are detailed in the concluding portion of para 2 of the note with the Judicial Current No. 2774 — *vide* also in this connection the notes of the Honorable Members recorded in the papers marked X in the bundle of "papers relating to the Malabar Eviction and Waste lands Bill".

(F) The latter portion of the Bill relates to grant of *waste* lands, and it will be remembered that the Govt. has decided to discontinue the practice of granting cowles for these lands without refce to the Janmi — *vide* para (8) of the proclamation in Appendix I at page 35 of G.O. 27. 6. 93 No. 396.

10. The Hon. Member writes "Mr Moberly tells me that "Janmidars are now taking "engagements from their tenants "&c &c &c. I will bear this in "mind in going through the "Malabar papers which will "soon come before us". It is not known which Malabar papers are referred to.

I meant the Settlement papers JS

11. It is pointed out in para 9 (page 26) of the Judicial Dept. note that the mere extension of the Tenancy Act (supposing that the Act corresponds to the Draft Bill now under revision) to Malabar would not improve the position of the tenants in any way (x). This is with reference to a remark made by the Board to the effect that in its opinion proposals for the revision of the Malabar Act (I of are not called for pe passing of the Draft Bill into law (B

(x) *vide* note (b) *infra*

Mis. no. 2588 printed at page 5 of Judicial C. no. 2774). The Board makes another remark in its Procs quoted above – namely that "questions affecting the relations between landlord and tenant are likely to arise during the progress of the settlement of the district now being undertaken, the decision on which it might be as well to await". With reference to this remark it is observed in ~~[illegible]~~ of the Judicial (page 27) Dept. Note that "the relation of the Malabar landlord and tenant has formed the subject of such prolonged enquiries on previous occasions that it is highly improbable that the settlement will bring out anything new. If the Govt
not in a position now to
with Malabar Land
it: ?er will be".
ph the above remark
out by the large
literature which has been produced in connection with this subject since the appointment of Mr. Logan as Commissioner, it is perhaps not unlikely that if the larger question of a general tenancy law for Malabar is to be reconsidered, the results of the Settlement Procs may be of some use. Possibly the Hon. Member had the Settlement papers in view when he wrote "Malabar papers" in his remark quoted above – (para 10 supra).

12. The "precis of papers on Malabar Land question" which forms Appendix G (4) to the Report of the Malabar Land Tenancy Committee appointed by G.O. 17-9-85 No. 650 Pol." (p.p. 129-155) gives a full and critical summary of the most important reports and opinions on the subject. Sir Charles Turner's minute summarized in part IV of precis (pp 148 153) is put also a file of papers con

reports and discussions connected with the Malabar Evictions and Wastelands Bills.

Note (a) In this connection para 16 of Mr P. P. Hutchins remarks on Mr Logan's report (page 49 of the vol. on "Malabar Land Tenures") may be perused.

Note (b) It is a question whether the draft Tenancy ill is sufficiently clear the point.

.50 authorizes a ryotwari lord to proceed under the for the recovery of rent

rent if he has taken a written agreement from his tenant specifying the rent to be paid. Under §. 60, When an arrear of rent remains due from a tenant not being an occupancy tenant ... the landlord may ... institute a suit to eject the tenant.

(Query: Does this apply to the tenants of ryotwari landlords?) If it

If it does, does sec 136 (1) also apply, which say that every tenant who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect ~~of~~ thereof in accordance with this Act by him and for which compensation has not already been paid."

As regards the clause, "improvements made in accordance with this act", wording in Sec. 135 seem wide enough to include -wari landlords & their ten

h

~~When~~ Again Sec. 121(1)(c) & (d) provide that "nothing in any contract between a landlord and a tenant made before or after the passing of this Act . . . . . . (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act; or (d) shall take away or limit the right of a tenant as provided by this Act to make improvements, and claim compensation for them."

It would seem that ~~these~~ sections quoted above convey a wider meaning than probable was intended by the framers of the Bill.

The annotations appended to the corresponding sections in the Bengal Tenancy Act (F) may show how these sections are understood there.

F.

?.

A.G. 27/7

~~2ff~~

Not print

I do not see why the provisions about compensation for improvements shd not extend to the tenants of ryotwary land holders.

JG

in Messrs. Rampini and Finucanes edition of

F) Copy is in circulation

Note for the Hon. Mr. Grose.

circulated with Judicial
Current No. 2774.
(Re. Madras Act I of 1887)

Papers to be read in Proceedings:—

(P.) { Again G.O., dated 14 June 1890, No. 1012, Ind.
Again G.O., dated 11 Dec. 1891, No. 2530, Ind.
(A.) Current No. 2774 of 1894, dated 31 May from the Rev. Dept.

Current No. of 18 , dated Order/P.S. from 1st October 1894, No. 2374

[Note
It is proposed to keep
this order Confidential]

Subject to rd with alterations
below

22/9/94 25/9

An excellent draft.

In December 1889 the High Court forwarded for the sanction of Govt. under sec. 6(2) of the Malabar Compensation for Tenants' Improvements Act, 1887, six tables showing the rates of compensation to be paid for trees & plants in {one of the District Munsifis of North Malabar ((Tellicherry) Cannanore, Kavây, Badagara, Paināḍ & Nadapur. The tables were referred to Mr. Winterbotham, the then Collector of Malabar, for remarks & he replied that the proposed rates were utterly inadequate. The Board (of Revenue) concurred but, after a further reference to the High Court, the Govt. sanctioned the proposed rates with the observation that the Act seemed to affor inadequate protection to tenant, that further leg. lation would perhaps necessary & that the Co of Malabar should su a report on the matte the end of 1893. (G.O. d 1891, No. 2530, Ind.).

Collector's report & the
remarks of the Board of
Revenue thereon form the
correspondence read in this
Proceedings.
2. Madras Act I of 1887 may
be said to have a twofold
object, namely, (i) to secure
to tenants the full market
value of their improvements
& by doing so, to check the
growing ~~tendency~~ practice of
eviction.
The extent to which this double
object has been attained con-
stitutes the final question for
consideration.
It is impossible to say with
certainty whether the Act
has had the effect of securing
to tenants the full value of
their improvements because,
although the sums received
by tenants as compensation
are known, there are no means
of ascertaining the amounts
to which they were entitled.
It would, no doubt, be fair
to assume that a sudden
increase in the number of
cases where compensation
was paid & in the amount
[illegible] occurring in 1887 [illegible]
[illegible] to the operation of the
Act, but, unfortunately, no
statistics for the years pre-
ceding 1887 are available &
it is impossible, therefore, to
ascertain whether any increase
took place in that year
[illegible] figures for the period
[illegible] to the passing of

---

the Act present nothing whi
is instructive on this point.
They merely show that, in 1887,
compensation was awarded
in 24.5 per cent of the eviction
cases & that the average sum
awarded in each case amounte
to R.109, while, in 1892, the
corresponding figures were
23.4 per cent & R.166, which
last figure is lower than
those reached in 1889 (R.202) &
1890 (R.178).
There are better grounds on
which to base conclusions
relative to the effect of the
Act in checking evictions.
Mr. Logan showed on page
xxxvii of his Report dated
the 16th June 1882 that the
average number of persons
against whom decrees of
eviction were passed annually
was 1,891 in 1862-66, 3,483 in
1867-71, 6,286 in 1872-76 &
8,355 in 1877-80. Unfortunately
no statistics are available
for the period 1881-86 & the
figures for 1887-92 do not
admit of immediate compari
with those given by Mr. Loga
because, whereas the latte
indicate the number of
persons against whom ev
was decreed, the former
to refer to the number
suits in which evic
ordered. But it
assuming Mr. K
for 1890-92 to
description of same facts as the
figures for 1887-89,

602—20-6-91.

DEPARTMENT.

No.

189 ,

has been no tendency towards a decrease in the number of evictions during 1887-92 X. Indeed the statistics indicate the reverse, as appears below—

~~From~~

Year.	Number of suits in which eviction was decreed.	Year	Number of suits in which eviction was decreed.
1887	2,189	1890	4,221
1888	2,441	1891	4,132
1889	2,657	1892	4,650

Dated

FOR ORDERS.

From this it seems to follow that the Act has failed to check evictions to the extent which was anticipated, although, for want of particulars, it is impossible to say whether it has not been (effective) to some degree. Mr Bradley's opinion that tenants are far better off than they were before the passing of the Act & that eviction is in many cases not taken out on account of the magnitude of the compensation awarded ~~former testimony~~ that the new law has not been altogether inoperative & paragraph 5 of the Note on the ~~upon~~ administration of the Registration Department during 1893 contains evidence a similar effect. On the hand, it is observed in para. 17 of his letter 1st June 1894, No the subject of the outbreak, speaks of the practically ing

253 (39)

3. If ~~it~~ this being granted, then, that the Act has not worked so effectively as was expected, it becomes necessary to investigate the causes of its partial failure.

The most obvious ~~cause~~ of these is that inadequate compensation is being awarded to the tenants. Mr Winterbotham in his letter read in G.O. dy 11 Dec. 1891, No 2530, Judl., expressed the opinion that the Act ~~is~~ was being construed in the most illiberal spirit & that the Explanation appended to sec. 6 enabled the Courts to ignore the intention of the Legislature which was to give the tenant the full market-value of his improvements.

So far as regards "fixtures & tillages" there are no means of ascertaining the accuracy of Mr Winterbotham's ~~[illegible]~~ criticisms, but it is highly probable that they are just, for Mr Twigg, the Sub-Collector, in his letter read in the Proceedings of Govt. referred to above, expressed views which are entirely inconsistent with the intention of the Act & the High Court (I.L.R. XIII Madras 454) appears to have made a ruling as to the manne in which compensation should be calculated the absence of evidence to the market-value o improvement, althou was intended by the Legislature that the market-value should be ascertained in every case.

(Press Sep-para.)

As regards "Plantations" there can be no doubt that the rates sanctioned in G.O. of 11 Dec. 1891, No. 2530, Rev., do not represent the market-value, nor anything like the market-value, of the trees specified in the tables. The reason why such inadequate rates were proposed is not, the Govt. thinks, far to seek. The principle of compensation for improvements was fully recognized long before Madras Act I of 1887 was passed, but, prior to the passing of that enactment, the rates of compensation for trees were fixed according to an ancient, arbitrary &, in most cases, utterly inadequate scale. This scale varied locally to a marked degree, but the principal distinction lay between North & South Malabar, the rates in the South being far higher than those prevalent in the North. Whether this distinction was attributable to the difference between the Kanam (mortgage with possession) of the North & the Kanam (lease) of the [illegible] th, or whether it was [illegible] to the maintenance [illegible] old customary rates [illegible] North & the gradual [illegible] tion of a more reasonable [illegible] in the South, is not certain & is a matter of little moment. The important fact is that this distinction between North & South did, & does still, exist, for the statistics now before Govt. show that the average compensation awarded in the South is far higher than that given in the North, although the rates show a tendency to approximate.

A striking instance of

The strength of the ingrained idea that tenants in the North are not entitled to the full value of their ~~[illegible]~~ improvements, ~~is instanced~~ is exemplified in ~~by~~ the case quoted by Mr. Bradley of a District Munsif who continues to award half the value of improvements, as janmabhogam, to the landlord; & it is to this idea that the Govt. is inclined to attribute the inadequacy of the rates of compensation for trees which were proposed by the District Munsifs of North Malabar & reluctantly accepted by Govt.

Mr. Bradley suggests, as another reason for the partial failure of the Act, the impetus given to evictions by the fear le
Mr. Logan's proposals to g
the tenant occupancy-rig
should be acted upon.
it is doubtful if this
have ~~been~~ had much e
for ~~there~~ no steps have
taken in this direction
the Committee on Malab

infantry constitutes a serious menace to the peace & prosperity of the district, & the necessity for remedial measures was recognized when Act I of 1887 was passed. There can be little doubt that agrarian discontent combines with other causes to produce the frequent & disastrous outbreaks among the Moplahs. This ~~view~~ statement is supported by ~~the~~ opinions of numerous competent observers, &, in view of the fact that Moplah outrages are almost confined to the great grain-producing taluks of Ernád & Walawanád, it is significant that Mr. Logan, in his capacity of Special Commissioner, arrived at the conclusion that grain-lands are held on shorter tenure ~~[illegible]~~ ~~[illegible]~~ and are probably more frequently rack-rented than garden-lands. Mr Logan also adduced statistics to prove that, relatively, more Muhammadans tan Hindus are sued for iction. It would be useful ascertain whether this still the case, & the ~~Collector~~ High Court will be requested ~~endeavour~~ thro' the District Judges to collect and submit statistics the subject for the iod during which Act 1887 has been in force. But, however that may be, ~~[illegible]~~ the

The Cllr wd have to go to the judges for his figures — we may as well get them direct

connection between Moplah outbreaks & the discontent engendered by the precariousness of the land-tenure in Malabar seems sufficiently established, ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ tenancy & there is no reason to suppose that this discontent is confined to the Muhammadan tenants, although it occasionally assumes among them a more violent form than it does among the Hindus. It was anticipated that the enactment of Act I of 1887 would check evictions to so great an extent as to secure to the tenantry a reasonable degree of permanency in their holdings, but, as it seems to have failed to do so, the removal of those defects which prevent the Act from attaining its full measure of success, appears to Govt. to be ~~[illegible]~~ undoubtedly expedient.

5. The Board of Revenue has made no suggestions as to the form which legislation should take; on the contrary, it expresses the opinion that nothing need be done until the Te Bill passes into law & that it would be well defer taking any ac until the completion o new settlement.

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The Collrs. wd. have to go to the Judges for their figures — we may as well get them direct
J.D.

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The Govt is not inclined to
accept the Board's policy
of delay. The Tenancy Bill
is not likely to become
law for a long time, &
when it does, & assuming it to
be rendered applicable to
Malabar, it will not, if it
retains its present form,
confer any particular
benefits upon the tenant.
As to deferring action
until the conclusion of the
settlement, the Govt. considers
that such a course would
be both unnecessary &
dangerous. Unnecessary because
it is highly improbable
hat any additional evidence
will be forthcoming on a
matter so much debated as
the relation between landlord
& tenant in Malabar; &
dangerous because Mr.
Bradley shows in para. 17
of his letter of the 6th June
last, No. 514, ~~relating to the~~
regarding the recent Moplah
disturbances, that the landlords
are taking steps to ensure
hat all increase in assess-
nent which may follow
he new settlement shall
ll upon the tenants.
seems, therefore, to Govt.
t legislation should be
ertaken without delay;
e first & most obvious
is to remove the existing
ances to the free & full
tion of Act I of 1887.
subject the following

remarks seem to be called for.

6. (1) In the first place it is essential that the Courts shall be left no room for mistake as to the intention of the Legislature to give to the tenant the full market-value of his improvements. In the Bill for the compensation of tenants as originally drafted this intention was clearly expressed, but it was altered at the suggestion of the then Advocate-General in spite of the strenuous opposition of Mr. H. J. Stokes & Sir T. Madhava Rao who foresaw that the wording proposed by the Advocate-General would obscure the main object of the Enactment. Their prediction seems to have been verified & the Govt. inclines to the view that the following amendments should be made in the Act, viz:

(1) in sec. 3(1) to insert the words "tree or plant" after the word "work";

(2) in sec. 5(1) to substitute the words "as the full "market-value of his "improvements" for the words "for improvements";

(3) in ~~the~~ Explanation to sec. 6(1) to insert the words "among other" between the words "following" and "matters"; &

(4) to sec. 6(1) to add a new clause running " in the

"case of trees & plants, "the probable market-"value of the same".

(2) A still more obviously necessary step is to cancel the tables of rates of compensation which were sanctioned in G.O. of 11 Dec 1891, No 2530, Jud., & to substitute for them a scale of rates prepared on a uniform system & calculated on an adequate basis. The present tables probably do more harm than good; they in nowise represent the ~~[illegible]~~ market-value of the trees & plants mentioned therein, as they profess to do, & the burden of proving the inadequacy of the rates is thrown upon the tenant, so that he would be better off if there were no tables of rates in existence. The present tables apply, too, to only six Munsifis.

The High Court will accordingly ~~be requested to~~ (consider the expediency of) directing the Dt. Judges of Malabar to prepare, in consultation with the Collector & at an early date, fresh tables showing for each Munsifi (in the district) the full market-value of the various trees & shrubs which are regarded as improvements. The Collector should consult the District Forest Officer before expressing an opinion on the rates proposed by the Dt. Judges for timber-trees and firewood.

(Note The Hon Mr Grose is in favour of having no tables of rates but it is understood that H.E. & the Hon Mr. Mias agree to retain them but to revise them in accordance with the principles set out below]

In the preparation of the new tables, the Govt. consider that one very important matter to be borne in mind is that ~~One great defect in the existing tables is that they make no attempt to value~~ fruit-trees should be valued with reference to the length of time during which they may reasonably be expected to yield. ~~Fruit~~ That no such provision is made in the existing tables is a ~~This~~ defect which should ~~ought to~~ be remedied; ~~[illegible]~~ & the Govt. is inclined to think that the value of a fruit-tree should be fixed at a sum equal to the present value ~~[illegible]~~ ~~[illegible]~~ of an annuity (at 5 per cent) equal to the net value of its produce for the period during which it may be expected to bear. The sum so fixed, would probably exceed to a considerable extent the true market-value of the tree, because allowance has to be made for vicissitudes of season, fluctuations in prices, and risk of damage to the tree & gradual decline of fertility. It would not, therefore, be just to award to the tenant the full present value of the tree & perhaps the fairest method of division would be to allow him as compensation one-half of the present value which (as stated) might be taken to roughly represent the market-value of his improvement. Of course it would be open to the parties to prove that the rate arrived at in this way was too high or too low as the case might be, the tables prepared under sec. 6(2) of the Act

Five per cent is suggested as it is believed to represent, approximately, the average return expected from agricultural investments. For the calculation of the values of fruit trees on this basis two tables would be required; one showing, for each kind of fruit tree, the average period during which a tree of every age up to, say, fifty years ~~[illegible]~~ may be expected to continue to yield fruit, and the probable net average annual value of the fruit yielded during that period, and the second giving the present value of an annuity of one rupee at five per cent for from one to (say) forty years.

a presumptive force.
This suggestion can be best illustrated by an example. In the table of rates for the Tellicherry Munsif the compensation payable for an Áttuvappu Cocoanut tree of the first class, i.e. producing more than 100 nuts (yearly), is R.3. Assuming that ~~it produces~~ the yield is 100 nuts, that their value is R.2½, that the cost of maintaining the ~~garden~~ tree is 8 annas a year & that the ~~tree~~ bears for 40 ~~50~~ years, then the value of the tree may be taken to be the present value of an

~~In preparing tables on this principle it will be necessary to show the estimated period during which the tree produces fruit, the estimated value of the annual ~~produce~~ yield & the market value payable to the tenant, which ~~would~~ last will be a fixed proportion of the capitalized value of the tree.~~

(3) As observed above, landlords have found a way of evading the payment of compensation by entering fictitious rents in the leases given by them & then claiming the benefits of clause (c) of section 6(1). It is, no doubt, the duty of Courts to consider & decide whether a reduction of rent on account of improvements to be made is genuine or fictitious &, if it proves to be the latter, to refuse to admit the landlord's claim for a reduction of the amount awardable as

annuity of R.2 at 10.5 per cent for 40 years, i.e. to R 19½ 34/9. So that, under the arrangement suggested by Govt., the tenant would receive compensation amounting to R 9.12.0 instead of only R 3. Thus the tenant's position would be materially

~~annuity of R.2 at 10 per cent for 40 years, i.e. R 20{1-(1/1.1)^40} or R 20 × ·97, i.e. R 19.55 so that, under the arrangement suggested by Govt., the tenant would receive R 9 2/5 instead of R~~

improved, while it cannot be argued that the compensation would be excessive in face of the fact quoted in para. 5(3) of Mr. Winterbotham's letter read in G.O. of 11 Dec. 1891, No. 2530, Jud., that in one instance Govt. was compelled in a land-acquisition case to ~~pay~~ to a jenmi more than R.100 for each cocoanut-palm, the trees being, too, of an inferior class.

[Note. The First Asst. R. D. kindly worked out the Present Value given above for me]

[Herewith a proper table which might be struck [illegible] the [illegible] of the G.O. when [illegible] for reference—] [illegible]

Who would be greatly committed by permission at the time of the lease

[Note
The Hon. Mr. Grose thinks the matter might be left to the Courts, but the Hon. Mr. Rhiss disagrees & there seems no objection to inviting opinions on the subject]

Approved
JG

[Note
This is understood to be the meaning of the Hon. Mr. Rhiss' remark on p. 23. The Hon. Mr. Grose seems to think that it is unnecessary to take any steps]

This last sentence may be omitted for the present [ ] 29 MC

~~practicable if it is necessary to take any steps for the protection of the tenant in this matter.~~

compensation. But the Govt. does not feel certain that the scrutiny of the Courts is a sufficient safe-guard to the tenant & two modes of preventing cases of this character suggest themselves, viz, (i) to declare that nothing in clause (c) of section 6(1) shall apply to leases made after a given date & (ii) to repeal clause (c) of sec. 6(1) altogether.
It is more difficult to discern a method of checking the evasion of the law by permitting tenants to hold for a period beyond the term of their Kánams & then persuading them to execute leases in which the trees are entered as landlords' improvements but, possibly, the requisite protection might be afforded to the tenant by a provision empowering him to apply to the Collector to ~~[illegible]~~ reduce his rent on the ground that he was by force or fraud induced to surrender his claim to improvements effected by himself. But, as obs in para. 3, the Govt. do not clearly understa the Collector's remark the subject & they m explained ~~[illegible]~~.
) There is another po

respect of which the working of Act I of 1887 has proved defective.
In the previous correspondence relative to evictions in Malabar complaints as to the character & competency of the Commissioners appointed by the Courts to value improvements are common. The Courts have power to appoint Commissioners for this purpose under sec. 392 of the Civil Procedure Code & the Committee of 1884 proposed in para. 50 of its report to limit the discretion of the Courts by requiring them to appoint a public servant, a practising Vakil or an official Commissioner to value improvements.
In the Statement of Objects & Reasons which accompanied the Bill which became Act I of 1887 it is observed that it was not considered expedient to adopt this suggestion but no reasons are assigned. Section 5 of the Act ~~[illegible]~~ requires the Courts to associate Assessors with themselves in accordance with rules to be made by [illegible] & rules on this subject were approved [illegible] 16 April 1888, No [illegible] Jud^l. It appears, [illegible] ever, from the remarks [illegible] ages 20 & 21 of [illegible] [illegible] ákrishna Aiyar's

In fact, if further enquiry should show such a step to be necessary)

and would, ~~[illegible]~~ in view of this necessity, be glad [illegible] as to the number of official Commissioners who would probably be required & the cost of their employment.

Commentary on Act I of 1887 that the provisions of the law relative to the appointment of Assessors have remained almost a dead letter, & this, it seems, is mainly due to the high rate of remuneration (R. 5 *per diem*) allowed to Assessors under the rules.
To remedy this state of things one or both of the following courses might be adopted, viz, (i) to reduce the daily allowance of the Assessors; (ii) to frame rules under sec. 392 of the Civil Procedure Code with the object of restricting the Courts in their choice of Commissioners & thus raising their status. The Gov^t. ~~will~~ would be prepared [illegible] to go farther & ~~to expend money on~~ to incur the cost of the appointment of official Commissioners, ~~on receipt of information as to the number required.~~
7. The above suggestions relate to the removal of defects in Act I of 1887 & in the rules made thereunder, but there are other & most important questions which call for consideration in this connection.
In the first place Mr. Bradley suggests that the practise of giving melkánams should be prohibited. The Gov^t., however, considers it impossible

to adopt this proposal. Mélkánams may be, & probably are, a fertile source of trouble & hardship to the tenants, but, as Mr. Wigram says on p. 125 of his 'Malabar Law & Custom', the right to mortgage the equity of redemption is involved in the undisputed right to assign it absolutely &, as the Kánamkár has, on his part, full power to assign absolutely or sub-mortgage his holding, it appears to Govt. that it would be a violent & unjustifiable measure to withdraw the corresponding power enjoyed by the Janmi.

(2) The second point is of even greater importance. It is admitted by all who are most conversant with the subject that one of the most serious disadvantages under which the tenant labours is the unrestricted power of the landlord in regard to the levy of renewal fees upon the termination of leases & there is abundant evidence to show that this power is frequently exercised in a most oppressive manner. The Committee of 1884 proposed in para. 34 of its report to restrict renewal fees to a maximum of one year's

net produce *minus* the land-revenue. It was calculated that this arrangement would add 8⅓ per cent to the rent. The Second Committee which reported in February 1887 does not seem to have discussed this matter as a distinct question but it divided equally on a Bill which contained a clause restricting renewal fees to 20 per cent of the Kánam amount &, in cases other than Kánam, to one year's net produce *minus* the land revenue. This Bill having been ~~dropped~~ abandoned by the Committee on the ground that it was not supported by a majority, the question of restricting renewal fees dropped out of sight, ~~&~~ but it may be mentioned in this connection that the Committee of 1884 showed excellent reasons why the maximum limit of renewal fees should not be fixed at a proportion of the Kánam amount. The Govt. is by no mean satisfied that the propo of the Committee of 188 on this subject recei the consideration whi their importance dem & is inclined to thin legislation in the int of the tenant is [illegible] desirable. It is possible that differences in the systems of North & South Malabar will necessitate different methods of fixing the maximum renewal-fees & this is a matter which ~~demands~~ requires special consideration.

(3) Thirdly, it appears necessary to take measures to prevent the landlords from shifting on to the tenants the whole burden of the new assessment. On this subject ~~the Collector~~ further full particulars ~~[illegible]~~ are ~~necessary~~ required. The best means of obtaining information ~~of~~ on the point will probably be to make an examination of as many recent leases as possible. The I.G. of Registration will issue instructions to this effect to his subordinates & will, if possible, visit Malabar himself. The examination of such leases ~~as~~ as are not registered in consequence of their exemption under Notification published on p. 819 of the Fort St George Gazette dated 30th May 1876 will have to be ~~[illegible]~~ conducted by the Revenue officers & the Collector will take steps to have ~~[illegible]~~ inspected as many as possible (inspected by ~~[illegible]~~) Tahsildars & Deputy Tahsildars ~~[illegible]~~ personally or by ~~[illegible]~~ [illegible] subordinates [illegible] is found that [illegible] is correct, it will [illegible]

will [illegible] the matter without delay.

[illegible] of the matter.

[Note
The Hon. Mr. Grose suggested sending a D.O. to the I.G. & Collector but the other H.M.s seem to desire that the instructions shall appear in the G.O. Perhaps the Hon. Mr. Grose will not object to this]

[Either way will do as far as I am concerned. [illegible]]

[illegible]

X

declared null & void by [illegible] legislative enactment [illegible] declared null & void

[48? [illegible]]

on the analogy of section 48 of the Bengal Tenancy Act, 1885,

probably ~~[illegible]~~ prove necessary ~~to cancel~~ all leases containing ~~maximum~~ clauses exempting the landlords from the payment of any portion of the additional assessment & to fix by law some multiple of the Govt. assessment as the maximum rent which may be demanded from a tenant.

8. The important matters dealt with in the last preceding paragraph will probably have to form the subject of a separate Tenancy Bill for Malabar, but, pending the receipt of the information called in clause (3) of that paragraph, the Govt. is not in a proper position to deal with this ~~matter~~ question. ~~[illegible]~~ ~~[illegible]~~ The progress of the settlement of the district renders expedition desirable & the requisite information should be supplied by the I.G. of Regn. & the Collector as ~~early~~ soon as possible.

9. Regarding the views expressed in paragraph 6 & clauses (1) & (2) of paragraph 7 of this Order the Gov[illegible] desires to be favoured [illegible] the ~~views~~ opinions of the Hon. Judges of the High [illegible] the Hon. the Advo[illegible] ~~& the Collector~~ Board of Reve[illegible]

[Note
It seems unnecessary to say anything more about a separate Tenancy Bill. When the replies to this para. (& those regarding clauses (1) & (2) of para. 7) are received they will be transferred to the Rev. Dept. which can best deal with the 3 questions raised in para. 7. ~~[illegible]~~ On the other hand Jud. Dept. will deal with the replies on the subject-matter of ~~the~~ para. 6, as that is quite distinct & relates merely to the amendment of Act I of 1887. In this way all confusion will be avoided.]

Note
It is understood that the High Court's opinion regarding the matter referred to in clause (3) [of para. 7] is not to be sought until the Collr. & I.G. have furnished the information called for in para. 8. But there seems no reason why opinions on the other questions at issue should not be obtained at once.]

Earliest practicable opportunity. ~~[illegible]~~ The High Court will also be requested to furnish Govt. with statistics of the number of evictions & the amount awarded in compensation to tenants during (& during ~~[illegible]~~ 1893, in order to the period 1877–86) ~~[illegible]~~ comparison with the figures for 1887–~~[illegible]~~92 & the Collector of Malabar will report whether Govt. is correct in its ~~[illegible]~~ supposition that the figures supplied by Mr. Bradley relate to suits & not to persons. The Resident in Travancore (Travancore) will also be requested to furnish a copy of the Janmi & Tenant Bill which is now before the Travancore Legve. Council for the information of Govt.

To the Hon. the C/J. with C.L. with 6 &c.

~~Board of~~ Revenue Dept. with 4 &c.

Board of Revenue with 2 &c.

Govt. Solicitor with 1 &c.

Insp. of Registration with 1 &c.

Copy to the Resident in Travancore

Copy to the Dt. Magt. of Malabar. with 1 &c.

13 Sept.

copy [illegible]

Jd. 14/8/94

[illegible] 2/9

Eviction in Malabar

Note

It is pretty certain but there is no harm in asking]

~~H. E. the Actg. Governor~~

[illegible] S.

(Travancore)

To the Sec. [illegible] for favour of [illegible] consent details.

[illegible] 20/9.

R 26/9

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with 52 copies

49

95

1st October 1894, No. 2374, Judicial.

CONFIDENTIAL. I

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—again the following papers:—

G.O., dated 14th June 1890, No. 1012, Judicial.

Abstract.—Communicating, with remarks, to the Honorable the Judges of the High Court a letter from the District Magistrate of Malabar with Resolution of the Board of Revenue thereon regarding the six tables of rates of compensation to be paid to tenants under Madras Act I of 1887.

G.O., dated 11th December 1891, No. 2530, Judicial.

Abstract.—Passing orders on correspondence relative to the preparation under section 6 (2) of the Tenants' Improvements (Malabar) Act, 1887, of tables of rates of compensation to be paid in the case of trees and plants to ejected tenants.

Read—also the following paper:—

Proceedings of the Board of Revenue (Land Revenue), dated 11th May 1894, Mis. No. 2588.

Read—the following letter from H. BRADLEY, Esq., Acting Collector of Malabar, to the Secretary to the Commissioners of Land Revenue, dated Camp, Mannarghat, 31st January 1894, No. 161-P. Gl.:—

I have the honour to submit the report called for in G.O., dated 11th December 1891, No. 2530, Judicial, upon the working of the Tenants' Improvements Act, Malabar. I forward my report through the Board of Revenue because Mr. Winterbotham's report, which led to the correspondence upon which the Government Order was based, was addressed to the Board.

2. The enclosed statement for the three years ending 1892 shows the number of evictions, &c., and has been prepared from figures furnished by the District Judges on the same lines as the statement printed at page 7 of the Government Order under reply which formed the enclosure to the High Court's letter printed at page 6. It shows that there has been a very considerable increase in the number of eviction suits; that the percentage of cases in which compensation was granted remains about the same—just under 24 per cent. for the three years; and that the compensation granted amounted to over 5 lakhs of rupees. The amount of compensation granted per case has increased from Rs. 148 to 169.

3. It is, therefore, clear that the avowed object of the Act—namely, to check evictions—has not been attained. I have no statistics, and I fear that it would not be easy to obtain them for the 13,000 eviction suits which have been before the Courts during the last three years, to show in how many cases the janmi himself was the plaintiff or in how many cases the kanomdar himself was cultivating. But there must be many cases in which the person who really expended time and labour upon the improvements was a sub-tenant and in perhaps more than half the cases the plaintiff is the holder of a melcharth.

4. Considering that less than seven years have elapsed since the passing of the Act, and the ordinary period of a kanom lease is 12 years, the full effect of the Act has not yet been reached, because there has, as yet, been no occasion for eviction suits in respect of $\frac{5}{12}$ of the leases subsisting before the Act was passed. But I firmly believe that eviction suits will increase steadily until 12 or 13 years have passed since the introduction of the Act and that the position of tenants will, for the reasons given below, be found not to have improved at all when the end of the century arrives. The janmi is anxious that the compensation to be paid upon evicting a tenant should be as low as possible, and it is not difficult to devise a means of keeping it low, or in any case it can be determined once for all at the next renewal and care taken that all future improvements shall be described in the leases as his property.

5. There is no doubt that as things are at present tenants are far better off than they were before the passing of the Act. They are getting much better rates of compensation, but they do not consider that the rates they obtain compensate them in full. The janmis on the other hand look upon the Act with disfavour, as it has appreciably reduced their hold upon their tenants. In some cases it is reported that the amount given in the way of compensation exceeds the janmam value of the land, and it is, I believe, a fact that execution is not taken out at all in a fair proportion of eviction suits owing to the amount that has to be paid as compensation.

6. In North Malabar it is stated that Courts very frequently give higher rates of compensation than those sanctioned in the Government order under reply, but this is attributed to the personal views of the present Judge, who joined the Court in May 1890 and who has his own method of working out the compensation payable. In South Malabar there are no sanctioned rates. But it will be seen at a glance that the average amount of compensation awarded is much greater in South than in North Malabar. The general opinion amongst officials appears to be that the rates of compensation now awarded, though far more favorable to the tenants than the old customary rates, are not high enough to cover the real value of the improvements. But there is, of course, the danger if they become too high of the cost of evictions becoming prohibitive and of janmis thereby losing all control over their tenants.

7. In considering the number of evictions that have taken place since the introduction of the Act, there are two points which require special consideration—one is the impetus to evictions given by the janmis' fear lest Mr. Logan's proposals relating to permanency of tenure should be brought into force which very probably might account for some of the increase in the number of eviction suits; the other is the ruling of the High Court reported at page 454 of Vol. XIII of the Indian Law Reports (Madras Series). Under this ruling, as interpreted by the Courts, the cost of instituting an eviction suit for garden land has very considerably increased. This, of course, would tend to keep down such suits.

8. I now proceed to explain why I believe that the effect of the Act will have almost entirely passed away by the end of the century. As soon as the janmis began to understand the bearing of the Act, they began to devise means of evading it, and they have accordingly taken to entering a very considerably increased rent in renewed leases; and they insert a clause to the effect that a portion of the rent has been remitted for improvements to be effected. Then under clause (*c*) of section 6 (1) of the Act, the compensation will be materially reduced at eviction. The tenant knows that he will be evicted if he does not consent to the landlord's terms; for the present he has only to pay the old rate of rent, and the next renewal is 12 years off, and without considering the future consequences he can easily be got to consent. In other cases the janmi allows the tenant to retain the land for a few years beyond the period of the kanom and then persuades the tenant into executing a lease in which all or nearly all the trees are entered as landlord's improvements. I believe, therefore, that by one means or another after all the kanoms in the district have been renewed once since the Act was introduced, it will be found that the percentage of eviction suits in which compensation has to be paid will be very small.

9. Upon the whole, then, I am of opinion that the Act has worked so far favorably for the tenants, but I do not believe its effects will be permanent nor has it tended to give the least additional security to the tenants. It has not checked the practice of giving melcharths in the very slightest degree. I fear that no legislation will have any permanent effect unless it secures to a kanomdar freedom from eviction so long as he pays his rent and the customary renewal fees. This can, I fear, only be done by prohibiting melcharths, the number of which is said to be on the increase. The present Act would be considerably improved by the repeal of clause (*c*) of section 6 (1), which puts a very dangerous weapon into the hands of the janmis.

10. I do not think that the tables of rates are in any way necessary so long as the method of applying them is left entirely to the Courts. It is stated that one of the munsifs has recently adopted a practice of deducting half the ascertained value of the improvements by way of compensation to the janmi for the capital invested in the land. As long as such a thing as this is possible, no tables of rates can be of much effect.

Enclosure.

Statement showing the Eviction suits in North and South Malabar during the years 1890 to 1892.

Name of Court.	1890.						1891.						1892.					
	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6
	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.
					RS. A. P.						RS. A. P.						RS. A. P.	
North Malabar.																		
1. Sub-Court, North Malabar, Tellicherry ..	17	10	58·52	7	8,754 8 5	1250·64	14	7	50	7	2,674 2 2	382·01	22	19	86·36	3	3,721 9 8	1240·53
2. District Munsif's Court, Cannanore	61	44	72	17	1,479 0 0	87	54	33	61	21	2,704 0 0	128	40	13	32	27	2,651 0 0	98
3. District Munsif's Court, Tellicherry	210	161	76·6	49	3,937 4 9	80	201	164	81·09	37	6,546 4 10	176	141	117	82·97	24	1,639 7 9	68
4. District Munsif's Court, Taliparamba ..	83	71	85·54	12	1,038 1 10	86	96	87	90·62	9	564 6 4	62	129	112	86·82	17	601 10 6	35
5. District Munsif's Court, Badagara.	333	235	70	98	10,247 0 0	104	294	188	64	106	8,363 0 0	78	351	221	62	130	18,063 0 0	138
6. District Munsif's Court, Payyoli *.	..	..	..	..	..	..	..	..	..	..	..	..	279	171	61·29	108	14,048 13 5	130
7. District Munsif's Court, Koilandy †	226	171	75·6	55	2,778 4 11	50	174	138	79·3	36	2,630 12 7	73	143	106	74·1	37	2,366 2 1	63
8. District Munsif's Court, Panur ..	325	226	69	99	10,243 0 2	103	267	166	62	101	8,480 7 2	83	232	161	69	71	6,275 7 0	88
Total ..	1,255	918	73·1	337	38,477 4 1	114	1,100	783	71·2	317	31,963 1 1	101	1,337	920	68·8	317	49,367 2 5	156
South Malabar.																		
9. Sub-Court, Calicut	4	2	50	2	4,246 6 3	2,123	3	3	100	..	..	..	6	2	40	3	2,776 2 0	925
10. " Palghat	7	5	71·4	2	9,286 14 9	4,643	3	1	33·3	2	1,050 4 8	525	4	1	..	..	..	..
11. " Cochin.	11	11	100	..	..	...	7	6	85·6	1	146 0 0	146	8	6	75	2	93 0 0	46
12. Principal District Munsif, Calicut .	138	90	65·25	48	5,836 8 6	121	161	103	63·97	58	5,543 0 2	95	176	133	75·56	43	5,617 0 0	130

* Established on 1st March 1892.

† Redemption suits are not included.

Statement showing the Eviction suits in North and South Malabar during the years 1890 to 1892—*cont.*

Name of Court.	1890.						1891.						1892.					
	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6
	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.	Number of evictions.	Number in which no compensation was awarded.	Percentage of columns 2 to 1.	Number in which compensation was awarded.	Total amount of compensation when given.	Proportion of columns 5 to 4.
South Malabar—cont.					RS. A. P.						RS. A. P.						RS. A. P.	
13. Additional District Munsif, Calicut ..	114	54	47·36	60	7,071 0 0	118	158	71	44·93	87	9,632 0 0	111	121	46	38·01	75	7,515 0 0	100
14. District Munsif, Shernad ..	343	263	76	80	13,887 0 0	173	319	264	82	55	6,753 0 0	122	387	346	89	41	12,873 0 0	313
15. District Munsif, Ernad ..	246	205	83·3	41	7,792 10 6	190	218	183	83·9	35	20,230 3 5	578	296	253	85·4	43	12,465 14 11	289
16. District Munsif, Betutnad ..	401	348	86·7	53	26,206 10 2	494	331	249	75·2	82	15,522 3 3	189	355	289	81·4	66	11,877 12 4	179
17. District Munsif, Kutnad ..	278	237	85	41	7,232 0 0	176	328	279	85	49	11,285 0 0	230	310	273	88	37	5,786 0 0	156
18. District Munsif, Chavakkad ..	314	242	77·07	72	8,929 1 9	124	328	225	68·59	103	13,339 14 5	129	329	224	68·08	105	1,930 15 3	18
19. District Munsif, Angadipuram.	258	166	64·3	92	10,190 7 4	92	279	164	58·7	115	6,786 13 7	115	340	230	67·6	110	4,566 13 10	111
20. District Munsif, Nedunganad.	271	225	83	46	16,550 0 0	360	328	[illegible]	87	41	30,722 0 0	749	353	279	84	54	36,697 0 0	680
21. District Munsif, Palghat ..	335	286	85	49	5,853 0 0	119	292	250	86	42	6,734 0 0	160	287	240	84	47	5,052 0 0	107
22. District Munsif, Temelprom ..	251	215	86	36	9,790 5 8	272	267	235	88	32	9,062 7 10	283	306	282	92	19	3,337 11 8	176
23. District Munsif, Vayitri ..	1	1	100	..	..	..	8	8	100	..	..	..	5	5	100	..	..	..
24. District Munsif, Anjengo ..	..	..	..	..	..	..	2	2	100	..	..	..	..	..	..	..	..	..
Total ..	2,972	2,350	79·1	622	1,32,872 0 11	214	3,032	2,330	76·8	702	1,36,806 15 4	19·5	3,283	2,609	79·5	645	1,10,588 6 0	171
Grand Total ..	4,227	3,268	77	959	1,71,319 5 0	178	4,132	3,113	75	1,019	1,68,770 0 5	165	4,620	3,529	76·4	962	1,59,955 8 5	166

99

Resolution—dated 11th May 1894, Mis. No. 2588.

The Collector's report on the working of the Malabar Compensation for Tenants' Improvements Act I of 1887 will be submitted to Government with reference to paragraph 4 of G.O., No. 2530, dated 11th December 1891.

2. The report proves little beyond the facts that the number of eviction suits has enormously increased; that the tenants are dissatisfied with the amount of compensation awarded, while the janmis have been seeking, and are supposed to have found, a means of evading the Act; that there is no uniformity in the methods adopted by the Courts for determining the amount of compensation to be awarded, and that the percentage of cases in which compensation is granted has remained almost stationary at about 24 per cent. of the number of evictions.

3. In the opinion of the Board, proposals for the revision of the Malabar Act are not called for pending the passing of the draft Tenancy Bill into law; and questions affecting the relations between landlord and tenant are likely to arise during the progress of the settlement of the district now being undertaken, the decision on which it might be as well to await.

(True Copy and Extract.)

(Signed) L. M. WYNCH,
Secretary.

To the Secretary to Government, Revenue Department.

Mis. No. 2140.

Transferred to the Judicial Department.

2. With reference to paragraph 3 of the Board's Proceedings read above, the attention of the Judicial Department will be invited to section 3 of the Madras Tenancy Bill, from which it will be seen that the provisions of the proposed Act will not apply to the Malabar district until they are extended thereto by a notification.

(Signed) R. C. C. CARR,
Under Secy. to Govt.

OOTACAMUND,
31*st May* 1894.

To the Judicial Department.
" Board of Revenue (Land Revenue).

Here enter Notes on green ~~papers~~

ORDER—dated 1st October 1894, No. 2374, Judicial.

In December 1889 the High Court forwarded for the sanction of Government under section 6 (2) of the Malabar Compensation for Tenants' Improvements Act, 1887, table showing the rates of compensation to be paid for trees and plants in six of the District Munsifs of North Malabar (Tellicherry, Cannanore, Kaváyi, Badagara, Painád and Nadapuram). The tables were referred to Mr. Winterbotham, the then Collector of Malabar, for remarks and he replied that the proposed rates were utterly inadequate. The Board of Revenue concurred but, after a further reference to the High Court, the Government sanctioned the proposed rates with the observation that the Act seemed to afford inadequate protection to the tenant, that further legislation would perhaps be necessary and that the Collector of Malabar should submit a report on the matter at the end of 1893 (G.O. dated 11th December 1891, No. 2530, Judicial).

The Collector's report and the remarks of the Board of Revenue thereon form the correspondence read in this Proceedings.

2. Madras Act I of 1887 may be said to have a twofold object, namely, first to secure to tenants the full market-value of their improvements and, secondly by doing so, to check the growing practice of eviction.

The extent to which this double object has been attained constitutes the first question for consideration.

It is impossible to say with certainty whether the Act has had the effect of securing the tenants the full value of their improvements because, although the sums received by tenants as compensation are known, there are no means of ascertaining the amounts to which they were entitled. It would, no doubt, be fair to assume that sudden increases in the number of cases in which compensation was paid and in the sums paid occurring in 1877 were due to the operation of the Act, but, unfortunately, no statistics for the years preceding 1887 are available and it is therefore impossible to say whether any such increases did take place in that year. The figures for the period subsequent to the passing of the Act present nothing which is instructive on this point. They merely show that, in 1887, compensation was awarded in 24·5 per cent. of the eviction cases and that the average sum awarded in each case amounted to Rs. 109, while, in 1892, the corresponding figures were 23·6 per cent. and Rs. 166, which last figure is lower than those reached in 1889 (Rs. 202) and 1890 (Rs. 178).

There are better grounds on which to base conclusions relative to the effect of the Act in checking evictions. Mr. Logan showed on page XXXVII of his Report dated the 16th June 1882 that the average number of persons against whom decrees of eviction were passed annually was 1,891 in 1862–66, 3,483 in 1867–71, 6,286 in 1872–76 and 8,355 in 1877–80. Unfortunately no statistics are available for the period 1881–86 and the figures for 1887–92 do not admit of immediate comparison with those given by Mr. Logan because, whereas the latter indicate the number of *persons* against whom eviction was decreed, the former seem to refer to the number of *suits* in which eviction was ordered. But it is plain, assuming Mr. Bradley's figures for 1890–92 to refer to the same description of facts as the High Court's figures for 1887–89, that there has been no tendency towards a decrease in the number of evictions during 1887–92. Indeed the statistics indicate the reverse, as appears below:—

Year.	Number of suits in which eviction was decreed.
1887	2,819
1888	2,441
1889	2,627
1890	4,227
1891	4,132
1892	4,620

From this it seems to follow that the Act has failed to check evictions to the extent which was anticipated, although, for want of particulars, it is impossible to say whether it has not been to some degree effective.

Mr. Bradley's opinion that tenants are far better off than they were before the passing of the Act and that execution is in many cases not taken out on account of the magnitude of the compensation awarded goes to show that the new law has not been altogether inoperative and paragraph 5 of the Note on the administration of the Registration Department during 1893 contains evidence to a similar effect. On the other hand, it is observed that in paragraph 17 of his letter dated the 6th June 1894, No. 514, on the subject of the recent Moplah outbreak, Mr. Bradley speaks of the Act as being practically of little use.

3. If it be granted, then, that the Act has not worked so effectively as was expected, it becomes necessary to investigate the causes of its partial failure.

The most obvious of these is that inadequate compensation is being awarded to the tenants. Mr. Winterbotham in his letter read in G.O. dated 11th December 1891, No. 2530, Judicial, expressed the opinion that the Act was being construed in the most illiberal spirit and that the *explanation* appended to section 6 enabled the courts to ignore the intention of the Legislature, which was to give the tenant the full market-value of his improvements.

So far as regards "fixtures and tillages" there are no means of ascertaining the accuracy of Mr. Winterbotham's criticisms, but it is highly probable that they are just, for Mr. Twigg, the Sub-Collector, in his letter read in the Proceedings of Government referred to above, expressed views which are entirely inconsistent

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with the intention of the Act and the High Court (I.L.R. XIII, Madras 454) ppears to have made a ruling as to the manner in which compensation should be alculated in the *absence* of evidence as to the market-value of an improvement, though it was intended by the Legislature that the market-value should be ascerned in *every* case.

As regards "Plantations" there can be no doubt that the rates sanctioned in .O. dated 11th December 1891, No. 2530, Judicial, do not represent the market-alue, or anything like the market-value, of the trees specified in the tables. The reason why such inadequate rates were proposed is not, the Government thinks, far to seek. The principle of compensation for improvements was fully recognised long before Madras Act I of 1887 was passed, but, prior to the passing of that enactment, the rates of compensation for trees were fixed according to an ancient, arbitrary and, in most cases, utterly inadequate scale. This scale varied locally to a marked degree, but the principal distinction lay between North and South Malabar, the rates in the South being far higher than those prevalent in the North. Whether this distinction was attributable to the difference between the Kánam (mortgage with possession) of the North and the Kánam (lease) of the South, or whether it was due to the maintenance of the old customary rates in the North and to the gradual adoption of a more reasonable scale in the South, is not certain and is a matter of little moment. The important fact is that this distinction between North and South did, and does still, exist, for the statistics now before Government show that the average compensation awarded in the South is far higher than that given in the North, although the rates show a tendency to approximate. A striking instance of the strength of the ingrained idea that tenants in the North are not entitled to the full value of their improvements, is to be found in the case quoted by Mr. Bradley of a District Munsif who continues to award half the value of improvements, as janmabhogam, to the landlord; and it is to this idea that the Government is inclined to attribute the inadequacy of the rates of compensation for trees which were proposed by the District Munsifs of North Malabar and reluctantly accepted by Government.

Mr. Bradley suggests, as another reason for the partial failure of the Act, the impetus given to evictions by the fear lest Mr. Logan's proposals to give the tenant occupancy-right should be acted upon. But it is doubtful if this can have had much effect, for no steps have been taken in this direction since the Committee on Malabar Land Tenures reported adversely on the subject so long ago as early in 1887.

It is also observed by Mr. Bradley that the custom of granting Mélkánams, or Mélcharths, prevents the Act from conferring its full benefits; and it is certainly probable that the grant of a Mélkánam often leads ultimately to the eviction of the Kánamkár or the enhancement of his rent.

Another cause of the want of success which has attended the working of the Act is the ease with which it is evaded. Mr. Bradley gives two instances of this. Section 6 declares that the amount of compensation shall be estimated with reference to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement. The landlords have therefore begun, it is stated, to make nominal increases to rents on renewal of Kánams and nominally to remit the amount of the increases in consideration of improvements to be effected, the result being that the compensation payable to tenants on the expiry of the renewed Kánams is or will be, reduced in consideration of the apparently favorable terms on which they held. This manœuvre is so easy, safe and effectual that there seems some ground for Mr. Bradley's prediction that it will ultimately render the Act inoperative. Another mode of evasion brought to notice in the Collector's letter is that of allowing the tenant to retain his holding for a few years beyond the period of the Kánam and then persuading him to execute a lease in which the trees are entered as improvements made by the landlord. The Government does not fully understand the nature of this second method of evading the law, but it seems improbable that it is often adopted or is very effective.

4. The Government has expressed in the preceding portion of this Proceedings its opinion that Madras Act I of 1887 has not completely attained its object

and has recited the probable causes for the partial failure of the law. The next question to be considered is, therefore, the expediency of undertaking further legislation.

It has been asserted again and again by persons thoroughly acquainted with the conditions of Malabar that the insecurity of the tenantry constitutes a serious menace to the peace and prosperity of the district; and the necessity for remedial measures was recognised when Act I of 1887 was passed. There can be little doubt that agrarian discontent combines with other causes to produce the frequent and disastrous outbreaks among the Moplahs. This statement is supported by the opinions of numerous competent observers; and, in view of the fact that Moplah outrages are almost confined to the great grain-producing taluks of Ernad and Walavanât, it is significant that Mr. Logan, in his capacity of Special Commissioner, arrived at the conclusion that grain-lands are held on shorter tenure and are probably more frequently rack-rented than garden-lands. Mr. Logan also adduced statistics to prove that, relatively, more Muhammadans than Hindus are sued for eviction. It would be useful to ascertain whether this is still the case; and the High Court will be requested call on the District Judges to collect and submit statistics on the subject for the period during which Act I of 1887 has been in force. But however that may be, the connection between Moplah outbreaks and the discontent engendered by the precariousness of the land-tenure in Malabar seems sufficiently established; and there is no reason to suppose that this discontent is confined to the Muhammadan tenants, although it occasionally assumes among them a more violent form than it does among the Hindus. It was anticipated that the enactment of Act I of 1887 would check evictions to so great an extent as to secure to the tenants a reasonable degree of permanency in their holdings, but, as it seems to have failed to do so, the removal of those defects which prevent the Act from attaining its full measure of success appears to Government to be undoubtedly expedient.

5. The Board of Revenue has made no suggestions as to the form which legislation should take; on the contrary, it expresses the opinion that nothing need be done until the Tenancy Bill passes into law and that it would be well to defer taking any action until the completion of the new settlement. The Government is not inclined to accept the Board's policy of delay. The Tenancy Bill is not likely to become law for a long time; and when it does, and assuming it to be rendered applicable to Malabar, it will not, if it retains its present form, confer any particular benefits upon the tenant. As to deferring action until the conclusion of the settlement, the Government considers that such a course would be both unnecessary and dangerous. Unnecessary because it is highly improbable that any additional evidence will be forthcoming on a matter so much debated as the relation between landlord and tenant in Malabar; and dangerous because Mr. Bradley shows in paragraph 17 of his letter dated the 6th June last, No. 514, regarding the recent Moplah disturbance, that the landlords are taking steps to ensure that all increase in assessment which may follow the new settlement shall fall upon the tenants. It seems, therefore, to Government that legislation should be undertaken without delay; and the first and most obvious step is to remove the existing hindrances to the free and full operation of Act I of 1887. On this subject the following remarks seem to be called for.

6. (1) In the first place it is essential that the Courts shall be left no room for mistake as to the intention of the Legislature to give to the tenant the full market-value of his improvements. In the Bill for the compensation of tenants as originally drafted this intention was clearly expressed, but it was altered at the suggestion of the then Advocate-General in spite of the strenuous opposition of Mr. H. J. Stokes and Sir T. Madhava Rao who foresaw that the wording proposed by the Advocate-General would obscure the main object of the enactment. Their prediction seems to have been verified and the Government inclines to the view that the following amendments should be made in the Act, viz.:—

(1) in section 3 (1) to insert the words "tree or plant" after the word "work";

(2) in section 5 (1) to substitute the words "as the full market-value of his improvements" for the words "for improvements";

(3) in the *Explanation* to section 6 (1) to insert the words "among other" between the words "following" and "matters"; and

(4) to section 6 (1) to add a new clause running "in the case of trees and plants, the probable market-value of the same."

(2) A still more obviously necessary step is to cancel the tables of rates of compensation which were sanctioned in G.O., dated 11th December 1891, No. 2530, Judicial, and to substitute for them a scale of rates prepared on a uniform system and calculated on an adequate basis. The present tables probably do more harm than good; they in nowise represent the market-value of the trees and plants mentioned therein, as they profess to do, and the burden of proving the inadequacy of the rates is thrown upon the tenant, so that he would be better off if there were no tables of rates in existence. The present tables apply, too, to only six munsifis. 103

The High Court will accordingly be requested to consider the expediency of directing the District Judges of Malabar to prepare, in consultation with the Collector and at an early date, fresh tables showing for each munsifi in the district the full market-value of the various trees and shrubs which are regarded as improvements. The Collector should consult the District Forest Officer before expressing an opinion on the rates proposed by the District Judges for timber-trees and fire-wood. In the preparation of the new tables, the Government considers that one very important matter to be borne in mind is that fruit-trees should be valued with reference to the length of time during which they may reasonably be expected to yield. That no such provision is made in the existing tables is a defect which should be remedied; and the Government is inclined to think that the value of a fruit-tree should be fixed at a sum equal to the present value of an annuity at 5 per cent. equal to the net value of its produce for the period during which it may be expected to bear. Five per cent. is suggested as it is believed to represent, approximately, the average return expected from agricultural investments. For the calculation of the values of fruit-trees on this basis two tables would be required; one showing, for each kind of fruit-tree, the average period during which a tree of every age up to, say, forty years may be expected to continue to yield fruit, and the probable net average annual value of the fruit yielded during that period, and the second giving the present value of an annuity of one rupee at 5 per cent. for from one to (say) forty years. The sum so fixed would probably exceed to a considerable extent the tree market-value of the tree, because allowance has to be made for vicissitudes of season, fluctuations in prices, and risk of damage to the tree. It would not, therefore, be just to award to the tenant the full present value of the tree and perhaps the fairest method of division would be to allow him as compensation one-half of the present value, which moiety might be taken to roughly represent the market-value of his improvement. Of course it would be open to the parties to prove that the rate arrived at in this way was too high or too low, as the case might be, for tables prepared under section 6 (2) of the Act have only a presumptive force. This suggestion can be best illustrated by an example. In the table of rates for the Tellicherry munsifi the compensation payable for an A'ttu veppu cocoanut tree of the first class, *i.e.*, producing more than 100 nuts yearly is Rs. 3. Assuming that the yield is 100 nuts, that their value is Rs. 2½, that the cost of maintaining the tree is 8 annas a year and that the tree bears for 40 years, then the value of the tree may be taken to be the present value of an annuity of Rs. 2 at 5 per cent. for 40 years, *i.e.*, to Rs. 34¼. So that, under the arrangement suggested by Government, the tenant would receive compensation amounting to Rs. 17-2-0 instead of only Rs. 3. Thus the tenant's position would be materially improved, while it cannot be argued that the compensation would be excessive in face of the fact quoted in paragraph 5 (3) of Mr. Winterbotham's letter read in G.O. dated 11th December 1891, No. 2530, Judicial, that in one instance Government was compelled in a land-acquisition case to pay to a janmi more than Rs. 100 for each cocoanut-palm, the trees being, too, of an inferior class.

(3) As observed above, landlords have found the way of evading the payment of compensation by entering fictitious rents in the leases given by them and

then claiming the benefits of clause (*c*) of section 6 (1). It is, no doubt, the duty of the Courts to consider and decide whether a reduction of rent on account of improvements to be made is genuine or fictitious and, if it proves to be the latter, to refuse to admit the landlord's claim for a reduction of the amount awardable as compensation. But the Government does not feel certain that the scrutiny of the Courts is a sufficient safeguard to the tenant who would be gravely committed by his previous acceptance of the lease and two modes of preventing ruses of this character suggest themselves, viz., (i) to declare that nothing in clause (*c*) of section 6 (1) shall apply to leases made after a given date and (ii) to repeal clause (*c*) of section 6 (1) altogether.

It is more difficult to discern a method of checking the evasion of the law by permitting tenants to hold for a period beyond the term of their Kánams and then persuading them to execute leases in which the trees are entered as landlords' improvements but, possibly, protection might be afforded to the tenant by a provision empowering him to apply to the Collector to reduce his rent on the ground that he was by force or fraud induced to surrender his claim to improvements effected by himself. But, as observed in paragraph 3, the Government does not clearly understand the Collector's remarks on the subject and they must be explained.

There is another point in respect of which the working of Act I of 1887 has proved defective. In the previous correspondence relative to evictions in Malabar complaints as to the character and competency of the Commissioners appointed by the Courts to value improvments are common. The Courts have power to appoint Commissioners for this purpose under section 392 of the Civil Procedure Code and the Committee of 1884 proposed in paragraph 50 of its report to limit the discretion of the Courts by requiring them to appoint a public servant, a practising vakil or an official Commissioner to value improvements. In the statement of objects and reasons which accompanied the Bill which became Act I of 1887 it is observed that it was not considered expedient to adopt this suggestion but no reasons are assigned. Section 5 of the Act requires the Courts to associate assessors with themselves in accordance with rules to be made by Governmrnt and rules on this subject were approved in G.O. dated 16th April 1888, No. 902, Judicial. It appears however, from the remarks on pages 20 and 21 of T. A. Rámákrishna Aiyar's Commentary on Act I of 1887 that the provisions of the law relative to the appointment of assessors have remained almost a dead letter; and this, it seems, is mainly due to the high rate of remuneration (Rs. 5 *per diem*) allowed to assessors under the rules.

To remedy this state of things one or both of the following courses might be adopted, viz., (i) to reduce the daily allowance of the assessors; (ii) to frame rules under section 392 of the Civil Procedure Code with the object of restricting the Courts in their choice of Commissioners and thus raising their status. In fact, if further enquiry should show such a step to be necessary, the Government would be prepared to consider the possibility of going further and of bearing the cost of the appointment of official Commissioners; and would, in view of this necessity, be glad of information as to the number of official Commissioners who would probably be required and the cost of their employment.

7. The above suggestions relate to the removal of defects in Act I of 1887 and in the rules made thereunder, but there are other and most important questions which call for consideration in this connection.

(1) In the first place Mr. Bradley suggests that the practice of giving Mélkánams should be prohibited. The Government, however, considers it possible to adopt this proposal. Mélkánams may be, and probably are, a fertile source of trouble and hardship to the tenants, but, as Mr. Wigram says on page 125 of his "Malabar Law and Custom", the right to mortgage the equity of redemption is involved in the undisputed right to assign it absolutely and, as the Kánamkár has, on his part, full power to assign absolutely or sub-mortgage his holding, it appears to Government that it would be a violent and unjustifiable measure to withdraw the corresponding power enjoyed by the Janmi.

(2) The second point is of even greater importance.

It is admitted by all who are most conversant with the subject that one of the most serious disadvantages under which the tenant labours is the unrestricted power

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of the landlord in regard to the levy of renewal fees upon the termination of leases and there is abundant evidence to show that this power is frequently exercised in a most oppressive manner.

The Committee of 1884 proposed in paragraph 34 of its report to restrict renewal fees to a maximum of one year's net produce *minus* the land revenue. It was calculated that this arrangement would add $8\frac{1}{3}$ per cent. to the rent. The second Committee which reported in February 1887 does not seem to have discussed this matter as a distinct question but it divided equally on a Bill which contained a clause restricting renewal fees to 20 per cent. of the Kánam amount and, in cases other than Kánam, to one year's net produce *minus* the land revenue. This Bill having been abandoned by the Committee on the ground that it was not supported by a majority, the question of restricting renewal fees dropped out of sight, but it may be mentioned in this connection that the Committee of 1884 showed excellent reasons why the maximum limit of renewal fees should not be fixed at a proportion of the Kánam amount. The Government is by no means satisfied that the proposals of the Committee of 1884 on this subject received the consideration which their importance demanded and is inclined to think that legislation in the interests of the tenant is desirable. It is possible that differences in the systems of North and South Malabar will necessitate different methods of fixing the maximum renewal fees and this is a matter which requires special consideration.

(3) Thirdly, it appears necessary to take measures to prevent the landlords from shifting on to the tenants the whole burden of the new assessment. On this subject further and full particulars are required. The best means of obtaining information on the point will probably be to make an examination of as many recent leases as possible. The Inspector-General of Registration will issue instructions to this effect to his subordinates and will, if possible, visit Malabar himself and arrange for the prompt conduct of their enquiries and the early submission of the results. The examination of such leases as are not registered in consequence of their exemption under the Notification published on page 819 of the *Fort St. George Gazette* dated 30th May 1871, will have to be conducted by Revenue officers and the Collector will take steps to have as many as possible inspected by Tahsildars and Deputy Tahsildars and will report the result without delay. If it is found that Mr. Bradley is correct, it will probably prove necessary to declare null and void by legislative enactment all leases containing clauses exempting the landlords from the payment of any portion of the additional assessment and, on the analogy of section 48 of the Bengal Tenancy Act, 1885, to fix by law some multiple of the Government assessment as the maximum rent which may be demanded from a tenant.

8. The important matters dealt with in the last preceding paragraph will probably have to form the subject of a separate Tenancy Bill for Malabar, but, pending the receipt of the information called in clause (3) of that paragraph, the Government is not in a proper position to deal with this question. The progress of the settlement of the district renders expedition desirable and the requisite information should be supplied by the Inspector-General of Registration and the Collector as soon as possible.

9. Regarding the views expressed in paragraph 6 and clauses (1) and (2) of paragraph 7 of this Order the Government desires to be favoured with the opinions of the Honorable the Judges of the High Court, the Honorable the Advocate General and the Board of Revenue at the earliest practicable opportunity. The High Court will also be requested to furnish Government with statistics of the number of evictions and the amount awarded in compensation to tenants during the period 1877–86 and during 1893, in view to comparison with the figures for 1887–92 and the Collector of Malabar will report whether Government is correct in its supposition that the figures supplied by Mr. Bradley relate to suits and not to persons. The Resident in Travancore will also be requested to furnish a copy of

the Janmi and Tenant Bill which is now before the Travancore Legislative Council for the information of Government.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Hon'ble the Chief Justice with C.L.
Revenue Department.
" Board of Revenue.
" Government Solicitor.
" Inspector-General of Registration.
" Resident in Travancore.
" Copy to the District Magistrate of Malabar.

Govt. of {1894} Madras.

JUDICIAL.

CONFIDENTIAL.

Dated October, 1st.

Recd. *Encl.*

G.O., 1st October 1894, No. 2374.

OCTOBER.

Evictions in Malabar.

Passing orders on certain questions connected with —.

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(56)

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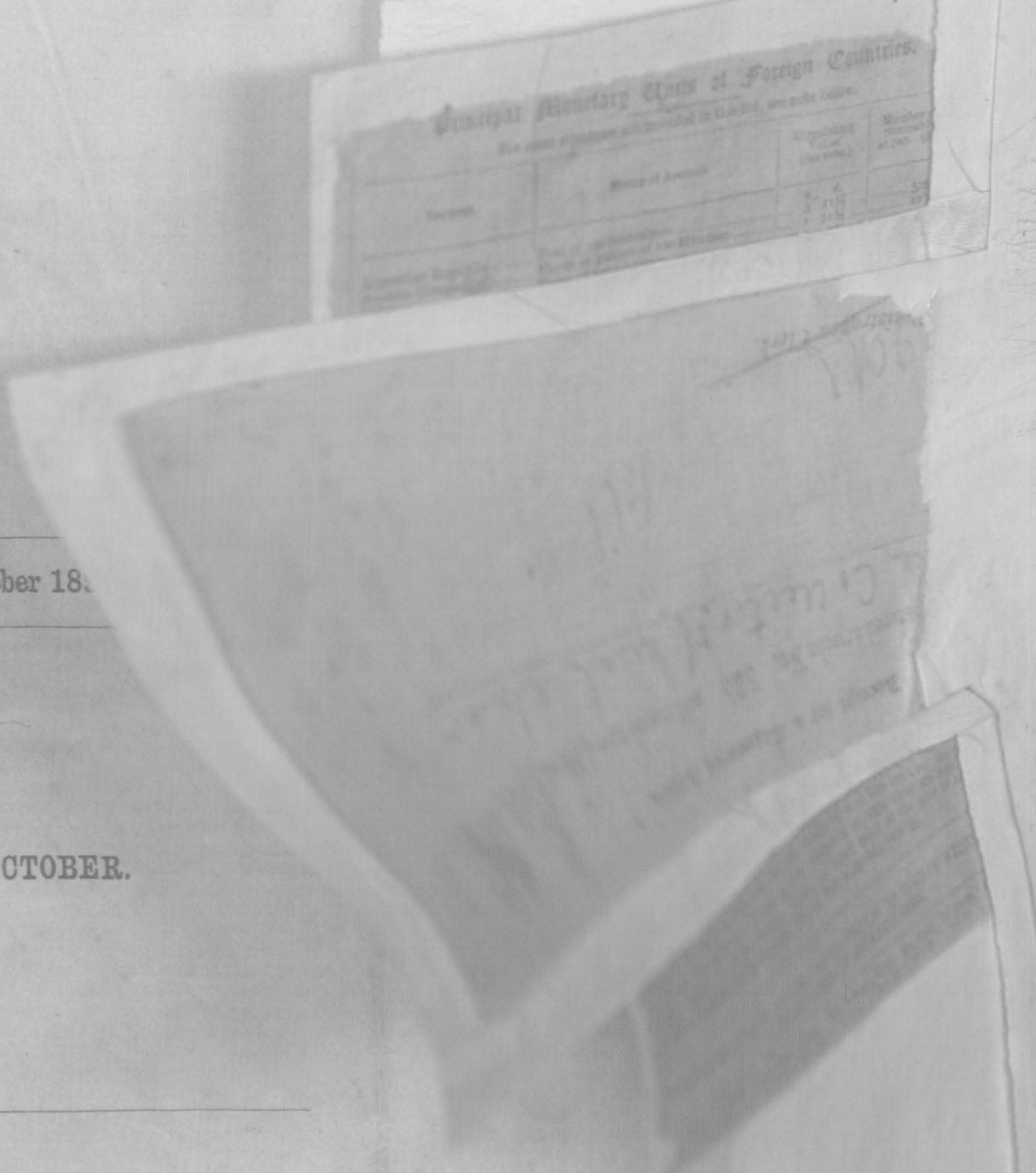
Recd.

G.O., 1st October 18



Principal Monetary Units of Foreign Countries.

OCTOBER.

Evictions in Malabar.

Passing orders on certain questions connected with —.

[G/14]

119

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1894

Judicial DEPARTMENT.
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[Despatch Abstract.]

Evictions in Malabar : Passing rders on certain questions onnected with evictions in Malabar