[L. / 16]
200—25-7-96

1

Legislative (1897) Department.

ORDINARY MS.

G.O., No. 894, 90, 91 Press

DATED 19 Novr 1897

INDEXED.

WS 22/11/7

[Despatch Abstract.]

Madras Tenancy Bill.

Directing that the —— as revised be submitted to the Govt of India for the previous sanction of H.E. the Govr-Genl, & Copies thereof also forwarded to the Rt Hon'ble the Secretary (for) of State, India

Fox

J. Cop

3

Legislative (1897) Department.

CURRENT No. 339

From

The Revenue Department

Order No. 89A Legislative dy 19 Novr 1897
mis

The ~~draft~~ letter will be forwarded to the Government of India; and the Rt Hon'ble the Secretary of State for India will also be addressed.

Misc No. 5881

Dep No 11
dy 25-11-97

Dated 16th November 1897.

Received 17 - 11 - 97

Registered 17 - 11 - 97

Enclosures 2.

Spare copies

20/11/7

To the Revenue Department. (9 & 0) 23/11/97

SUBJECT.

Transferring to the Legislative Department for the necessary action the draft Tenancy Bill as finally revised together with copy of a letter to the Government of India.

SECRETARY TO GOVERNMENT * LOCAL & MUNICIPAL DEPARTMENT * NOV. 1897

Note.

The Press has been asked for copies of letter & which are expected today for despatch. A draft despatch to the Secy of State is put up. (below).

20/11/97

CRU
20/11/97

CURRENT

5

F 16 2,000 -13-10-97.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

~~Read~~

Read No. 1881 dated 16th November 1897.

The draft Tenancy Bill as now finally revised together with a copy of a letter to the Government of India which has been passed by the Hon'ble Members and His Excellency the Governor will be transferred to the Legislative Department for the necessary action.

Secretary to Government.

To, The Legislative Department.

R/Rs.

[G. / 75 A.]
300--8-3-97.

Leg C no 337

NOTE FOR THE SECRETARY.

An incomplete file of papers, ~~only~~ ~~has been~~ was received in reply to the memo of ~~yesterday~~ 17 instant to the Revenue dept for connected papers.

A fresh memo for papers ~~is~~ was therefore submitted for signature, & the pp sent are herewith put up.

G.O. 123/124 Legve dy 11 Novr 1893, which contains the draft letter to India on the last occasion requesting the previous sanction of the Govr General for the introduction of the bill into the local legislative council is flagged A.

A despatch to the Secretary of State for India will have to be drafted. Please see G.O. R-115 Legve dy ~~17 Nov 1893~~ 3. Jany 1894 flagged B.

A draft despatch is accordingly submitted.

The question whether a bill like the present should be introduced into the local legislative council, or whether a general measure on these lines should be introduced into the Imperial legislative council, is one for the executive department concerned, which should, when the introduction of the Bill is decided finally, transfer the papers to

Note
G.O. 387 Rev dy 30-1-97 not available yet
The file is still incomplete. The bill of 1893 was referred to the Adv. Genl for remarks in the Revenue dept; It is not now known whether the present Bill has been referred to him; perhaps it has been considered unnecessary

Legve G.O. 115 R dy 17-11-93 flagged D

CRV 19/11/97

That is not the Gn. The reference is for sanction to the legislation here.

papers to the Legislative Department.; But in the present case as this Dept has already taken action in the direction desired, it may perhaps be thought that the draft letter to India ~~might~~ as well go in Legislative. As the subject is of an urgent nature it is proposed not to delay these pp any longer.

CRV
19/11/97

It is quite clear that the matter was not ripe for Legisl. Dept. when the pp. were transferred in 1893: but the case is now here & the Govt of India will be addressed in this Dept.

Since the letter to India at once

V.K. 19/11/

} Dispd 20/11/97

9

Government {1897} of Madras.

LEGISLATIVE.

Final Proof

Recd. } 1897. Enclosures

Regd. } 1897. Spare copies

Letter, No. 90, 11th November 1897.

NOVEMBER.

No. 90 LEGISLATIVE, 19th NOVEMBER 1897.

LEGISLATIVE DEPARTMENT.

LETTER—from

G. S. FORBES, ESQ.,
SECRETARY TO GOVERNMENT,
Legislative Department,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF REVENUE AND AGRICULTURE.

SIR,

With reference to the marginally-noted correspondence on the subject of Madras Tenancy legislation, I am directed to submit, for the sanction of His Excellency the Governor-General under section 5 of the Indian Councils Act, 1892, a revised Bill which it is proposed to introduce into the local Legislative Council and which is the result of a fresh scrutiny, by the present Government, of the Tenancy Bill commented upon by the Government of India in Mr. Finucane's letter, No. 902–352 (Revenue), of the 30th March 1894.

From Madras Government, No. 124, dated 11th November 1893.
To Madras Government, No. 114–352, dated 11th January 1894.
From Madras Government, No. 387, dated 30th January 1894.
To Madras Government, No. 902–352, dated 30th March 1894.
From Madras Government, No. 1947, dated 19th May 1894.
To Madras Government, No. 376–71–1, dated 8th February 1896.
From Madras Government, No. 1444, dated 10th April 1896.

2. In that letter, exception was taken to that Bill on the grounds—

(1) that it failed to sufficiently protect the ryot in the acquisition of occupancy right—provision for the establishment of "settled ryots", as defined in the Bengal Tenancy Act, being urged as absolutely necessary to meet the case:

(2) that it barred the growth of occupancy right in waste:

(3) that it failed to provide for the protection of under-tenants—sections 48 and 49 of the Bengal Tenancy Act being commended as a basis of legislation:

(4) that it gave no power to the Government to make a survey, record-of-rights and settlement of rents in proprietary estates:

and it was suggested for further consideration—

(5) whether protection, in the acquisition of occupancy right, should not be carried even farther than by providing for the establishment of "settled ryots":

(6) whether the free transfer of occupancy right, by sale, gift or otherwise, should be permitted:

(7) whether the last section, empowering farmers of public revenue to proceed against their sub-renters, should be retained: and

(8) whether the jurisdiction in suits under the Act should be vested in the Revenue Courts, or in the ordinary Civil Courts—the Government of India, as then advised, being in favour of the former.

The opinion was also expressed that, to ensure clear statutory definition of the substantive rights of ryots in proprietary estates, the various classes of tenants—settled ryots, occupancy ryots, non-occupancy ryots and under-tenants—should be enumerated in an early part of the Bill, and then their substantive rights be defined and declared.

3. The present Bill meets these objections and suggestions by—

(1) providing for the acquisition of occupancy right by attainment of the personal status of the "settled ryot," though the term itself is not actually used:

(2) permitting the growth of occupancy right in waste let for ordinary agricultural purposes, while leaving the proprietor free to reserve waste for forest purposes or to let it for building, mining or other special purposes as he may choose:

(3) protecting the under-tenant against ejectment, in the manner provided by section 49 of the Bengal Tenancy Act, *except* when he is in arrear at the end of a Revenue year and when there is no sufficient distress upon the premises to satisfy the arrear:

(4) empowering the Government to make a survey, record-of-rights and settlement of rents in proprietary estates:

(5) omitting the section as to farmers of public revenue:

(6) vesting the jurisdiction in suits and proceedings under the Act in the Revenue Courts, except in a few matters with which the Civil Courts are best qualified to deal: and

(7) enumerating the various classes of tenants—occupancy ryots, non-occupancy ryots and under-tenants—in an early part of the Bill, and then proceeding to define and declare their respective substantive rights.

But the Bill does not carry protection further, in the acquisition of occupancy right, than by providing for the personal status of the "settled ryot": it does not protect the under-tenant, as section 48 of the Bengal Act does, by a statutory limit of his rent: and it does not interfere with the free transferability of occupancy right.

4. On these three points, this Government does not consider it advisable, for reasons which will be now explained and which it is hoped will commend themselves to the Government of India, to go further, in the directions suggested, than the present Bill; but, in any case, these three matters bulk so small in the large number of important questions of principle on which both Governments are now in accord, that any difference of opinion in regard to them will not, it is trusted, be allowed to stand in the way of the sanction now sought for the introduction of this Bill.

5. Originally, in this Presidency, the only two parties interested in the soil were the State and the ryot; and when the Government, under the Permanent Settlement of 1802, transferred to the zemindars the State's rights as landed proprietor, it obviously could transfer no higher rights, in relation to the zemindari ryots, than it itself possessed. What those relative rights of proprietor and ryot actually were, the Government, in making the transfer, deliberately abstained from defining and declaring; but—as legislatively explained in Regulation IV of 1822—the Government, at the same time, left those rights, whatever they were, absolutely unaffected by the transfer. In other words, the plain intention was to leave the relative rights of proprietor and ryot, in the transferred estates, exactly as they would have continued to be, under the State as proprietor, had no such transfer been made; and the whole course of tenancy legislation since the Permanent Settlement (Regulations XXVIII and XXX of 1802, Regulation V of 1822, and Act VIII of 1865) has been confined to processual measures which it was believed would suffice to secure those rights to both zemindar and ryot. But the experience of now nearly a century of unrestricted freedom of contract—if the term 'freedom' can be fairly used of parties so unequally matched as the average zemindar and the average zemindari ryot—has proved mere processual measures to be inadequate for the preservation of substantive rights, and there has resulted a state of circumstances which, in the endeavour to restore those rights, legislation cannot, with due moderation, ignore.

6. In arriving at the leading principles of the Bill, therefore, His Excellency the Governor in Council has been guided by the broad consideration that while, historically examined, the aim of legislation should undoubtedly be to place the zemindari ryot and the zemindar, in respect of substantive rights, in the same relative positions as the Government ryot and the Government, the circumstances have, during nearly a century of defective legislation, become so altered in important

respects—for instance, in the matters of occupancy right and rent—that it is now practicable to do so only as nearly as existing facts, which cannot be ignored, will reasonably permit.

7. It is on this consideration that His Excellency in Council, while providing, in this Bill, for the acquisition of occupancy right by attainment of the personal status of the 'settled' ryot, finds a difficulty in seeing his way to adopt the suggestion of the Government of India that protection might perhaps be carried even further in the same direction—presumably by the simple provision that every zemindari ryot in Madras has occupancy right in any land he holds.

8. That, no doubt, is the case as regards every ryot holding on ordinary puttah under Government, from the moment of his admission to the occupation of land; and such a provision might be theoretically justified in the zemindaries on the ground that, under the ancient system of sharing the produce between the State and the ryot, the latter had a customary right—which remained unaffected by the transfer of the State's rights to the zemindar under the Permanent Settlement—to hold without limitation of term, from the moment of his admission, as long as he paid the State's, or proprietor's, share. But the fact remains that in zemindaries, owing to a variety of causes emphasised under the long régime of 'freedom' of contract, there are now, and have been from time immemorial, ryots without such occupancy right; and this fact cannot well be ignored. It seems impracticable, accordingly, without a violation of existing conditions which due moderation forbids, to at once place the zemindari ryot in the same position as the Government ryot by declaring that every zemindari ryot has occupancy right in his holding from the moment of his admission thereto.

9. The furthest that it at present appears advisable for legislation to go in this direction is to secure the occupancy right, as a matter of personal heritable status, to every zemindari ryot who by long residence and cultivation in his village has become entitled to be looked upon as a *permanent, settled* ryot thereof, and to facilitate, as far as possible, the acquisition of that status by every other ryot. It will be nowhere denied that every *permanent* ryot is, by the custom of the country, considered to be entitled, by the mere fact of his personal status as a permanent ryot, to have occupancy right in all land held by him as a ryot in his village. And the present Bill, by section 8, secures that status — without, however, using the term 'settled ryot', which is unfamiliar in Madras—to every zemindari ryot, and to the heirs of every zemindari ryot, who has continuously held land as a ryot in his village for twelve years, whether under lease or otherwise and whether the land held has been the same throughout or has been different at different times. Every such ryot will thus be placed in the same position as the Government ryot in that he will have occupancy right in his present holding, and henceforward, from the moment of his admission thereto, in any land he may hold as a ryot in his village: and to every other ryot, the same facilities for acquiring that status as are provided by the Bengal Tenancy Act will be secured by sections 34 to 36 of this Bill. This, accordingly, is as far as this Government considers it advisable that legislation should, for the present, go in the direction suggested.

10. Similarly, in the matter of rent, if the zemindari ryot could be placed at once in the same position as the Government ryot, he would be secured in a rent regulated —as the Permanent Settlement undoubtedly intended—on the customary basis that the proprietor was only entitled to a certain share of the crop, deducting cost of cultivation. But the long régime of defective legislation and 'freedom' of contract has resulted, in many zemindaries, in a state of rents which it would be impracticable, without an unjustifiable violation of existing conditions, to alter at once to the Government basis; and the most that can, in the circumstances, be done in this direction is to start with existing rents, presume them to be fair and equitable, and leave them to be adjusted, in time, under well-considered provisions for enhancement and reduction. This the present Bill, following the Bengal Tenancy Act, aims at effecting.

11. In the matter of the free transferability of occupancy right, by sale, gift or otherwise, there appears to be no reason, so far as this Government is aware, why the zemindari ryot should not be placed in precisely the same position as the Government ryot, who has absolute freedom of transfer, and with whose freedom this Government has as yet no sufficient evidence before it for proposing to sanction any interference.

In the southern districts, where, generally speaking, occupancy rights have been consistently respected by the proprietors of estates, the zemindari ryot's right of transfer has, so far as this Government is informed, never been questioned and has been exercised just as in the case of the Government ryot. In the northern districts, where, in many estates, occupancy rights have been steadily encroached upon until the ryots have been reduced practically to the position of mere tenants-at-will, it is with the loss of the occupancy right that the exercise of the right of transfer has perforce ceased; and when the occupancy right is going to be restored by this Bill, the recognition of the right of transfer seems properly to follow. There certainly appears to be no good ground for placing the zemindari ryot of the north in a different position in this respect from that of the zemindari ryot of the south.

12. The suggestion of the Government of India, that the right of transfer should not be recognised where the custom of transfer does not already exist, would, therefore, be of very doubtful application in this Presidency, where, so far as this Government is informed, the right is acknowledged and the custom prevails wherever the occupancy right itself exists; and whatever may be the merits of the case in other parts of India, this Government is not in a position to say that, in either the ryotwari or zemindari tracts of Madras, this right has so far been exercised injuriously to the ryots themselves as a class or to the community, or that there is any sufficient ground for apprehending danger from its continued exercise in the future. In some parts of India, it may be, agricultural property is passing from the hands of the hereditary cultivators into those of the sowcar; but evidence is wanting to prove any general tendency of the kind in this Presidency. Here, in fact, the sowcar, speaking generally, does not form a class apart, as in other parts of India, and is hardly to be distinguished from other members of the land-holding classes except by the circumstance that he is not solely dependent on the land but has some capital which he employs by lending to his neighbours on the security of their land, not with the object, or with the frequent result, of acquiring the property in that land, so much as with the object of getting a good rate of interest. To interfere with the free transferability of occupancy right in this Presidency in the absence of clear evidence that the exercise of the right of transfer has been operating injuriously to the ryots as a class would, in the opinion of His Excellency in Council, be very difficult of justification and would probably give rise to extreme discontent. In the absence of such evidence, therefore, the course which at present commends itself to this Government is not to interfere in any way with the free exercise of a right which the occupancy ryots of Madras have enjoyed from before the time of the British Government and which has been consistently upheld by the Civil Courts; and in these circumstances, His Excellency in Council does not consider it advisable to modify in any way the provision of the present Bill, section 12, which secures to every occupancy ryot absolute freedom to transfer his occupancy right.

13. So also, on the question of protecting the under-tenant by a statutory limit of his rent in the manner provided by section 48 of the Bengal Tenancy Act, there appears to this Government to be no reason why the zemindari ryot should not be placed in the same position as the Government ryot, who is under no restrictions as to the terms of rent which he may arrange with his sub-tenants. Nor, except perhaps in Malabar, for which special legislation is now under preparation, has any case been made out for general interference of the kind. In Tanjore, for instance, where the ryot-landlord now often gets from 25 to 30 per cent. more rent from his sub-tenant than the suggested restrictions would allow him, the sub-tenants are in fact more than holding their own with their landlords. The average holdings of ryots in this Presidency are so small that sub-letting is comparatively rare; and the imposing of a restriction of the kind suggested is likely to create unnecessary discontent.

14. This Government does not, therefore, consider it advisable to add a statutory limit of his rent to the protection already afforded to the under-tenant by Section 37 of the present Bill which, following Section 49 of the Bengal Tenancy Act, provides that he shall not be ejected before expiration of the term of a written lease or, when holding otherwise than under a written lease, before the end of the revenue year next following that in which a notice to quit has been served upon him by his landlord. This protection, however, this Government considers should only be extended to the under-tenant who pays his rent: and it is therefore made subject to

the provisions of Sections 129 to 132 of the Bill which enable the landlord, when the under-tenant is in arrear at the end of a revenue year and when there is no sufficient distress upon the premises to satisfy the arrear, to have him summarily ejected under the Collector's warrant, subject to certain sufficiently liberal conditions which admit of the under-tenant saving himself by paying up within fifteen days after service of the warrant, or by a suit before the Collector to set aside the warrant or, even after delivery of possession, by a suit in the Civil Court to reverse the ejectment.

15. It is on the same broad principle of placing the zemindari ryot and the zemindar in the same relative positions as the Government ryot and the Government that, turning to the substantive rights of the proprietor, the Bill, by Chapter VII, secures his rent to the proprietor as a first charge on the occupancy ryot's holding and, while preserving to every ryot the puttah or a written agreement as a prerequisite to the recovery of rent, preserves to the proprietor the same uncurtailed right of recovery by distraint and sale for arrears as the Government exercises in respect of its own defaulting tenants—a right which, indeed, the landlords in this Presidency have enjoyed for nearly a century, of their exercise of which there has been no general complaint, and of which there can be no possible reason for now depriving them.

16. In regard to the proprietor's rights over the waste in his estate, there has been some difficulty. The Government itself has, since the Permanent Settlement, been dealing as it pleases with the waste lands within its own possessions—reserving them for forest purposes, selling the occupancy right in them for valuable consideration, and so forth—without any regard to any customary rights which the ryots may have at one time possessed therein; and if the zemindar were to be placed in the same position as the Government in this respect, his right to treat the waste in his estate as private land, in which occupancy right could only be acquired by contract, would have to be allowed. This would, further, be in accord with the opinion expressed by the Government of Lord Wenlock, in forwarding the previous Bill, that a gift of absolute rights in the waste within their estates was conferred upon the zemindars at the Permanent Settlement, and that to permit the growth of occupancy right therein as against the zemindar would be to reverse that gift. The Government of India demurred to that view and, referring to paragraph 27* of the Instructions issued to Collectors for the introduction of the Permanent Settlement in Madras, considered the true meaning of that paragraph to be that the State simply transferred to the zemindars, for their sole benefit, the right to let waste lands at the established rates of sharing the produce and subject to the recognised customs of the country. In this connection, it has to be observed that in paragraph 14 of letter No. 324 dated 16th August 1865, Home Department (Legislative), from the Government of Madras to the Government of India, referring to the Bill which subsequently became Act VIII of 1865, it was distinctly stated that "in this Presidency, from the earliest times to which our records reach, the rights of the resident ryots of each village to retain their existing holdings or to extend them to the waste lands included in the village boundary, paying the established rate as recorded in the village nericknama or evidenced by the immemorial and perfectly well-known custom of the village for the class of land concerned, have never been questioned". This pronouncement, made more than sixty years after the Permanent Settlement, recognised in the State only a limited right in the waste, no higher right than which, by that Settlement, could certainly have been conferred therein upon the zemindars; and in these circumstances, the Government does not propose to legislate for the waste as proprietor's private land, so as to bar the accrual of occupancy right therein except by contract.

17. But it is impracticable now to go back to the complete original right, which has everywhere fallen into desuetude, of the resident ryots to extend their holdings as they pleased to the waste subject only to payment of the customary assessment;

*"It is well known that in the Circars there are very extensive tracts of uncultivated arable and waste lands, forming part of every zemindari. These are to be given up in perpetuity to the zemindars, free of any additional assessment, with such encouragement to every proprietor to improve his estate to the utmost of his means, as is held out by the limitation of the public demand for ever, and the institution of regular Judicial Courts to support him in all his just rights, whether against individuals or the officers of Government, who may attempt in any respect to encroach upon them. The advantages which may be expected to result, in the course of progressive improvement from these lands, will, or ought to, put the zemindar upon that respectable footing as to enable him with the greatest readiness to discharge the public demand, to secure to himself and family every necessary comfort, to have, besides, a surplus to answer any possible emergency."

and in view of this fact, and of the manner in which the Government itself has been exercising its rights over waste, the question is how far legislation can reasonably go in the direction of permitting the accrual of occupancy right, as against the proprietor, in the waste. The Government itself, while maintaining the right to reserve waste for forest or other special purposes, has in practice always admitted the ryot to waste let for ordinary agricultural purposes and has conceded to him occupancy rights therein. The liberty to reserve waste for forest purposes or to let it for agricultural or building or mining or other special purposes, as he may choose, cannot in equity be denied to the proprietor; but when he *does* let the waste for ordinary agricultural purposes it may well be provided that he cannot prevent the accrual of occupancy right therein. This object will be attained by simply excluding waste from the category of proprietors' private land. All land, excluding private land, let for ordinary agricultural purposes, be it waste or be it cultivated land, will then be land in which occupancy right can be acquired against the proprietor and apart from contract. The present Bill, accordingly, while leaving the proprietor free to reserve waste for other than agricultural purposes, omits, by section 148, the waste from the category of his private land.

18. On the question of jurisdiction in suits and proceedings under the proposed Act, the Government of Lord Wenlock, in forwarding the previous Bill, expressed itself strongly in favour of the ordinary Civil Courts. The Government of India, with the experience before it of the Bengal Tenancy Act, which reserves all such jurisdiction to the regular Civil Courts, was, as then advised, in favour of the view that jurisdiction should be retained in the Revenue Courts, and commended the matter to the further consideration of this Government. In view of an opinion founded on such experience, and believing that nothing short of the retention of jurisdiction will keep Revenue officers properly informed as to the conditions of zemindaries and that it is essential to good administration that Revenue officers should be in full possession of such information, this Government, on a close re-consideration of the subject, has now come to the conclusion that jurisdiction should be retained in the Revenue Courts, except in a few important matters with which, in its opinion, the regular Civil Courts are best qualified to deal. Such are (1) Suits in ejectment of occupancy ryots: (2) Suits in ejectment of non-occupancy ryots on any ground other than refusal to agree to an equitable enhancement of rent: (3) Applications by a landlord for the acquisition of tenant's land for building or other special purposes: (4) Suits for recovery of possession of holdings treated as abandoned: (5) Suits to reverse summary ejectment, by Collectors, of non-occupancy ryots and under-tenants: and (6) Suits to set aside disputed entries in the record-of-rights, or record of proprietors' private lands, involving questions of title or status or of the right to hold land rent-free. In all other suits and proceedings under its provisions, the present Bill vests jurisdiction in the Revenue Courts.

19. With the foregoing observations on the various points which appeared to require explanation with reference to the comments of the Government of India on the previous Bill, I am to proceed to the details of the present Bill. Where the latter follows the former Bill, it has not been thought necessary to repeat the reasons to be found in the explanatory papers which were therewith forwarded. And for convenience of reference, the corresponding sections of the previous Bill, of the Bengal Tenancy Act, and of Madras Act VIII of 1865, have been noted in the margin of the present Bill.

20. In its general arrangement, it will be observed, the present Bill differs materially from the previous one and, following the suggestion of the Government of India that the various classes of tenants should be enumerated in an early part and then their respective substantive rights be defined and declared, it pursues the natural evolution of subjects from this starting-point. The general arrangement in fact follows, as nearly as may be, that of the Bengal Tenancy Act.

21. *Chapter I, Section 1: commencement and local extent of the Act.*—Provision is made for the Act to come into force on the first day of a revenue year. This is the period to which many important provisions are made to refer; and if the Act were to commence in the middle of a revenue year, difficulties would probably arise of the kind experienced—and of which the case reported at 6 M.H.C.R. 122 is an example—when the mistake was made of bringing the existing Rent Recovery Act,

VIII of 1865, into force on a 1st of January. As long as saving clauses, such as section 171, are provided to prevent defeating of the Act from the time when the Bill is first published--and such clauses will be necessary whatever be the date fixed for bringing the Act into force--its commencement can always safely be deferred to the first day of a revenue year.

22. South Canara is not, as it was in the previous Bill (it is not known why), excluded from the local extent of the Act. The district is, no doubt, a ryotwari, not a zemindari district; but the existing Act, VIII of 1865, now to be repealed, is in force there as between the ryot-landlords and their tenants, and there appears to be no reason why the protection of the new Act should not be extended to them In any case, the further consideration of the question may be left to the Select Committee. The present Bill accordingly applies to the whole Presidency outside the Presidency Town, except Malabar and the South-East Wynaad, for which tracts a special Tenancy Bill is now under preparation.

23. *Section 2: repeal.*—No special provision has been made in respect of suits and other legal proceedings instituted under Act VIII of 1865 which may be pending when the new Act comes into force; because section 8 of the Madras General Clauses Act (I of 1891) will operate for their disposal under the repealed Act, as if the repealing Act had not been passed. This course, which will leave parties to have their disputes adjudicated under the definite law on which they came into Court, commends itself to this Government as better than the alternative of a special provision that, notwithstanding section 8 of the General Clauses Act, pending suits, &c., should be decided, as far as practicable, in accordance with the procedure and principles of the new Act—a plan which would be attended with unusual difficulty where the changes made in the law are so extensive as in the present case.

24. *Section 3: definitions.*—The terms 'proprietor' and 'ryot' have now been defined in addition to 'landlord' and 'tenant.' In the previous Bill, the only one of these four terms defined was 'tenant.' That Bill merely enumerated, under the term 'landlord,' two broad classes of landlords, neither of which included the zemindari ryot in his position as landlord of his under-tenants, though the Government ryot in the same position was so included. But, obviously, in regard to their respective under-tenants, the zemindari ryot and the Government ryot are landlords of precisely the same kind, equally to be legislated for as such; and both will fall under the general definition, in the present Bill, of a 'landlord' as "a person immediately under whom a tenant holds." This definition, it will be observed, does not, as in the Bengal Tenancy Act, include the Government; nor does the definition of 'ryot,' as now framed, include the Government ryot—the relations between the Government and the Government ryot as landlord and tenant being already legislated for, in this Presidency, by Madras Act II of 1864. The definition of 'ryot' confines the term to tenants holding for ordinary agricultural purposes immediately under a proprietor, and thus correctly expresses what the people themselves understand by a 'ryot' in a proprietary estate. The definition of 'proprietor', when read with the definition of 'estate', which has been taken from the Madras Proprietary Estates' Village Service Act (II of 1894), limits the term to proprietors of estates comprising at least one whole village. Some reasonable limit of this sort is necessary to avoid the absurdity, for instance, of a village sweeper, owning a service inam of an acre or so, being ranked as a proprietor. Such owners will be merely 'landlords.' In the term 'proprietor' are included persons for the time being in the shoes of the proprietor—assignees, mortgagees with possession, managers of estates of disqualified owners, and the like—between whom and the tenants of the estate it is necessary, for the proper carrying on of the business of the estate, that the provisions of the Act should be made applicable. To the definition, an explanation has been added which makes clear what was ruled in I.L.R.XX Madras 484, that in a zemindari the only zemindar, in cases of dispute, is the *registered* zemindar, and which also removes doubt in the case of joint-owners of estates. The term 'inamdar' was defined in the previous Bill; but in view of clause (*d*) of the present definition of 'estate', such definition is unnecessary. The inamdar is only a particular kind of proprietor whom there is no necessity to define any more than 'zemindar' or 'jaghirdar.' These four terms—'proprietor', 'ryot', 'landlord' and 'tenant'—as now defined, will completely cover every position of the persons whose relations are intended to be regulated by the new Act.

25. In adapting the definition of 'village' from the Madras Proprietary Estates' Village Service Act (II of 1894), the circumstance that the village forms the unit for the curnum's revenue accounts has supplied a convenient basis for definition. In this Presidency, there have always been curnums and village accounts in proprietary estates, and even where revenue survey—which supplies the basis of the definition in the Bengal Tenancy Act—takes place, the village map will follow the area according to the curnum's accounts.

26. In the Bengal Tenancy Act, the term 'holding' is defined in contradistinction to 'tenure' and is limited to the interest of a 'ryot'; but in this Presidency the Bengal provisions for 'tenure-holders' are inapplicable, nor does there appear to be any necessity to confine the term to holdings immediately under a proprietor. The definition has, accordingly, been extended in the present Bill so as to cover the interest of every 'tenant.'

27. In defining 'rent', care has been taken to admit of the necessary distinction being made, in the actual working of the Act, between the rent proper of land and what is legally or usually recoverable as, or along with, rent. The definition in the previous Bill brought water-tax, tree-tax, lawful cesses, &c., as well as the rent proper of the land, under the *whole* range of the Act, though the intention was only to bring such charges within the Act for the purpose of permitting them to be paid, deposited and recovered in the same manner as the rent proper. This would have given rise to difficulties in connection with certain portions of the Act—*e.g.*, those relating to enhancement and reduction of rent—properly applicable only to the land-rent: and the better plan of the Bengal Tenancy Act has, therefore, now been followed, by specially providing that such cesses, &c., are only included in the term 'rent' for the purposes of certain appropriate sections.

28. *Chapter II, section 4: classes of tenants.*—The only three classes enumerated are occupancy ryots, non-occupancy ryots and under-tenants. The other two classes enumerated in the Bengal Tenancy Act—'tenure-holders' and 'ryots holding at fixed rates'—are omitted. There are no 'tenure-holders', in the unexcepted areas of this Presidency, of the kind to which the provisions of the Bengal Act would be applicable. There are cases in which villages and groups of villages have been assigned, mortgaged with possession or let out on terms of years; but these tenures have been created by contracts, the terms of which must be enforced, and which it would be neither necessary nor equitable to vary by the operation of such provisions. Such lessees, mortgagees, and assignees, who are for the time being in the shoes of the proprietor, are (as already explained) properly included, for the purposes of this Bill, in the definition of 'proprietor.' There appears no necessity for any special classification of 'ryots holding at fixed rates,' the provisions of the Bill for enhancement and reduction of rent by suit being made inapplicable to rents fixed in perpetuity. The definition of 'under-tenants' has been extended so as to include those holding under Government ryots, who may be 'landlords' but are not 'ryots' within the meaning of this Bill.

29. *Chapter III: Occupancy ryots: sections 5 to 8: general.*—Although, for the reasons already given, every proprietary-estate ryot cannot be at once declared to be an occupancy ryot, every ryot who has occupancy right by custom has his right preserved to him by section 6, while every presumption is made, by section 7, and sub-section (5) of section 8 of the Bill, in favour of every ryot's possession of the occupancy right. These provisions effectually cure that part of the ruling in the leading case known as Chockalingam's case (VI M.H.C.R. 164) which, while in effect it recognised the existence of occupancy right in the zemindari ryot as a customary right, threw upon the ryot the burden of setting up and proving the custom. This in itself is an immense advance in the protection of the ryot. And, further, while section 5 of the Bill permits the ryot to acquire occupancy right at any time by written agreement with the proprietor, section 8 enables him to acquire it prescriptively, as against the proprietor, by the mere fact of continuously holding *any* land as a ryot in the village, whether under lease or otherwise, for a period of twelve years—in other words, by attainment of the personal status of a permanent ryot (or 'settled' ryot, as the Bengal Act phrases it), such status giving the occupancy right not merely, as the previous Bill limited it, in particular land held for twelve years, but in *all* land for the time being held by the ryot, as a ryot, in the village.

30. It may happen, however, that the completion of the twelve years' continuous holding occurs during the currency of a lease for a term; and this creates a position of considerable difficulty. It appears manifestly unfair to the proprietor, and indeed impracticable, to confer occupancy right in the land by sheer statutory force in the middle of a lease; while it is practically certain that to exclude holding under leases from counting towards the twelve-years rule will be tantamount to barring non-occupancy ryots from the prescriptive acquisition of occupancy right altogether. For with so simple a means at his hand of preventing the acquisition of occupancy right against himself, it is not likely that any proprietor will admit a non-occupancy ryot to the cultivation of his land except under a lease for a term. The fairest solution of the difficulty seems to be a provision which, while not impeding the ryot's attainment of the personal status of a twelve-year ryot, will leave the proprietor free to let the particular land, on expiration of the current lease, to another non-occupancy ryot if he so chooses. It is with this object that the proviso to sub-section (1) of section 8—which enacts that, when the expiration of the twelve years' period falls during currency of a lease for a term, the ryot shall not be deemed to have acquired occupancy right in the land so leased—has been inserted. In sub-section (3) of section 8 the words "or assign", which were inserted after the word "heir" in the corresponding sub-section of the previous Bill, have been omitted in view of the fact that the personal status under the twelve-years rule is only heritable and not transferable. It would defeat the whole principle of the rule if the stranger-purchaser from a non-occupancy ryot of eleven years' standing, for instance, could in one year acquire the personal status of a permanent ryot of the village.

31. *Sections 9 to 14: incidents of occupancy right.*—By section 10, the Bill, following the Bengal Tenancy Act, adds, to the incidents of occupancy right provided for in the previous Bill, the important incident that the occupancy ryot shall pay rent for his holding at fair and equitable rates. And by the last part of section 9, the Bill, unlike the previous Bill, adopts the salutary provision of section 23 of the Bengal Tenancy Act which prevents the occupancy ryot from cutting down trees in contravention of any local custom. By section 11, the occupancy ryot is protected from ejectment except on the same grounds as in Bengal. In section 14, which deals with the occupancy right of a ryot who dies intestate, the proviso that, in case of his property escheating to the Crown, his right of occupancy shall be extinguished - which proviso finds place in the corresponding sections of the previous Bill and of the Bengal Tenancy Act—has been omitted. His Excellency in Council is unable to see why, when the property of a deceased ryot escheats, the State should lose the benefit of his occupancy rights as against the proprietor.

32. *Sections 15 to 24: enhancement of rent.*—The rent of an occupancy ryot can, by sections 16 and 17 of this Bill, be enhanced only if it is money-rent and then only by suit on certain specified grounds. Special provision for enhancement by contract would be, in the circumstances of this Presidency, unnecessary and unsafe Under the system of puttahs and muchilkas which obtains here, and which this Bill maintains, these record the existing rent agreed to by the parties; and by simply omitting special provision for enhancement by contract, the effect would be that what the parties agreed to, as evidenced by the exchange of puttah and muchilka, would be valid; while, if they disagreed, they would have to go before the authority empowered to adjudicate on such disputes. No necessity, therefore, appears for special provision, even if enhancement by contract be allowed. But in view of the rack-renting which, in the Northern districts, has resulted from enhancement by contract—some of the Gódávari Zemindars, for instance, charging Rs. 40 per acre on lands of the same quality as those on which the neighbouring Government ryots pay Rs. 9—and of the insecure position to which the ryots have been reduced in their unequal contest with the proprietors in so large an area of the Presidency,* it would be very unsafe to continue to allow enhancement except with the sanction of the Collector or a Court. Nothing short of such a restriction, where the ryot is so unequally matched with the proprietor in the matter of

* Mr. Chentsal Rao, an experienced native official, depicted the state of affairs so far back as 1881 (and matters have not improved since then) in these terms—"At present the Zemindari tenants have hardly any security of tenure. Their rents are high; they are forbidden from making improvements on their land without the permission of the Zemindars; money is wrung out of them to the last penny, and they are annoyed in every possible way; and their existence has become tolerable only by their ability to cheat the Zemindars in their turn by concealment of cultivation and bribing the subordinates entrusted with the administration".

refusing to agree to an enhancement of rent, will, this Government considers, suffice for the adequate protection of the ryot. The Bill accordingly permits enhancement only by suit before the Collector.

33. The previous Bill, following the Bengal Tenancy Act, vested the jurisdiction, in such suits, in the ordinary Civil Courts. Questions of the alteration of rent will, however, be usually mere questions of fact, in adjudicating which the Revenue Officer's facilities for local inspection and his ordinary revenue experience are, in the opinion of this Government, calculated to give him a distinct advantage. The present Bill accordingly vests the jurisdiction in enhancement suits—and, indeed, in all suits and proceedings relating to the alteration of rent whether by enhancement, reduction, commutation or change with area—in the Collector. In matters of this kind, which can rarely involve questions of law, His Excellency in Council further considers it desirable to restrict the right of second appeal and the re-opening of questions in the Civil Courts, which are privileges all in favour of the man with the long purse. In such matters, therefore, it may at once be stated, the Bill, by section 31, absolutely bars the intervention of the Civil Courts either by suit or by injunction and, while allowing an appeal to the District Collector from the decision of the Collector, makes the District Collector's decision final, at the same time providing, in order to secure the necessary uniformity on such points of law as may possibly arise, that the officer trying the suit or appeal may, as in section 18 of the Madras Hereditary Village Offices Act (III of 1895), refer any question of law, usage or construction to the Board of Revenue, the correctness of whose decision is not allowed to be contested.

34. Turning to the grounds on which enhancement of rent is permitted, as compared with the Bengal Tenancy Act, the ground of the ryot's rent being below the prevailing rate for similar lands in the village—a ground of enhancement which would be very unsafe where rack-renting prevails—has been omitted, and the ground of increase in the productive powers of the ryot's land by a Government work, in consequence of which the proprietor has been required to pay additional revenue, has been added, as in the previous Bill. A new proviso, the equitableness of which is obvious, has, however, been inserted (section 20) which protects the ryot, in such cases, against an enhancement exceeding the sum which the proprietor has to pay to Government on account of the improvement made by it. A provision similar to section 35 of the Bengal Tenancy Act has been added (section 22) empowering the Collector to refuse any enhancement which, under the circumstances of the case, would be unfair or inequitable. No such provision was made in the previous Bill. Money-rents fixed in perpetuity, as for instance under ancient grants, are of course saved from enhancement.

35. In connection with enhancement on the ground of rise in prices, the circumstance has had to be considered that while in the Northern districts the Zemindars have for nearly a century been exercising the power of raising rents and it is now difficult to go back on transactions extending over so long a period, this has not been the case in some at least of the Southern districts; and it may be necessary, therefore, to treat these portions of the Presidency differently in regard to enhancement (and conversely, reduction) of rents on this ground. The doubt is whether, where it has not been customary for the proprietor to raise rents on the ground of rise in prices, he should now be permitted to do so by statute. This Government, as at present advised, considers it safer to make provision for barring enhancement on this ground in those estates or districts in which it has not been customary. If, however, this object were sought to be attained by a mere general proviso to this effect, it is feared that such a proviso would lead to a great deal of litigation in which the proprietor, with his longer purse and his superior position in regard to the power of producing proof of custom, would be at an undue advantage over the ryot. The better course, this Government considers, is to provide that the clause for enhancement on the ground of rise in prices shall not apply in particular named districts or estates in which it shall have first been ascertained that such enhancement has not been customary. It is believed that such enhancement has never been customary in the estates in the Salem, Madura and Tinnevelly districts. A proviso has accordingly been added to section 17 (and, of course, to the corresponding section for reduction of rents) excluding these three districts from the application of that clause. At the same time, further enquiry is being made as to the existence or non-existence of the custom in these or any other districts: and this proviso must not be taken as a definite pronouncement on

the point. Should the results of such further enquiry show modification or deletion of the proviso to be advisable, this can be effected in Select Committee; but it is not thought desirable to delay the forwarding of this Bill pending the completion of that enquiry, which must necessarily take considerable time.

36. *Sections 25 and 26: reduction of rent.*—There is nothing in the Bill to prevent rents, whether fixed in perpetuity or not and whether payable in money or in kind, from being *reduced* by agreement. And for the further protection of the ryot, the Bill, by section 25 (1), clause (*d*), provides for reduction of his rent on the ground that it has been unduly raised since the 1st May 1871, the date of the decision in Chockalingam's case, to which reference has already been made and in consequence of which it is believed that rents have from time to time been arbitrarily enhanced in the Northern districts. This was the object of the corresponding clause of the previous Bill, though it was differently worded.

37. *Section 27: commutation of rent.*—The provisions for commutation, which reproduce those of the previous Bill, are practically the same as in the Bengal Tenancy Act.

38. *Sections 28 to 31: alteration of rent with area.*—Provision is now made, as in the Bengal Tenancy Act, for alteration of rent with area. This was omitted in the previous Bill; but there is nothing of more common occurrence in the trial of rent suits, in this Presidency, than disputes as to the correctness of the rent with reference to the *extent* of the holding; and the usual course, in such cases, is to appoint a more or less untrustworthy Commissioner, on whose report as to measurements, &c., the accuracy or otherwise of the puttah is determined. Instead of leaving such disputes to be settled in this manner after matters have reached the stage of a suit, it appears to this Government to be very advisable that proprietor or ryot should be enabled in the first instance, independently of any suit, to obtain a rectification of the rent with reference to the area of the holding wherever such rectification appears right and equitable.

39. In the Bengal Tenancy Act, the provisions for alteration of rent with area are made applicable to all tenants; but in this Bill, they are limited to occupancy ryots. It is in the case of occupancy ryots holding under puttahs, which are generally left unchanged year after year notwithstanding actual changes in the holding by encroachment or otherwise, that the matter becomes really serious. In the case of non-occupancy ryots who will generally be holding under leases for terms, and in the case of under-tenants, it will be for the parties, once for all, to see that everything is correctly entered in the lease. It is the fact that, in this Presidency, proprietors have always possessed the right of entry and measurement in respect of holdings in their estates. This right was recognised in section 34, clause 8, of Regulation XXVIII of 1802; and His Excellency the Governor in Council is unable to discover sufficient ground for limiting the exercise of the right, when such right is allowed, to one occasion in ten years, as is done by section 90 of the Bengal Tenancy Act. But, while allowing free exercise of the right to enter upon and measure the holdings of occupancy ryots, His Excellency in Council considers it necessary, in order to prevent proprietors from making practical enhancements of rent under colour of rectification with area, and in order to protect ryots from being induced to agree to fictitious areas, that alteration of rent with area should be permitted only by order of the Collector upon application in that behalf made to him by either party. This restriction is imposed by the latter part of section 29 of the present Bill. With these modifications, the Bill adopts the provisions of the Bengal Tenancy Act on this subject.

40. *Chapter IV: sections 32 to 36: non-occupancy ryots.*—The scheme of the Bill for facilitating the acquisition of the status of an occupancy ryot by the non-occupancy ryot is, with some modifications, the same as that of the Bengal Tenancy Act, which was followed in the previous Bill. Under that scheme, the non-occupancy ryot cannot be ejected on the ground of expiration of the term of a lease unless it is his *initial* lease and has been registered: while if he is allowed to remain on and submits to an equitable enhancement of rent determined by the Court, he becomes entitled to continue in occupation at that rent for a term of five years, on expiration of which term he is liable to ejectment unless he has meanwhile acquired a right of occupancy—that is, ordinarily, unless he has meanwhile completed twelve years' continuous

holding as a ryot in the village. While conceding that some special facility for acquiring the status of an occupancy ryot should be afforded to the non-occupancy ryot who, by having been allowed to remain for at least seven years, may be presumed to have proved himself a good tenant, this Government does not see why ejectment on the ground of expiration of the term of a lease should be altogether limited to the initial lease. Supposing the proprietor lets a non-occupancy ryot in first for three years and then again for one year, there appears to this Government to be no sufficient reason why the proprietor should not be at liberty to eject the ryot on expiration of the second term. The present Bill, by section 34, clause (*c*), accordingly admits of the ryot's ejectment either on expiration of an initial registered lease, or on expiration of a subsequent registered lease when the ryot has not been in continuous occupation for altogether seven years—omitting the section of the previous Bill which corresponded to section 47 of the Bengal Tenancy Act.

41. Again, the proper object of ensuring a further term to a non-occupancy ryot who, by seven or more years' continuous occupation, is presumed to have proved himself a good tenant and who has submitted to an equitable enhancement of rent, is only to secure to him such continuous holding as will make up the twelve years requisite to give him the personal status of an occupancy ryot. This being the proper object of the rule, the ryot can fairly be required to be content with having attained that personal status, *without* being entitled to continue with occupancy right in the particular land leased to him after expiration of the further term for which the tenancy of it was continued to him just for the purpose of making up the necessary period of twelve years. The present Bill accordingly, by section 36, clause (7), secures to the non-occupancy ryot whose occupation has been continued beyond his initial lease, and who has submitted to an equitable enhancement of rent by the Collector, only such further term, not exceeding five years, as may be requisite to make up a total continuous holding of twelve years, and renders him liable to ejectment on the expiration of that term. This provision, following the same principle of not imposing occupancy right by sheer statutory force during the currency of a lease on which the proviso to sub-section (1) of section 8 has (as explained in paragraph 30 of this letter) been based, will secure the position which seems to this Government to be fairest to both parties, leaving the proprietor free to let that particular land to another non-occupancy ryot if he chooses, and leaving that particular ryot in possession of the personal status entitling him to occupancy right thenceforward in that land if again continued in its occupation, or in any other land to which he may be admitted in the same village.

42. Following the principle on which questions of rent have (as explained in paragraph 33 of this letter) been left to the Revenue Courts, the determination of an equitable rent, where the proprietor and the non-occupancy ryot cannot agree as to enhancement,—and consequently, the jurisdiction in suits for ejectment on the ground of refusal to agree to an enhancement of rent—is, by clause (6) of section 36 of the Bill, entrusted to the Collector and not, as in the previous Bill and in the Bengal Tenancy Act, to the Civil Court. The effect is that if the proprietor seeks to eject a non-occupancy ryot for failure to pay rent or for misuse of the land or breach of conditions of the tenancy or on the ground of expiration of a lease, he will have to resort to the Civil Court; but if he seeks to eject the ryot for refusal to agree to an enhancement of rent, he will have to go to the Collector who, in the opinion of this Government, is the proper person to decide suits regarding rates of rent.

43. The "prevailing rate" of rent for similar lands in the village not being a safe criterion for enhancement where rack-renting is general, as in the Northern Districts, the present Bill does not, as in the previous Bill and in the Bengal Tenancy Act, lay down any such criterion for the guidance of the Collector in determining what rent is fair and equitable in a suit for ejectment on the ground of refusal to agree to an enhancement. Nor does the present Bill bar a decree for ejectment in such a suit from taking effect until the end of the revenue year in which it is passed. This Government sees no reason why, in case of refusal to agree to an equitable enhancement of rent determined by the Collector, the tenant should not be forthwith ejected.

44. The present Bill, again, omits, from section 33, the proviso contained in the corresponding sections of the previous Bill and of the Bengal Tenancy Act that nothing in the section limiting the enhancement of a non-occupancy ryot's rent to enhancement by registered agreement or by agreement under section 36 shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed. The effect of such a proviso might be that the ryot, having been induced by his landlord to agree verbally to an increased rate of rent, might afterwards be bound to it—which is precisely what it is desired to prevent.

45. By this Bill, the non-occupancy ryot, besides that he may, by section 34, be ejected by a regular suit in the Civil Court for failure to pay arrears of rent may, by sections 129 to 132, be summarily ejected under the Collector's warrant when he is found to be in arrear at the end of a revenue year and when there is no sufficient distress upon the premises to satisfy the arrear. Non-payment of rent is, in the case of the occupancy ryot, not made a ground for ejectment; but in the case of the non-occupancy ryot, who is not so protected, this Government considers it only fair to the landlord to provide a summary means of ejectment, instead of the tedious and expensive process of a regular suit, when the tenant is even at the end of the revenue year proved, by ineffectual distraint, unable to pay the rent.

46. *Chapter V: section 37: under-tenants.*—For the same reason, the protection of the under-tenant against ejectment except on the ground of expiration of the term of his lease is, by section 37 of the Bill, made subject to the provisions of sections 129 to 132.

47. *Chapter VI: sections 38 and 39: rates of rent.*—For the decision of suits involving disputes regarding rates of rent, the Bill, by section 38, merely directs that all contracts to pay rent, not inconsistent with its other provisions, shall be enforced: and by section 39, following section 51 of the Bengal Tenancy Act, the Bill provides that the tenant shall be presumed, until the contrary is shown, to hold at the same rent as in the last preceding revenue year. The previous Bill, following more or less the provisions of section 11 of the existing Act VIII of 1865, laid down further rules for determining disputed rates of rent in such suits; but, in view of the other provisions of the present Bill, these rules become unnecessary or inappropriate. The suits in which disputes regarding rates of rent commonly occur are suits to enforce acceptance of puttahs or to set aside distraints or attachments, the usual contention of the ryot in such suits being that the puttah tendered or alleged to have been tendered to him is bad for demanding an improper rent. In such suits pending when the new Act comes into force, disputed rates of rent will be determined (as explained in paragraph 23 of this letter) under the provisions of section 11 of the existing Act VIII of 1865. In such suits instituted after the new Act comes into force, if an enhanced rent over that of the previous year is claimed—and this is the most common cause of dispute—the Collector will simply have to see, in the case of an occupancy ryot, whether such enhancement (enhancement by contract being prohibited in the case of occupancy ryots has been decreed in a separate suit for the purpose under section 17, or in the case of a non-occupancy ryot (for there is nothing in the Bill to prevent a proprietor from giving a puttah to a non-occupancy ryot, if he chooses) whether there is a registered agreement under section 33, or an agreement under section 36, for such enhancement—failing which, the Collector will pronounce the puttah bad in respect of the rent demanded, and will determine the proper rent by that payable in the preceding year, unless the ryot is able to show that he is entitled to a reduction of the existing rent. The rule for enforcement of contracts, taken together with the other provisions of the Bill that the tenant is presumed to hold at the same rent as in the preceding year (section 39), that the existing rent is presumed to be fair and equitable (section 15) and that it can only be altered in certain ways and on certain grounds specified (sections 16, 17 and 25), supplies all that appears to be necessary for the guidance of Collectors in settling disputes regarding rates of rent.

48. *Sections 40 and 41: arrears of rent.*—The rate of interest on arrears, as compared with that prescribed in the previous Bill, in Act VIII of 1865 and in the Bengal Tenancy Act, has been increased, by section 41 of the present Bill, from 12 to

12½ per cent. per annum. This rate works out to 2 pies per rupee per mensem, and will simplify calculation—for which purpose, also, it is provided that fractions of a month and of a rupee may be disregarded. The further provisions of the previous Bill which, following section 68 of the Bengal Tenancy Act, proposed to impose penalties by way of damages for unreasonable neglect or refusal by the tenant to pay rent and for unreasonable demand by the landlord, have been omitted. The idea is entirely strange to this Presidency, and if there is wrongful loss caused by either party the ordinary remedy by a suit for damages appears to be sufficient.

49. *Sections 42 to 44: receipts.*—To facilitate the paying of their rents and the obtaining of receipts by tenants, and to prevent their being driven perhaps to go many miles for such purposes, the present Bill, by section 44, besides providing for payment by postal money orders, presumes the headman of each village to be the landlord's authorised agent for the purpose of receiving rents and granting receipts, unless the landlord has duly appointed for such purpose as his authorised agent some other person resident within the village or within three miles of it. This provision is intended to maintain as far as possible, consistently with not imposing on the proprietor a perhaps inefficient or untrustworthy agent in each village, the general custom of the country whereby the ryots pay their kists to the village headman. The remaining provisions of the Bill, in regard to receipts, are the same as in the previous Bill, which omitted such portions of the corresponding part of the Bengal Tenancy Act as are inapplicable or unnecessary in Madras.

50. *Sections 45 to 48: deposit of rent.*—These provisions, which substantially reproduce those of the previous Bill and of the Bengal Tenancy Act, now make it clear that the rules as to deposit of rent have reference only to money-rents; that the deposit must be a deposit *after*, and not before, the rent has become due; and that the rent which the tenant may apply for permission to deposit is what the tenant considers to be the full amount due by him at the time, as decided in I.L.R. XV, Cal. 166, and not necessarily the amount actually then due. The power of receiving and disposing of deposits is, like all other questions of rent, vested in the Collector instead of, as in the previous Bill and in the Bengal Tenancy Act, in the Civil Court; and in order that every reasonable facility may be given to the tenant to preserve his rights by the deposit of his rent, provision is made by section 45 for similarly empowering any other Revenue Officer—for instance, the Tahsildar or Deputy Tahsildar—whom the Government may appoint in this behalf.

51. *Sections 49 to 51: produce rents.*—In regard to produce rents, the Bill exactly follows the Bengal Tenancy Act and the previous Bill.

52. *Chapter VII: recovery of rent: sections 52 to 61: puttahs and muchilkas and written agreements.*—In the case of occupancy ryots the puttah is, by section 52 of the Bill, and in accordance with the existing law as laid down by the Full Bench in VII Mad. H. C. R., 312, made a pre-requisite to the recovery of rent whether by ordinary suit in the Civil Court or by the special procedure of distraint or attachment and sale under the Act itself. In the case of non-occupancy ryots and under-tenants, the taking of a written agreement specifying the rent to be paid is, by section 61, made a pre-requisite to recovery by distraint under the Act, but not to recovery by ordinary suit. But there is nothing in the present Bill, as there was in the previous Bill which limited the term 'puttah' to the engagement with an *occupancy* ryot, to prevent a proprietor from giving a puttah—that is, an engagement without limitation of term—to a non-occupancy ryot.

53. Instead of permitting puttahs and muchilkas to be altogether dispensed with by agreement of the parties, as the existing Act VIII of 1865 does, and thus leaving the Courts without anything documentary to assist them in the settlement of disputes, the Bill, by section 60, provides that puttahs and muchilkas once exchanged shall remain in force until the revenue year for which fresh puttahs and muchilkas are executed, even when the puttah and muchilka have been exchanged for only one year; while section 56 permits them to be exchanged for periods of any number of years. There are innumerable cases in which the holding and the charge on it do not alter for many years, and these provisions, while ensuring that there will always be a puttah and muchilka to go by, will obviate the immense and needless trouble which would

be entailed if the proprietor of an estate were compelled to grant a fresh puttah to each ryot for each revenue year, and will thus assimilate the system to that obtaining between the Government and its ryots.

54. Under the existing Act VIII of 1865, the accuracy of the puttah in every single particular is a necessary condition precedent to the recovery of rent. This has been proved by experience, particularly in the Southern districts where the ryots have always been able to more than hold their own with their landlords, to interpose a serious obstacle to the recovery of even their just dues by proprietors; and it is necessary, in fairness to the landlord, to prevent a puttah from being completely annihilated by some perhaps unimportant inaccuracy in a multitude of detailed stipulations. The present Bill accordingly provides, by section 52, that when proceedings for the recovery of rent are taken on a puttah which is not entirely but is substantially correct, such proceeding shall be valid to the extent that the puttah is correct. It will be for the Court to decide in each case whether, in view of its various conditions, the puttah is substantially correct; but inasmuch as stipulations for termination of the tenancy at a time stated (which transgresses the essential principle of a puttah as an engagement without limitation of term) or in restriction of cultivation or harvesting (which interferes with the legitimate freedom of the ryot) are such as go to the root of the proper relation between the parties and have, in numerous cases decided by the Madras High Court, been consistently held to be invalid, the Bill also provides, for the guidance of the Courts, that no puttah can in fact be held to be substantially correct which contains any stipulation of these particular kinds.

55. The jurisdiction in suits and proceedings for the alteration of rent being vested in the Collector, and the rate of rent to be paid being the most important item in a puttah, the disposal of suits to obtain puttahs and to enforce the acceptance of puttahs is, by sections 57 and 58 of the Bill, retained in the Revenue Courts instead of being transferred, as in the previous Bill, to the Civil Courts.

56. *Sections 62 to 93: distraint and sale of movable property.*—Except that the various sections have been re-arranged in the proper sequence of events, and that the jurisdiction in suits and proceedings relating to distraint and sale of movable property has been retained in the Revenue Courts, the provisions of the present Bill for the recovery of rent by this special procedure are, with the few differences hereinafter noted, the same as in the previous Bill.

57. While allowing distraint only in cases in which the rent has been in arrear for any period not exceeding a year, the Bill, by section 62, provides that when a suit has been filed by a tenant to obtain a proper puttah from his landlord, the rent shall be taken to become due only from the date of final decree in the suit—the object being to prevent loss of the rent to the landlord when the litigation becomes prolonged, as it often does, for more than a year.

58. In connection with the service of notice of distraint, it is now made clear, by section 64 of the Bill, that the "usual place of abode" of the defaulter at which service is to be effected denotes some place in the neighbourhood of the land to which the distraint refers. This is in accordance with the ruling at I.L.R. XVIII, Mad. 30, and will prevent such a contention as was therein raised that the phrase "usual place of abode" included a residence in foreign territory.

59. Sale of the distrained property is, by section 78, authorized, as by the existing law, only if the tenant does not within thirty days from the date of distraint file a suit before the Collector to set aside the distraint, or if such a suit is filed and is decided against the tenant; and the obligation upon the landlord to produce the distrained property at the time and place of sale is, by the proviso to section 79, made inapplicable to distrained products of a speedily perishable nature, such as fruits or vegetables and the like, which it would be absurd to require the landlord to produce and which are, therefore, to be sold as early as possible by the distrainer under rules to be framed in this behalf by the Local Government.

60. By section 91, the landlord's power to proceed against a tenant or his security or against both, which obtains under the existing law, but was omitted in the previous

Bill, is preserved, with the additional proviso that no distraint is to be made upon the property of a surety until the arrear has been demanded from the defaulter, unless the defaulter has absconded.

61. *Sections 94 to 105: attachment and sale of occupancy right in land.*—Occupancy right being the only saleable interest as *against* the landlord which a tenant has in his holding, the Bill makes it clear that the provisions for recovery of rent by attachment and sale of the tenant's interest in his holding are limited to occupancy ryots. Such attachment and sale may, by section 94, be, as in the previous Bill and in the Bengal Tenancy Act, in execution of a decree in the ordinary Civil Court for arrears of rent; or it may, by sections 95 to 97, following sections 38 to 40 of the existing Act VIII of 1865, be by special procedure before the Collector, that is, by service of notice upon the ryot of the proprietor's intention to sell the occupancy right and by the Collector's authority to sell if no suit is instituted before the Collector by the defaulter within thirty days from the date of service to set aside the notice or if such suit is decided against the defaulter. To meet both courses, the provisions of the Bill *after* authorisation of sale of the occupancy right (sections 99 to 105) are framed so as to be applicable to all cases of attachment and sale whether in execution of a decree or in pursuance of the special procedure under the Act. By section 98, rent is made a first charge upon occupancy right, indefeasible by any other encumbrance.

62. *Chapter VIII: sections 106 to 111: repair of irrigation works.*—While restricting to the District Collector the power to order the execution by the ryots of repairs to irrigation works neglected by the proprietor and the power to order recovery of the cost of such repairs by ultimate deduction from the rents payable to the proprietor, the Bill, by section 106, enables the District Collector to depute to a subordinate Collector the making of the necessary inquiry upon the ryots' application for an order authorising their execution of repairs; and by section 111, the interference of the Civil Courts with the District Collector's proceedings in the matter is absolutely barred,—an appeal from any order issued by the District Collector being, however, allowed to the Board of Revenue, whose decision will be final. The matter, though very important and novel, is one which, in the opinion of this Government, should be left entirely in the hands of the Revenue authorities.

63. The provision, in the previous Bill, that an order authorising the execution of repairs to an irrigation work shall be passed only if twelve years shall have elapsed from the completion of repairs to the same work authorised by a previous order, has now been omitted. In the case of a work repaired in one year and breached in consequence of a cyclone the very next year, it seems indefensible that the ryots should be compelled to wait eleven years before being enabled to force the proprietor to repair, and this Government considers that the ryots should have power to compel repairs in such a case at any time. The provision of section 25 (1), clause (*b*) of the Bill, which enables occupancy ryots, in case of the complete failure of an irrigation work, to sue for reduction of rent, will no doubt afford relief while the work remains in disrepair; but the great object is to ensure that proprietors shall keep their irrigation works in proper order, and that provision is not in itself sufficient to secure this object effectually. With these modifications, the provisions of the present Bill for the repair of irrigation works are precisely the same as those of the previous Bill.

64. *Section 112: illegal cesses.*—Complaints having reached the Government of the levy of tree-tax in certain estates in the Salem district, it has been considered advisable to add to section 112—which is in other respects the same as in the previous Bill—an explanation making it clear that the levy of any tax on trees or other tax not included in the assets on which the peshcush of a permanently-settled estate has been fixed, is illegal.

65. *Sections 113 to 120: improvements.*—Compensation for improvements is, by the present Bill, following the principle of the Bengal Tenancy Act, restricted to ryots and not allowed to tenants generally, as in the previous Bill; and by section 119 compensation is awardable only in the case of ryots ejected otherwise than by sale for arrears of rent. An occupancy ryot whose interest in his holding is sold for arrears of rent will get compensation in the sale price, if his improvements are worth anything, and should not get compensation over again. In the case of dispute as to the right to

make an improvement or as to whether a particular work is an improvement, the decision of the Collector is, by section 115, made final only if he is the District Collector. If the Collector is not the District Collector an appeal is allowed to the latter. It would, in the opinion of the Government, be unsafe, in disputes of the kind, to entrust such absolute power to a perhaps inexperienced Divisional officer. In all other respects, the Bill is practically the same as the previous Bill and the Bengal Tenancy Act in the matter of improvements.

66. *Section 121: acquisition of land for building and other purposes.*—In view of the importance of the matter, and on the analogy of the Land Acquisition Act (I of 1894), the disposal of applications by landlords for the acquisition of their tenants' land for building and other special purposes is, by section 121 of the Bill, reserved to the Principal Civil Court of original jurisdiction; and in determining the amount of compensation to be awarded to the tenant in such cases, the Court is to add 15 per cent. to the full value of the land and improvements, if any, for the compulsory nature of the acquisition, and to be guided by the rules enacted in sections 23 and 24 of Act I of 1894 aforesaid. The opening and working of mines and factories is also added to the special purposes for which land may be acquired under this section. With these modifications the Bill follows the corresponding section of the previous Bill and of the Bengal Tenancy Act.

67. *Sections 122 to 124: surrender and abandonment.*—The provisions for surrender and abandonment of holdings are in this Bill, as in the previous Bill, made applicable to all tenants, and are not limited to ryots, as in the Bengal Tenancy Act; nor is provision made only, as in that Act, for surrender of the whole holding. By section 122 of the present Bill, while surrender only of the whole holding is permitted without the landlord's consent, provision is also made for the surrender of any part of a tenant's holding with such consent. The presumption that notice of the tenant's intention to surrender has been given if the tenant ceases to reside in the village at least three months before the end of the revenue year—which found place in the previous Bill, following the Bengal Tenancy Act—has now been omitted. It is a common case, in this Presidency, that a tenant does not live at all in the village in which his holding is situated. To protect the under-tenant in case of surrender or abandonment of his holding by his immediate landlord, section 124 of the Bill, following sub-section (4) of section 87 of the Bengal Tenancy Act, compels the superior landlord, where the whole or part of a surrendered or abandoned holding has been sub-let by a registered instrument, to offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant who has ceased to cultivate the holding and on condition of the sub-lessee paying up all arrears due by that tenant. In other respects, the provisions of the Bill in regard to surrender and abandonment are the same as those of the previous Bill.

68. *Sections 125 to 127: sub-division of tenancy and transfers.*—Instead of providing, as in the previous Bill, that a division of a holding shall not be binding on the landlord unless made with his consent, the present Bill, by section 125, enacts that it shall not be competent to a landlord to refuse to consent to the division of a holding and to the proportionate distribution of the rent payable in respect thereof, except in the case of division of a revenue field. This is in accordance with the principle of placing the zemindari ryot in the same position as the Government ryot, who has always had the power to transfer the whole or any part of his holding as he pleases; and to impose such a restriction on sub-division as that which the previous Bill, following the Bengal Tenancy Act, would have imposed, would be to unsettle the ideas which have always obtained in this Presidency and which it is, in the opinion of this Government, essential to foster, that the ryot possesses rights in his holding which he can deal with as property. It is in order to prevent the inconveniences which might arise from such minute sub-division as that of a revenue field, that it has been considered advisable to fix this limit as that beyond which the landlord may veto further division.

69. The provisions of the Bill (sections 126 and 127) for the obligations and liabilities of tenants and their transferees in cases of transfer of holdings and for the obligations of proprietors and their transferees and the liabilities of ryots in cases of

transfer of estates, are the same as in the previous Bill, except that, in the latter cases, the proprietor and transferee are not required to give written notice of the transfer to each ryot in the estate—which is practically impossible where there may be thousands of tenants—but may give general notice by publication in the District Gazette and by such other suitable means as the Government may direct.

70. *Sections 128 to 132: ejectment.*—While providing, by section 128, that no tenant shall be ejected from his holding except in execution of a decree of a Civil Court or order of a Collector passed in accordance with the Act, the Bill, by sections 129 to 132, provides for summary ejectment, by order of the Collector, of tenants who have no occupancy right to be sold, who are in arrear at the end of a revenue year and on whose premises there is no sufficient distress to satisfy the arrear. It is only fair that the landlord, in the case of such hopeless tenants, should be saved the tedious and expensive process of ejectment by regular suit. At the same time the tenant is (as already explained in paragraph 14 of this letter) given every reasonable opportunity of saving himself from ejectment up to the very last.

71. *Chapter IX: sections 133 to 143: survey, record-of-rights and settlement of rents.*—In connection with this subject, His Excellency the Governor in Council has given full consideration to the suggested amendments of chapter X of the Bengal Tenancy Act contained in the Minute and Bills prepared by Sir Alexander Mackenzie and in the other papers received with Mr. Sly's demi-officials (Revenue Department) No. 4088—337-K.W., dated 31st October 1896, and No. 296—71-K.W., dated 12th February 1897. So far as those suggestions have special reference to a general settlement of rents on a large scale as matter preliminary to a settlement of Government land revenue, they are, of course, inapplicable to the circumstances of this Presidency; and it is only with reference to the preparation of a record-of-rights as a final record of existing facts that the subject has properly to be considered in Madras. In respect of the preparation of such a record, it will be found that the main difficulties experienced in the working of the Bengal Act, as interpreted by the Calcutta High Court, have been provided for in the present Bill.

72. The proper ultimate object of any procedure in this matter must be, in the opinion of this Government, to secure, as the last act of all, the publication of a record absolutely final and conclusive as to facts and rights existing at the time, which will give everybody concerned a definite unmistakeable starting point for the future; and it is with this object that the proper sequence of the procedure, its character and its scope have to be determined. The framing of any record-of-rights which, after final publication, is made open to question in any particular will, this Government considers, be so much waste of money, time and labour.

73. The proper sequence of procedure, as pointed out by Sir Alexander Mackenzie, should be as follows:—

(1) A rough record of existing facts under the various heads particularised is first compiled by a subordinate staff working under the officer deputed to prepare the record-of-rights;

(2) this rough record is read out locally and objections to it are heard and decided summarily, or after local inquiry, by the said officer;

(3) the record thus framed is published in draft as a preliminary record;

(4) further objections and proposals for alteration, after such draft publication, are heard and decided; and

(5) the record, thus completed, is finally framed and published.

74. The present Bill, after specifying in section 134 the particulars which must be included in the record, leaves the officer deputed to the duty free, by section 136, to frame the preliminary record on such inquiry as he sees fit, which will ordinarily be a departmental inquiry disposing of objections to rough records prepared in the villages by his establishments; and then compels him to make a draft publication of the preliminary record for a period of six months and to receive and hear any objection which may be made to any entry therein during that period. When all objections to the preliminary record have been disposed of, section 138 directs the officer to frame and publish the final record. The Bill thus secures the right sequence of procedure,

under which there are two well-marked stages in the preparation of the record—(1) the inquiry and disposal of objections before preparation and publication of the preliminary record, (2) the disposal of objections to the preliminary record after its publication.

75. The difficulty experienced in working this part of the Bengal Tenancy Act has been that even objections during the stage preceding draft publication have had to be formally tried by the Revenue Officer under the provisions of the Civil Procedure Code for the trial of suits, with the result of needless delay, expense and trouble even in trivial matters of which the officer, if given a free hand, could dispose more speedily and equitably by an unfettered summary inquiry. A further difficulty has been that, notwithstanding that such formal judicial trial is required of the officer at every stage, his decisions are held not to be *res judicata* and the very same disputes are liable to be re-opened in the regular Civil Courts.

76. In view of these difficulties, Sir Alexander Mackenzie's Bill No. I, which is that favoured by the Government of India, proposes to leave to the Revenue Officer's decisions even at the later stage a mere presumptive value—thus leaving it open to the parties to dispute any entry, in the Civil Court, even after final publication of the record—but not to require formal judicial trial at any stage. To this Government, however, it appears of the first importance, if the final record is to be, as it ought to be, a record conclusive as to existing facts and rights, that decretal value, and not mere presumptive value, should attach to the decision, by whatsoever authority, of objections to the preliminary record made during the period of draft publication. On the objections filed to entries in the preliminary record, as experience in Bengal has shown, difficult questions are likely to be raised—as, for instance, questions of title or of boundary between conterminous estates, on an entry of the name of the landlord; questions of rival claims to tenancy, on an entry of the name of the tenant; or questions of the validity of claims to hold land rent-free, on an entry of the rent payable; and these are questions which, in the opinion of this Government, had better be left to the decision of the regular Civil Courts. If provision be made for the officer preparing the record to refer the objector, when such questions are raised, to the Civil Court—whose decisions thereon will perforce have decretal value—the same decretal value may safely be given to the officer's decisions in the comparatively simple matters which will be left for his own disposal, without requiring the formality of regular judicial trial under the Civil Procedure Code, the more so if his decisions be, like those of the Civil Court, subject to appeal and second appeal. But, besides requiring every objection to be decided before publication of the final record and giving to every decision the value of a decree, this Government would go even further in the direction of securing absolute conclusiveness to the final record as a record of existing facts and rights. It considers that, so long as ample time is given to the parties to object to any entry published in the preliminary record, the same finality as it is proposed to attach to entries settled by decree on objections raised should be given to every entry left undisputed during the period of such publication.

77. The present Bill, while leaving the officer deputed to prepare the record-of-rights a perfectly free hand to dispose summarily and departmentally, on such inquiry as he thinks fit, of objections during the earlier stage preceding draft publication of the preliminary record, prescribes publication thereof (section 136) for a period of *six* months, during which, instead of during the short period of one month allowed by the Bengal Tenancy Act, any entry so published can be objected to and put to the test of regular trial; but having given such ample time for objection, the same section bars the officer from entertaining any objection not made within that period, and enacts that every entry to which objection has not been so made shall be final and conclusive as to the fact or facts which it records. The next section, 137, provides that in hearing objections to the preliminary record, the officer shall adopt the simplified procedure prescribed by the Bill (section 154) for the trial of suits by Collectors; and gives decretal value to his decisions at that stage, but enacts that when, on an objection to an entry in the preliminary record a *bonâ-fide* dispute arises as to the title to be recorded as landlord, or as to the right to be recorded as tenant, or as to a claim to have land recorded as rent-free, the officer shall, and in any other case in which he deems fit may, stay proceedings and refer the objector to the Civil Court, the section further providing that if, in such cases, the objector does not within thirty days of the order of reference,

file a suit in the Civil Court to set aside the entry objected to, the officer shall proceed to hear and dispose of the objection as if no such dispute had arisen. By section 140 an appeal is allowed to a Special Judge and a second appeal, on points of law, to the High Court, from the officer's decisions, while in cases taken to the Civil Court there will of course be the usual right of appeal and second appeal under the Civil Procedure Code. By section 138, when all objections to the preliminary record have been disposed of, the officer is required to frame and publish the final record, and the entries so published are made conclusive as to the facts which they record. As, however, the publication of the final record might be unduly delayed if it were deferred until all suits and appeals and second appeals on objections to the preliminary record have been decided, the same section permits the officer to first publish a final record of the cases in which no such suits and appeals have been filed and thereafter to publish, from time to time, a supplementary final record of the cases in which such suits and appeals have been filed.

78. If the record-of-rights as finally published is to be really a complete and conclusive record of the rights of landlord and tenant existing at the time, nothing short of the foregoing provisions will, in the opinion of this Government, suffice to secure this end. As it may be found convenient to have the survey made by a survey officer and the record-of-rights prepared by a Revenue officer, or in some cases, to have both operations conducted by the same officer, the duty is not limited by the present Bill, as in the Bengal Tenancy Act, to a Revenue officer, but provision is made, by section 133, for having the survey and record prepared by such officer or officers as the Government may see fit to empower in that behalf. And accuracy being the first object to be attained if the ultimate record is to be final and conclusive as to existing facts, no modification should, in the opinion of this Government, be made, as proposed in Sir Alexander Mackenzie's Bill No. I, in clause (*d*) (section 134) of the particulars to be recorded, which requires that *all* the boundaries of the tenant's holding shall be specified. Nor does there appear any necessity to include the point whether the land is held rent-free or not, in the particulars to be recorded; because if the land is actually held rent-free the entry against "the rent payable" (clause (*e*) of section 134) will be *nil*.

79. Section 135 empowers a proprietor to apply for the preparation of a record-of rights in his estate; and as, under the definition of 'proprietor' in this Bill, when a proprietor has leased or mortgaged his estate with possession, the lessee or mortgagee becomes the proprietor for the purposes of the Act, it will be such lessee or mortgagee who will be entitled to make the application. This effects what appears to this Government to be the proper course in such cases. Otherwise, if the original proprietor were allowed to make the application, the lessee or mortgagee might find the whole basis on which he made his bargain with the proprietor completely upset. Lest any doubt should arise, however, in such cases, it has been thought better to add an explanation to section 135 which will make this point clear. In view of the explanation to the definition of 'proprietor' it will be only the registered proprietor or the recognised managing joint-owner who, in the event of any dispute among co-proprietors, will be the person empowered to make application for the preparation of a record-of-rights in an estate; and in this view it becomes unnecessary to adopt the suggestion in Sir Alexander Mackenzie's Bill No. I that the words "on the application of one or more of the proprietors" should be substituted for "on the application of a proprietor" (section 135) so as to prevent an obstructive co-sharer from impeding other co-sharers in obtaining a survey and record-of-rights if they wish to do so. The suggested amendment would place it in the power of any one co-sharer to obtain survey and settlement of rents against the wishes of the majority of co-sharers—a power which, in the opinion of this Government, should not be allowed to any but the registered proprietor or the recognised managing joint-owner, in such cases.

80. Where, in cases of general rack-renting and discontent likely to give rise to serious disputes, the Government finds it necessary to order survey and record-of-rights in a particular estate, it is of importance that the means should be at hand of effecting a fair and equitable settlement of rents as part of the operation. Provision is, therefore, made in section 139 of the Bill empowering the officer preparing the

record-of-rights to settle rents. The rents settled by the officer under section 139 will of course not be entered in the record-of-rights, which is only to record the existing rent payable at the time the record is being prepared (clause (*e*) of section 134), but they will be the rents payable in future, section 141 providing that rents settled under section 139 are to take effect from the beginning of the revenue year next after the publication of the final record.

81. *Chapter X: sections 144 to 148: record of proprietor's private lands.*—If, for the reasons given in paragraph 17 of this letter, the waste in a proprietary estate is not, merely as such, to be treated as proprietor's private land, the only lands properly falling under this category will be those known as khás, pannai and the like, and those in which the proprietor has, by transfer, become possessed of the occupancy right. In the previous Bill, lands in which the occupancy right has been purchased by the proprietor were omitted, it is not known why, from the category of his private lands; for these are precisely the lands in which the proprietor has the fullest ownership possible and to which the provisions for acquisition of occupancy right as against the proprietor can no longer apply.

82. In the case of khás, pannai and such like lands to be recorded as proprietor's private land on the ground of their having been cultivated as such by the proprietor himself with his own stock or by his own servants or hired labourers, the previous Bill, following the Bengal Tenancy Act, required proof of such cultivation for a period of twelve continuous years immediately before the passing of the Act. This, in the opinion of His Excellency in Council, is an unnecessarily long period; and the present Bill, by section 148, only requires proof of cultivation, in such cases, for three continuous years immediately before the date of the order directing preparation of the record. As in the case of survey and record-of-rights, power is reserved to the Government, by section 145 of the present Bill, to depute such officer or officers as it thinks fit, to the duty of preparing a record of proprietor's private lands; and in the case of application by a proprietor or a tenant to ascertain and record whether particular land is or is not proprietor's land, under section 146, it has been considered safer to empower only the District Collector to direct an officer to take the necessary action. Instead of reproducing in a series of sections, as the previous Bill did, the procedure to be followed by officers in preparing a record-of-rights as the procedure to be also followed in preparing a record of proprietor's private lands, the present Bill, by section 147, adopts the simpler plan of the Bengal Tenancy Act by merely enacting that the provisions of sections 136 to 138 and 140 of this Bill shall apply when an officer proceeds to prepare a record of proprietor's private lands. With these exceptions, the provisions of the Bill on this subject are the same as those of the previous Bill.

83. *Chapter XI: sections 149 to 161: judicial procedure.*—In respect of judicial procedure, the differences between this and the previous Bill are chiefly those necessitated in consequence of the jurisdiction in suits and proceedings being, for the most part, vested in Collectors instead of in the ordinary Civil Courts. The previous Bill, having left all suits to the Civil Courts, permitted the High Court, from time to time, to make rules declaring that any portions of the Civil Procedure Code should not apply, or should apply subject to specified modifications, to suits under the Act: and, in the particular case of suits for the recovery of rent, it prescribed a certain procedure intended to simplify their disposal by omitting some, and modifying others, of those provisions of the Code which would otherwise apply. His Excellency in Council sees no necessity to modify the procedure of the Code in the case of the suits and proceedings which will be, by the present Bill, left to the Civil Courts and which will be, for the most part, of an important nature—suits in ejectment and so forth—for the careful trial of which the whole procedure of the Code should certainly be available. The present Bill, accordingly, interferes in no way with the Civil Procedure Code in the actual trial of suits so far as the Civil Courts are concerned; but in view of the simpler nature of the suits which will come before the Revenue Courts under its provisions, the Bill, by section 154, permits of their trial being regulated by rules to be made, from time to time, by the Local Government and lays down a certain procedure which must, in any case, be adopted by Collectors—section 150 at the same time enacting that, subject to such provisions, the Code of Civil Procedure shall apply to all suits tried by Collectors under the Act.

84. In the procedure for trial of suits by Collectors, provision is made for enabling the officer trying the suit to dictate his judgment to a shorthand writer—a practice which this Government hopes will in a few years become the ordinary practice in this Presidency.

85. The provision of the previous Bill which, following section 147 of the Bengal Tenancy Act, would have barred a landlord from instituting a suit against a tenant for the recovery of rent until after three months from the date of a similar previous suit, has been omitted. In view of the summary remedies of the present Bill (sections 62, 95 and 129) against tenants in arrears, a special provision of this kind appears of little avail.

86. The rules which the previous Bill, following section 156 of the Bengal Tenancy Act, would have applied, as to crops sown or planted, &c., in the case of every ryot ejected from his holding, have also been omitted. Such rules, it is feared, would lead to a great deal of litigation; and, in the opinion of this Government, a provision that, except where otherwise expressly provided by the Bill, a ryot whose ejectment is decreed in the first eight months of a revenue year shall not be ejected till the commencement of the next revenue year, and that a ryot whose ejectment is not decreed in the first eight months shall not be ejected till the commencement of the revenue year next but one following, is much to be preferred. Such provision is accordingly made in section 159 of the Bill. The remaining provisions of the Bill in regard to judicial procedure are the same as those of the previous Bill.

87. *Chapter XII: sections 162 to 164: contract and custom.*—The rules (section 162) intended to protect tenants from contracting themselves out of their rights under the Act were, by the previous Bill (following the Bengal Tenancy Act) made subject to exceptions in the case of leases granted *bonâ fide* for the reclamation of waste land, and in the case of waste reclaimed by a landlord himself and subsequently let to a tenant. It being a principle of the present Bill (as explained in paragraph 17 of this letter) that waste let for agricultural purposes should not be treated differently from other land let for such purposes, these exceptions appear to this Government to be uncalled for, and they have now been omitted.

88. *Chapter XIII: sections 165 and 166 and schedule II: limitation.*—The periods of limitation for suits, appeals and applications, specified in schedule II, are to be taken as merely tentative pending revision in Select Committee.

89. *Chapter XIV: sections 167 to 174: supplemental.*—In the case of illegal distraint, resistance to lawful distraint, &c., the Bill, by section 167, provides a specific penalty instead of, as in the previous Bill and in the Bengal Tenancy Act, declaring that the offender shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

90. By section 171, the Bill invalidates any enhancement of rent made or agreed to between the date of first publication of the Bill and the date of commencement of the Act. This provision, in order to prevent tenants from being induced to agree to improper raising of their rents for the purpose of forestalling the provisions of the Act against enhancement, is, in the opinion of this Government, very necessary.

91. It is anticipated that, in some districts, appeals to the District Collector against decisions of Collectors, more particularly in cases of enhancement and reduction of rent under Chapter III, may be more numerous than it will be possible for him to dispose of without detriment to his other duties: and in order to provide the means of giving the necessary assistance to the District Collector in such cases, section 174 enables the Government to appoint, from time to time, an officer to exercise, in addition to the District Collector, all or any of the powers of the District Collector under this Bill.

92. Again as there are numerous subjects in regard to which rules and orders may be fitly made by the Board of Revenue under various provisions of the Bill, section 173 enables the Government to delegate all or any of its powers under the Bill to the Board of Revenue except the power just mentioned and the following:—

(*a*) power to extend any of the provisions of the Act to any of the areas at present excepted from its local extent (section 1);

(*b*) power to declare, where no revenue accounts are maintained, what local area constitutes a particular "village" for the purposes of the Act [section 3, sub-section (2)];

(*c*) power to order a survey and record-of-rights to be prepared in any local area or estate (section 133);

(*d*) power to order the survey and record of proprietors' private lands (section 145);

(*e*) power to appoint a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of officers preparing records of rights and records of proprietors' private lands (sections 140 and 147); and

(*f*) power to invest any Revenue or Judicial officer with all or any of the powers of a Collector in respect of suits and proceedings under the Act (section 149).

93. This completes the details of the Bill with reference more particularly to the points of difference between its provisions and those of the previous Bill, resulting from the fresh scrutiny to which the latter has been subjected by this Government. And in thus, for the first time, defining and declaring substantive rights—*for the proprietor*, the right to rent as a first charge on the land, the right of enhancement, the right of entry and measurement and alteration of rent with area, the right of summary distraint, attachment, sale and ejectment through the Collector as well as by ordinary suit before the Civil Court, the right of acquisition for reasonable purposes, and the right of absolute disposal of his private lands; *for the ryot*, the right of occupancy, the right of free transfer, the right to a fair rent, including the right to reduction and alteration of rent with area, the right to a patta or written agreement as a prerequisite to the recovery of rent, the right to receipts, the right to deposit rent, the right to make and be compensated for improvements, the right to enforce repairs of irrigation works, and the right against ejectment except by a decree of Court or order of a Collector—this Bill, His Excellency the Governor in Council believes, will be found effectually to remedy the most serious defect in the rent law of this Presidency, which has hitherto been the want of provision for substantive rights, and, in doing so, to hold the scales as evenly as possible between landlord and tenant, consistently with the adequate protection of the latter.

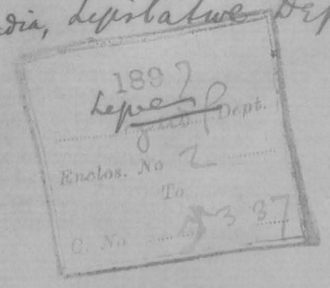
94. The Bill, therefore, it is trusted, will meet with the early approval of His Excellency the Governor-General, and I am to request that sanction may be accorded in time for its introduction into the local Legislative Council during the approaching Session.

I have the honour to be,
Sir,
Your most obedient servant,

FORT ST. GEORGE,
November 1897.

Secretary to Government.

Endt No. 91 Legisd 19 Nov 1897.
Copy to the Govt of India, Legislative Dept.



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THE MADRAS TENANCY BILL, 189 .

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Abbreviations.

B.T.A.=Bengal Tenancy Act, VIII of 1885.

M.R A =Madras Rent Recovery Act, VIII of 1865.

[The section-numbers in square brackets denote the sections in the previous Bill.]

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A

BILL

TO

Amend the Law relating to Landlord and Tenant in the Presidency of Madras.

WHEREAS it is expedient to amend and declare the law regulating the relations between landlords and their tenants in the Presidency of Madras; It is enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

B.T.A. 1.

[1] **1.** This Act may be called the Madras Tenancy Act, 189 :

Short title.

it shall come into force on the first day of July 189 :

Commencement.

[3] and it shall extend to the whole of the Presidency of Madras outside the limits of the Presidency Town, except the district of Malabar and the portion of the Nilgiri district known as the South-East Wynaad. But the Local Government may by notification declare that, from a date to be specified in such notification, all or any of the provisions of this Act shall be extended to all or any of such excepted areas or any portion thereof.

Local extent.

B T A. 2.

[2] **2.** Madras Acts VIII of 1865 and II of 1871 and section 7 of Madras Act III of 1890 are hereby repealed.

Repeal.

B.T.A. 3 and 5.

[4] **3.** In this Act, unless there is something repugnant in the subject or context:—

Definitions.

(1) "Estate" means

(*a*) any permanently-settled estate, whether a zemíndárí, jághír, mittah or pálaiyam;

(*b*) any portion of such permanently-settled estate which has been separately registered in the office of the Collector;

(*c*) any unsettled pálaiyam or jághír;

(*d*) any inam or shrotriem village or group of villages of which the grant was made or confirmed, or has been recognised, by the British Government;

(*e*) any portion, consisting of one or more villages, of any of the estates specified above in clauses (*a*), (*b*) and (*c*) which is held on a permanent under-tenure.

(2) "Village" means any local area situated in, or constituting, an estate, which is designated as a village in the Revenue accounts and for which the Revenue accounts are separately maintained by one or more curnams, or which is now recognised by the Local Government as a village or may hereafter be declared by the Local Government, for the purposes of this Act, to be a village.

(3) "Proprietor" means a person owning an estate and, in respect of an estate specified in clause (*e*) of sub-section (1) of this section, the holder thereof; and includes also assignees, lessees, mortgagees with possession and purchasers of the interest of, and farmers of rents from, any such person, provided such interest or farm extends to at least a whole village. It also includes managers of estates of disqualified owners, and public officers in possession of estates as stake-holders or holding land in attachment for arrears of revenue or under the orders of a Civil Court.

Explanation.—Where there is a dispute as to ownership of an estate, or as to who, among joint-owners of an estate, is entitled to proceed as proprietor under this Act, the proprietor shall, for the purposes of this Act, be the person in whose name the estate is for the time being registered in the office of the Collector of the district wherein the estate is situated; and where an estate is so registered in the names of two or more persons as joint-owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognised by the other joint-owners as the managing owner of the estate or who, in case of dispute, is recognised and registered by the Collector as senior joint-owner.

(4) "Ryot" means a person who has acquired a right to hold land as a tenant immediately under a proprietor, for the purpose of agriculture, horticulture or grazing; and includes also the successor

in interest of a person who has acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of agriculture, horticulture or grazing.

Provided that no tenant shall be deemed to be a 'ryot' by reason only of his having the right to bring under cultivation the land appurtenant to his dwelling-house or attached thereto for use therewith as a garden or pleasure-ground or for the pasturage of animals kept for private use.

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

(6) "Landlord" means a person immediately under whom a tenant holds.

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

In chapters VI and VII, sections 110, 112, 125 to 127 both inclusive, and schedule I of this Act, 'rent' includes also (*a*) money payable on account of the use and enjoyment of trees held independently of land: (*b*) money payable on account of the use and enjoyment of water supplied for cultivation of land, where the charge for such water has not been consolidated with the rent for the land: (*c*) any cesses, fees or charges payable along with the rent of land or trees according to law or usage having the force of law: and (*d*) money recoverable in respect of land, trees or water, under any other enactment for the time being in force as if it was rent.

Explanation.—The payments to be made by a farmer of rents to a proprietor are not 'rent.'

(8) "Holding" means a parcel or parcels of land held by a tenant and forming the subject of a separate tenancy.

(9) "Signed" includes stamped, when the name of the person signing is affixed by a stamp.

(10) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(11) "Revenue year" means the year ending on the 30th June.

CHAPTER II.

Classes of Tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely):— B.T.A. 4.

Classes of tenants.

(*a*) Occupancy ryots, that is to say, ryots having a right of occupancy in the land held by them as ryots:

(*b*) Non-occupancy ryots, that is to say, ryots not having such a right of occupancy:

(*c*) Under-tenants, that is to say, tenants holding whether immediately or mediately under ryots, or under landlords other than proprietors.

CHAPTER III.

Occupancy Ryots.

General.

5. Occupancy right in land may be created at any time by written agreement between proprietor and ryot. [5]

Occupancy right by agreement.

6. Every ryot, who immediateiy before the commencement of this Act has, by the operation of any enactment, by custom, contract or otherwise, a right of occupancy in land in any village shall, when this Act comes into force, be deemed to have that right of occupancy under this Act. [7] B.T.A. 19.

Continuance of existing occupancy rights.

7. Every ryot shall be presumed to have occupancy right in all land held by him as a ryot, until the contrary is admitted or proved. [6]

Presumption of existence of occupancy right.

8. (1) Every person who, for a period of twelve years, whether wholly or partly before or wholly or partly after the commencement of this Act, has continuously held as a ryot land situate in any village, whether under lease or otherwise, shall be deemed, on the expiration of that period, to have a right of occupancy in all land for the time being held by him as a ryot in that village. [8] B.T.A. 20 and 21.

Occupancy right how acquired.

Provided that, when the expiration of that period falls during currency of a lease for a term, the ryot shall not be deemed to have acquired occupancy right in the land so leased.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a ryot all land held as a ryot by a person whose heir he is.

(4) Land held by two or more persons jointly as ryots shall be deemed, for the purposes of this section, to have been held as a ryot by each such person.

(5) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a ryot, it shall, as between him and the proprietor under whom he holds the land, be presumed for the purposes of this section, until the contrary is admitted or proved, that he has for twelve years continuously held land in the same village as a ryot.

Incidents of Occupancy Right.

B.T.A. 23 [10] **9.** An occupancy ryot may use the land in his holding in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but he shall not be entitled to cut down trees in contravention of any local custom.

Rights in respect of use of land.

B.T.A. 24. **10.** An occupancy ryot shall pay rent for his holding at fair and equitable rates.

Obligation to pay fair rent.

B.T.A. 25. [11] **11.** An occupancy ryot shall not be ejected from his holding, except in execution of a decree for ejectment passed on the ground—

Protection from ejectment except on specified grounds.

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and the proprietor, liable to be ejected.

[9] **12.** All rights of occupancy shall be transferable by sale, gift or otherwise.

Occupancy right transferable.

B.T.A. 2[illegible] [12] **13.** (1) When the entire interests of proprietor and occupancy ryot in a holding become united in the same person by transfer, succession

Effect of acquisition of occupancy right by proprietor.

or otherwise, the occupancy right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy right in land is transferred to a person jointly interested in the land as proprietor, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(3) A person holding land as an ijárádár, or farmer of rents, shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or by subsequently holding the land in ijárá or farm.

14. If a ryot dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property. [13]

Devolution of occupancy right on death.

B.T.A. 26.

Enhancement of Rent.

15. The rent for the time being payable by an occupancy ryot shall be presumed to be fair and equitable until the contrary is proved. [30]

Presumption as to fair rent.

B.T.A 27.

16. The rent of an occupancy ryot shall not be enhanced except as provided by this Act. [31]

Restriction on enhancement.

B.T.A 2.

17. Where an occupancy ryot holds at a money-rent not fixed in perpetuity, the proprietor may, subject to the provisions of this Act, institute a suit before the Collector to enhance the rent on one or more of the following grounds, namely :— [33]

Enhancement of rent by suit.

B.T.A. 30

(*a*) that there has been a rise in the average local prices of staple food-crops in the taluk or zemíndárí division since the existing rent was fixed:

(*b*) that the productive powers of the land held by the ryot have been increased by an improvement effected by, or at the expense of, the proprietor since the existing rent was fixed:

(*c*) that the productive powers of the land held by the ryot have been increased, since the existing rent was fixed, by any work of irrigation or other improvement

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executed at the expense of Government, and the proprietor has been required to pay an additional revenue or rate to Government in consequence thereof :

(*d*) that the productive powers of the land held by the ryot have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable where it was not previously practicable.

Provided that no enhancement of rent on the ground stated in clause (*a*) of this section shall be claimable in any estate within the districts of Salem, Madura or Tinnevelly.

B.T.A 32. [34]

18. Where an enhancement is claimed under section 17, clause (*a*)— Rules as to enhancement on ground of rise in prices.

(*a*) the Collector shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison : Provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period ;

(*c*) if in the opinion of the Collector it is not practicable to take the decennial periods prescribed in clause (*a*), the Collector may, in his discretion, substitute any shorter periods therefor ;

(*d*) the average prices by which the Collector shall be guided shall be those published under the authority of the Local Government, unless and until they are proved to be incorrect ;

(*e*) the decennial periods taken for the comparison of average prices shall be periods of ten years excluding all years which the Local Government may notify to be, or to have been, famine years in respect of any local area ;

(*f*) the Local Government shall make rules for determining what are to be termed staple food-crops in any local area, and for the guidance of officers preparing price lists under this section.

Rules as to enhancement on ground of proprietor's improvement.

19. (1) Where an enhancement is claimed under section 17, clause (*b*)— [35]

B.T.A. 33.

(*a*) the Collector shall not grant an enhancement unless the improvement has been completed and registered in accordance with this Act:

(*b*) in determining the amount of enhancement the Collector shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement;

(ii) the cost of the improvement;

(iii) the cost of the preparation and cultivation required for utilising the improvement; and

(iv) the existing rent and the ability of the land to bear a higher rent.

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

Rules as to enhancement on ground of improvement by Government.

20. Where an enhancement is claimed under section 17, clause (*c*), the Collector shall have regard to— [36]

(i) the increase in the productive power of the land caused or likely to be caused by the improvement;

(ii) the cost of the preparation and cultivation required for utilising the improvement; and

(iii) the additional payment which the landlord is required to make to Government on account of the improvement.

Provided that the enhancement imposed on the ryot shall not exceed the sum which the proprietor has to pay to Government on account of the improvement made by it.

Rules as to enhancement on account of fluvial action.

21. Where an enhancement is claimed under section 17, clause (*d*)— [37]

B.T.A. 34.

(*a*) the Collector shall not take into account any increase which is merely temporary or casual;

(*b*) the Collector may enhance the rent to such an amount as he may deem fair and equitable but not so as to give the proprietor more than one half of the value of the net increase in the produce of the land.

B.T.A. 35.

Enhancement to be fair and equitable.

22. Notwithstanding anything contained in the foregoing sections, the Collector shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

B.T.A 36. [38]

Power to order progressive enhancement.

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

B.T.A. 37. [39]

Limitation of right to bring successive enhancement suits.

24. (1) A suit instituted for the enhancement of the rent of a holding on the ground of a rise in prices shall not be entertained, if within the fifteen years next preceding its institution, the rent of the holding has been enhanced by a contract, or, if within the said period of fifteen years, the rent has been commuted under section 27, or a decree has been passed under this Act enhancing the rent on the ground aforesaid or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Reduction of Rent.

B.T.A. 38. [40]

Reduction of rent by suit.

25. (1) An occupancy ryot holding at a money-rent not fixed in perpetuity may institute a suit before the Collector for the reduction of his rent on the following grounds but not otherwise, namely:—

(*a*) on the ground that the soil of the holding has, without the fault of the ryot, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual; or

(*b*) on the ground, in the case of irrigated land, that the irrigation work on which it is dependent has completely failed; or

(*c*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food crops in the taluk or zemíndárí division since the existing rent was fixed; or

(*d*) on the ground that the rent has been unduly raised after 1st May 1871 and before the commencement of this Act.

Provided that no reduction of rent on the ground stated in clause (*c*) of this sub-section shall be claimable in any estate within the districts of Salem, Madura or Tinnevelly.

(2) In any suit instituted under this section, the Collector may direct such reduction of the rent as he thinks fair and equitable.

Limitation of right to bring successive suits.

26. (1) A suit instituted for the reduction of rent on the ground of a fall in prices shall not be entertained if, within fifteen years next preceding its institution, the rent has been reduced by contract, or a decree has been passed under this Act reducing the rent on the ground aforesaid or dismissing the suit on its merits. [41]

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Commutation of Rent.

Rules for commutation of rent payable in kind.

27. (1) Where an occupancy ryot pays, for a holding, rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of these ways and partly in another, either the ryot or the proprietor may apply to the Collector to have the rent commuted to a money-rent. [42]

(2) If the application is opposed, the Collector shall consider whether, in all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reason for the refusal.

(3) If the application is not opposed, or if it is opposed and the objection is disallowed, the Collector shall determine the sum to be paid as money-rent, and shall order that the ryot shall, in lieu of paying the rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the Collector shall have regard to—

(*a*) the average money-rent payable by occupancy ryots for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the proprietor during the preceding ten years or during any shorter period for which alone evidence may be available; and

(*c*) the charges incurred by the proprietor in respect of irrigation under the system of rent in kind and the arrangements made, or to be made, on commutation, for continuing those charges.

(5) The order determining the sum to be paid as money-rent shall be made in writing and shall state the grounds on which it is made and the time from which it is to take effect.

Alteration of Rent with Area.

Alteration of rent in respect of alteration in area.

28. Every occupancy ryot shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the holding of land which having previously belonged to the holding was lost by diluvion or otherwise without any reduction of the rent being made; and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to such area.

Proprietor's right to measure land.

29. Every proprietor may, by himself or by any person authorized by him in this behalf, at any

time enter on and measure any land comprised in his estate, for the purposes of the last preceding section; but no alteration of rent under the said section shall be allowed except under the order of the Collector upon application made to him for that purpose by the proprietor or the occupancy ryot concerned.

B.T.A. 52 (2) to (4), and 91.

30. (1) Upon such application and upon notice to the opposite party, the Collector shall, after causing such measurements to be made as he thinks fit, and after hearing such evidence as the parties may adduce, determine the area for which rent has previously been paid and the amount, if any, to be added to or deducted from the rent.

Alteration of rent with area how determined.

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

(*a*) the origin and conditions of the tenancy—for instance, whether the rent was a consolidated rent for the entire holding;

(*b*) whether the ryot has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the proprietor;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the application.

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

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

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31. No Civil Court shall entertain any suit or issue any injunction regarding a Collector's proceedings under this chapter, but from every decree or order passed by a Collector under this chapter, if the Collector is not the District Collector, an appeal shall lie to the District Collector, whose decision shall be final. If the Collector is the District Collector, his decree or order shall be final.

Right of appeal.

Provided that—

(*a*) If, before or during the hearing of a suit or application under this chapter or of an appeal against a decree or order passed under this chapter, or if, in the execution of any such decree, any question of law or usage having the force of law, or of the construction of a document which construction may affect the merits, arises, and the officer trying the suit or appeal or executing the decree entertains reasonable doubt on such question, he may, either of his own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement for the decision of the Board of Revenue and shall stay further proceedings until the said decision is communicated to him:

(*b*) The Board of Revenue shall, if any of the parties so request, hear him or his agent and shall decide the point referred and transmit a copy of its judgment to the officer by whom the reference was made, and the said officer shall, on receipt thereof, proceed to dispose of the case in conformity with the decision of the said Board, and the correctness of the decision of the said Board shall not be contested in any appeal made under this section.

CHAPTER IV.

Non-occupancy Ryots.

B.T.A. 42.

[44] **32.** When a non-occupancy ryot is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and the proprietor at the time of his admission.

Initial rent of non-occupancy ryot.

B.T.A. 43.

[45] **33.** The rent of a non-occupancy ryot shall not be enhanced except by registered agreement or by agreement under section 36.

Conditions of enhancement.

34. A non-occupancy ryot shall, subject to the provisions of this Act, be liable to ejectment from his holding on one or more of the following grounds, but not otherwise (namely):— [46]

Grounds on which non-occupancy ryot may be ejected.

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in his holding in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and the proprietor, liable to be ejected;

(*c*) when he has been admitted to occupation of the land under a registered lease, on the ground that his original lease has expired; or when he has not been in occupation of the land for seven years, on the ground that his last lease has expired;

(*d*) on the ground that he has refused to agree to an enhancement of rent;

(*e*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 36, or that the term for which he is entitled to hold at such a rent has expired.

35. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy ryot unless notice to quit has been served on the ryot not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term. [48]

Conditions of ejectment on ground of expiration of lease.

B.T.A. 45.

36. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy ryot unless the proprietor has tendered to the ryot an agreement to pay the enhanced rent for a fresh term, and the ryot has, within three months before the institution of the suit, refused to execute the agreement. [47]

Conditions of ejectment on ground of refusal to agree to enhancement.

B.T.A 46

(2) A proprietor desiring to tender an agreement to a ryot under this section may file it in the office of the Collector or such other officer as the Local Government appoints in this behalf, for service on the ryot. The Collector or officer shall forthwith cause it to be served on the ryot in the manner prescribed for service of notice under section 64 and when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a ryot on whom an agreement has been served under sub-section (2) executes it, and, within one month from the date of service, files it in the office from which it issued, it shall take effect from the commencement of the revenue year next following.

(4) When an agreement has been executed and filed by a ryot under sub-section (3), the Collector or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the proprietor in the manner prescribed for service of notice under section 64.

(5) If the ryot does not execute the agreement and file it under sub-section (3), he shall be deemed, for the purposes of this section, to have refused to execute it.

(6) If a ryot refuses to execute an agreement tendered to him under this section, the proprietor may thereupon institute a suit before the Collector to eject him, and the Collector shall determine what rent is fair and equitable for the holding.

(7) If the ryot agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for such further term from the date of the agreement as is requisite to make up a total continuous holding of twelve years, but on the expiration of that term he shall be liable to ejectment. Provided that such further term shall not exceed five years.

(8) If the ryot does not agree to pay the rent so determined, he shall be forthwith ejected.

CHAPTER V.

UNDER-TENANTS.

37. Subject to the provisions of sections 129 to 132, an under-tenant shall not be liable to be ejected by his landlord except— B.T.A. 49.

Restriction on ejectment of under-tenants.

(*a*) on the expiration of the term of a written lease;

(*b*) when holding otherwise than under a written lease, at the end of the revenue year next following the year in which a notice to quit is served upon him by his landlord.

CHAPTER VI.

General Provisions as to Rent.

Rates of Rent.

38. In the decision of suits between landlords and their tenants involving disputes regarding rates of rent, all contracts to pay rent, not inconsistent with the provisions of this Act, shall be enforced. [22 and 23 (1)] M.R.A. 11 (1).

Rule for deciding disputes as to rates of rent.

39. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any revenue year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding revenue year. B.T.A. 51.

Presumption as to amount of rent and conditions of holding.

Arrears of Rent.

40. (1) When rent shall remain unpaid at the time when, according to any agreement or, in the absence of agreement, according to the custom of the country, it ought to have been paid, the amount remaining unpaid shall be deemed an arrear of rent. [51] B.T.A. 54 (3). M.R.A. 14.

What deemed an arrear of rent.

(2) If in times of distress a landlord desires to postpone demand on his tenants he may do so from time to time by a general declaration to be published in each village in such manner as may be prescribed by rules to be framed from time to time by the Local Government in this behalf: and a declaration so published shall operate from time to time as an agreement as to the time of payment within the meaning of sub-section (1).

41. An arrear of rent shall bear simple interest at the rate of twelve and one-half per centum per annum from the date on which the arrear fell due until the arrear is liquidated. [61] B.T.A. 67. M.R.A. 37.

Interest on arrears.

Explanation.—This interest may be calculated at two pies per rupee per mensem, fractions of a month and of a rupee being disregarded in the calculation.

Receipts.

42. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for the amount paid by him signed by the landlord or by the landlord's authorised agent. [53] B.T.A. 56. M.R.A. 81.

Right of tenant to receipt for rent.

(2) The landlord or his agent shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in schedule I of this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

43. If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 42 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit before the Collector to recover from the landlord a penalty not exceeding double the amount or value of that rent as the Collector thinks fit. [54] B.T.A. 58 (1). M.R.A. 81.

Penalty for withholding receipt.

44. The headman of each village shall be presumed to be the authorized agent of the landlord for the purpose of receiving rents and granting receipts under sections 42 and 43, unless the landlord has duly appointed for such purpose as his authorized agent some other person resident in the village or within three miles of it; provided that the tenants may pay their rents to the landlord by postal money-orders under rules which the Local Government may from time to time prescribe. [55] B.T.A. 61.

Persons to whom, and how, rents may be paid.

Deposit of Rent.

45. (1) In any of the following cases, namely—

Application to deposit rent.

(*a*) when a tenant tenders money on account of money-rent which has become due and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of money-rent which has become due has

reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the money-rent which has become due is payable to two or more persons jointly, and the tenant is unable to obtain the joint receipt of the said persons for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the money-rent which has become due;

the tenant may present to the Collector or such other officer of the Department of Land Revenue as the Local Government may order, an application in writing for permission to deposit in the office of the said Collector or other officer the full amount of the money which he alleges to be then due.

(2) The application shall contain a statement of the grounds on which it is made; and shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered;

in case (*c*), the names of the persons to whom the rent is due, or of so many of them as the tenant may be able to specify; and

in case (*d*), the name of the person to whom the rent was last paid and of the person or persons now claiming it.

(3) The application shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government may, from time to time, fix.

[56] **46.** (1) If it appears to the Collector, or other officer to whom an application is made under the last foregoing section, that the applicant is entitled under that section to deposit the rent, he shall receive the rent and shall give a receipt for it under his official seal.

Receipt for deposit in Revenue office to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the persons to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

[57] **47.** (1) The Collector or other officer receiving the deposit shall forthwith cause to be affixed in a conspicuous place at his office a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Collector or other officer shall forthwith—

in cases (*a*) and (*b*) of section 45, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be served, free of charge, on the persons referred to in case (*c*) of sub-section (2) of the said section and to be posted in some conspicuous place in the village in which the holding is situate; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who, the Collector or other officer has reason to believe, claims or is entitled to the deposit.

[58] **48.** (1) The Collector or other officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a competent Court as to the person so entitled.

Payment or refund of deposit.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a competent Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Collector or other officer with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government, in respect of anything done by a Collector or other officer receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Produce Rents.

Order for appraising or dividing produce.

49. (1) Where rent is taken by appraisement or division of produce—

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division; or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where, in the opinion of the District or Sub-Divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

[63]

Procedure where officer appointed

50. (1) Where a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as

[64]

assessors, and may give him instructions regarding the number, qualifications and mode of selection of these assessors (if any) and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making any appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant or both fails or fail to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report and after giving the parties an opportunity of being heard and after making such inquiry (if any) as he may think necessary, he shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Rights and liabilities as to possession of crops.

[65] **51.** (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case, the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

CHAPTER VII.

Recovery of Rent.

Puttahs and Muchilikas.

52. No proprietor shall have power to proceed against an occupancy ryot for the recovery of rent, under this Act or otherwise, unless and until he shall have exchanged a puttah and muchilika with such ryot or tendered him such a puttah as he was bound to accept. [14 and 15]

Obligation of proprietor to tender puttah to occupancy ryot.

M.R.A. 2, 3 and 7.

Provided that when proceedings are taken by a proprietor on a puttah which is not entirely but is substantially correct, such proceedings shall be valid to the extent that such puttah is correct.

Provided also that no proceedings with respect to a puttah which contains any stipulation in restraint of cultivation or of harvesting or for termination of the tenancy at any specified time shall be valid.

53. The tender of a puttah may be made directly to the ryot or by filing the same in the office of the Collector or such other officer of the Department of Land Revenue as the Local Government may order; and, if so filed, the Collector or such officer shall cause the puttah to be served on the ryot, at the cost of the proprietor, in the manner prescribed for the service of notice under section 64. [14]

Puttah how to be tendered.

M.R.A. 7.

54. Puttahs and muchilikas shall be signed by the respective parties or by persons duly authorized in that behalf. [15]

Puttahs and muchilikas to be signed.

M.R.A. 6.

55. The puttah shall contain the names of the parties; the local description and extent of the land; the rate or amount and nature of the rent, according as it may be payable in money, in kind or by a share of the produce, separately specifying any fees or charges payable with it according to law or usage having the force of law; the period or periods at which such rent, fees or charges are to be paid; the date of the instrument and all special terms by which it is intended that the parties shall be bound. The muchilika may, at the option of the proprietor, be a counterpart of the puttah or a simple engagement to hold according to its terms. [16]

Contents of puttah and muchilika.

M.R.A. 4.

61

56. Puttahs and muchilikas may be exchanged for periods of one year or more, but the tender of puttah shall always take place within twelve months after the commencement of the period to which the puttah relates; provided that no proprietor shall be bound to tender, and no occupancy ryot to accept, a puttah for a period of more than one revenue year. [17]

Period for which puttahs and muchilikas may be exchanged.

M.R.A. 8 and 71.

57. When any proprietor shall, for three months after demand, have refused to grant such a puttah as his tenant, being an occupancy ryot, was entitled to receive, it shall be lawful for the tenant to sue for such a puttah before the Collector. The Collector shall decide the terms of the puttah to be granted, and if it be not granted as directed within the time specified, the decree shall be of the same force and effect as if a puttah and muchilika had been exchanged. [18]

Suit to obtain puttah.

M.R.A. 9.

58. When an occupancy ryot shall for one month have refused to accept the puttah tendered to him and to give a muchilika in exchange, the proprietor may sue before the Collector to enforce acceptance of such puttah. [19]

Suit to enforce acceptance of puttah.

M.R.A. 10 and 72.

59. In adjudicating suits under the preceding section, the Collector shall first inquire whether the party sued was bound to accept a puttah, and, unless this be proved, the suit shall be dismissed. Should the plaintiff establish the above point, the Collector shall inquire whether the puttah tendered is a proper one. If it is found to be so, the Collector shall order the defendant to accept the puttah and to execute a muchilika in accordance with it. If the Collector is of opinion that the puttah tendered is not a proper one, he shall decide what the terms of the puttah should be, and shall then order the defendant to accept such puttah and to execute a muchilika in accordance with it. In default of the tenant so doing, the decree shall be of the same force and effect as if a puttah and muchilika had been exchanged. [20]

Procedure in adjudication of suit to enfore acceptance of puttah.

60. Save as respects lands duly relinquished or newly taken up by the tenant, for which the parties may exchange a supplementary puttah and muchilika, the terms of puttahs [21]

Duration of puttahs and muchilikas exchanged or decreed.

and muchilikas exchanged or decreed between proprietors and their occupancy ryots shall remain in force until the beginning of the revenue year for which fresh puttahs and muchilikas are exchanged or decreed.

Written Agreements.

61. Landlords may proceed under this Act for the recovery of rent from their tenants other than occupancy ryots if they have taken written agreements from such tenants specifying the rent to be paid, but not otherwise. [50]

Obligation of landlord to take written agreement from non-occupancy tenant.

M.R.A. 13.

Distraint and Sale of Moveable Property.

62. When an arrear of rent is due for any period not exceeding a year and no security has been accepted therefor, the landlord may, in addition to any other remedy to which he is entitled by law, distrain the moveable property of the defaulting tenant or the crops, or the ungathered produce of the land or trees held by him, while in his possession. [66]

Cases in which landlord may distrain.

B.T.A. 121.

Provided that when a suit has been filed under section 57, the rent shall be taken to become due from the date of the Collector's decree, or if that is appealed against, from the date of the last decree of the Appellate Courts.

Provided also that no distraint shall be made under this section in respect of the crops or ungathered produce of any part of the holding which the tenant has sublet with the written consent of the landlord.

Provided also that ploughs and implements of husbandry, the cattle actually trained to the plough and seed-grain shall not be distrained for arrears so long as other property may be forthcoming equal to the discharge of such arrear.

63. The distraint shall be effected on the personal responsibility of the landlord, by the landlord serving on the tenant a written notice signed by the landlord or by his authorized agent setting forth— [67]

Distraint how to be effected.

B.T.A. 122, 124 and 141. M.R.A. 14 and 15.

(1) the amount of the arrear due, with interest, if any;

(2) the holding in respect of which it is due;

(3) the period in respect of which it is due;

(4) the nature and approximate value of the property distrained;

and by the landlord or his authorized agent taking charge of the property or placing some person in charge of it on the landlord's behalf.

Provided that produce which from its nature does not admit of being stored shall not be distrained at any time less than twenty days before the time when it would be fit for reaping or gathering.

B.T A. 125. M.R.A 15 and 16. [69 and 70]

64. The notice of distraint prescribed by section 63 shall be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode in the neighbourhood of the land to which the distraint refers, or to his authorized agent, or, when such service cannot be effected, by affixing a copy of the notice to the outer door or wall of his last-known residence within the district, or on some conspicuous part of the land to which it refers.

Notice of distraint how to be served and published.

A copy of the notice of distraint shall be fixed up in some conspicuous place in the village in which the land is situate in respect of which the arrear has accrued, and another copy shall be forwarded to the Collector by the landlord within forty-eight hours of its service on the defaulting tenant.

M.R.A. 19. [71]

65. Persons authorized to distrain may apply to the nearest Police station for such assistance as may be necessary to prevent any breach of the peace, and the authority to whom such application is made shall depute one or more Police officers to be present at the time of such distraint for such purpose.

Distrainer may procure Police assistance.

M.R.A. 24. [73]

66. The distraint shall not be excessive; that is to say, the value of the property distrained shall be as nearly as possible proportionate to the amount of the arrears due.

Distraint to be proportionate to arrear.

M.R.A. 25. [86]

67. Distraint shall be made after sunrise and before sunset and not otherwise.

Time of distraint.

M.R.A. 28. [74]

68. It shall be lawful for the distrainer to force open any stable, cow-house, granary, godown, out-house, or other building, and he may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such

What places distrainer may force open.

dwelling-house for the purpose of attaching property belonging to a defaulter and lodged therein; provided always that it shall not be lawful for such distrainer to break open or enter any apartment in such dwelling-house appropriated for the zenana or residence of women, except as hereinafter provided.

69. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling-house, the outer door of which may be shut, or within any apartments appropriated to women, which, by the usage of the country, are considered private, such distrainer shall represent the same to the officer in charge of the nearest Police station. On such representation the officer in charge of the said station shall send a Police officer to the spot, in the presence of whom the distrainer may force open the outer door of such dwelling-house, in like manner as he may break open the door of any room within the house except the zenana. The distrainer may also, in the presence of the Police officer, after due notice given for the removal of women within the zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who, according to the customs of the country, cannot appear in public), enter the zenana apartments for the purpose of distraining the defaulter's property, if any, deposited therein. If any such property be found, it shall immediately be removed from such apartments in order that they may be left free for the return of the former occupants.

[75] M.R.A. 29.

Power to force open doors, and to enter zenana, in presence of a Police officer.

70. The distrainer shall not work the bullocks or cattle or make use of the property distrained. He shall provide necessary food for cattle or live-stock, and the cost of doing so shall be a charge against the owner and shall be recoverable as a cost of the distraint.

[72] M.R.A. 23.

Distrained cattle or goods not to be used.

71. (1) A distraint under this chapter shall not prevent the defaulter or any person claiming through him from doing all acts necessary for the preservation and maturing of the crops or other produce distrained, or from reaping, gathering or storing the same.

[80] B.T.A. 126. M.R.A. 21.

Right to reap and preserve produce.

(2) If such person fails to do so at the proper time, the distrainer shall do all acts necessary for the preservation or

maturing of such standing crops or ungathered produce, and for their being reaped or gathered when ripe, and stored or preserved in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood.

(3) In either case the distrained produce shall remain in the charge of the distrainer or of some person appointed by him in this behalf.

B.T.A 136 (1). M.R.A. 22. [68 and 93]

72. (1) After a distraint has been made under this chapter and at any time until forty-eight hours before the date appointed for sale, the defaulter or the owner of the property, where he is not the defaulter, may deposit in the office of the Collector, or such other officer of the Department of Land Revenue as the Local Government may order, the amount of arrear with all costs incurred, or may pay this amount to the distrainer, or may furnish security to the satisfaction of the distrainer, whereupon the Collector, other officer or distrainer shall give a written acknowledgment of the deposit, payment or security, and shall forthwith direct the withdrawal of the distraint.

Withdrawal of distraint on deposit, payment, or furnishing of security.

(2) At any time before the sale of the distrained property, the defaulter or owner may deposit, in the hands of the officer appointed to conduct the sale, the amount of arrear with interest and all costs which may have been incurred, and the officer conducting the sale shall grant a receipt for the same and shall withdraw the distraint forthwith.

B.T.A. 136 (4). [94]

73. After the expiration of one month from the date of a deposit being made under the last preceding section, the Collector shall pay therefrom to the landlord who made the distraint the amount due to him, unless in the meantime the owner of the property distrained shall have instituted a suit against the landlord contesting the legality of the distraint and claiming compensation in respect of the same.

Payment of amount due to landlord.

M.R.A. 20. [85]

74. When property distrained may be stolen, lost, damaged or destroyed while in the keeping of the distrainer, by reason of his not having taken the necessary precautions for its due preservation, he shall be responsible to the owner for the loss or damage, and the

Liability of distrainer for loss of, or injury to, distrained property.

Collector shall, on the application of the owner, and on proof of such loss or damage, pass an order that the same shall be made good.

75. Claims to crops distrained under section 62, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim for rent due to the landlord by his defaulting tenant; but if, before the day fixed for the sale, a third party appears before the Collector and claims a right or interest in the crops under distraint, the Collector shall hold, or cause to be held, an immediate enquiry, and if he sees sufficient cause for doing so, may postpone the sale of such crops. The Collector shall adjudicate upon the claim and pass such order between the claimant and the distrainer as he shall deem fit. If the claimant fails to establish his right, an order shall be issued for proceeding with the sale. [87] M.R.A. 32.

Claims by third parties.

76. When a defaulter may make a fraudulent conveyance of property to prevent distress for arrears, the Collector shall, on application by the distrainer, and on proof of such conveyance, pass an order directing the property to be delivered up or its value paid to the distrainer. The defaulter will further be liable to the penalties prescribed by section 424 of the Penal Code. [88] M.R.A. 26.

Penalty for fraudulent conveyance of property to prevent distraint.

77. When it may be proved to the satisfaction of the Collector that any person has forcibly or clandestinely taken away property once distrained, the Collector may, on the application of the distrainer, cause such property to be restored, or its value to be paid, to the distrainer. [89] M.R.A. 27.

Penalty for forcibly or clandestinely taking away distrained property.

78. If the tenant does not within thirty days from the date of distraint file a suit before the Collector to set aside the distraint, or if such a suit is filed and is decided against the tenant, the distrainer shall, within fifteen days from the expiration of the thirty days, or from the decision of the suit, apply to the Collector for an order directing the public officer empowered by Act VII of 1839 to cause the sale of the distrained property. That officer, on receiving such order, shall fix up in some conspicuous place in the village a notice specifying the property to be sold and the time and place [76 and 77] B.T.A. 127. M.R.A. 18.

Notice of sale of distrained property.

which he has fixed on for its sale. He shall also cause proclamation of the intended sale to be made by beat of drum in the village to which the lands belong on which the arrear has accrued. In fixing the day of sale, not less than seven days must be allowed from the time of the public notice and not less than thirty days from the date of distraint.

79. The sale shall ordinarily be held in the village where the property was distrained or is stored, unless the Collector is of opinion that the property is likely to sell to better advantage in some neighbouring village, when he may order the sale to take place in such village. In any case, the landlord shall be bound to produce the property at the time and place of sale, and the cost of the transport thereof shall be considered part of the cost of distraint; provided that crops or products which are in their nature speedily perishable shall be sold as early as possible by the distrainer under rules to be framed in this behalf by the Local Government. B.T.A. 128 [78]

Place of sale.

80. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing. B.T.A. 129. [79]

When crops may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself or by any person appointed by him in this behalf and do all that is necessary for the purpose of tending and reaping or gathering them.

81. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand with the costs of distraint and sale is satisfied by the sale of a portion thereof, the distraint shall be immediately withdrawn with respect to the remainder. B.T.A. 130. M.R.A. 33. [81]

Manner of sale.

82. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed until the next day, or (if a market is held at the place of sale) until the next market B.T.A. 131. [82]

Postponement of sale.

day, the sale shall be postponed until that day and shall be then completed, whatever price may be offered for the property.

83. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold. The defaulting purchaser shall be liable for any loss arising from, as well as for expenses incurred on, the re-sale.

Payment of purchase-money.

[83]

B.T.A. 132.
M.R.A. 35.

84. The officer appointed to sell property distrained shall bring to the notice of the Collector any material irregularity committed by the distrainer under colour of this Act, and he is authorised in such case to postpone the sale pending the Collector's order.

Obligation to report irregularity in distraining.

[84]

M.R.A. 17.

85. When it shall come to the knowledge of the Collector, either through the above officer or otherwise, that the distrainer did not serve on the tenant a written notice as required by section 63, or failed to publish the notice as required by section 64, or that the distress was excessive, the Collector may direct the restoration of the distrained property to the owner. If the Collector so directs the restoration, the distrainer shall not be allowed to proceed further under this Act for the recovery of the arrear of rent, and the tenant shall be at liberty to sue the distrainer before the Collector for any loss or damage which he may have sustained.

Effect of irregularity in distraining.

[84]

M.R.A. 17.

86. When the purchase-money has been paid in full, the officer holding the sale shall deliver the property to the purchaser and shall give him a certificate duly signed by himself, describing the property purchased by him and the price paid.

Certificate to be given to purchaser.

[90]

B.T.A. 133.
M.R.A. 35.

87. From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale. The remaining proceeds shall be applied to the discharge of the arrear for which the distress was made, with interest thereon, up to the day of sale and to the discharge of any arrear which may have accrued between the date of distress and the date of sale; and

Proceeds of sale how to be applied.

[91]

B.T.A. 134.

the surplus (if any) shall be paid to the person whose property has been sold. The defaulter shall receive from the officer who has conducted the sale a receipt for arrears of rent discharged from the proceeds of sale.

B.T.A. 135.

[92] **88.** Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Persons prohibited from purchasing.

B.T.A. 137.

[95] **89.** (1) When an inferior tenant, on his produce being lawfully distrained under this chapter for the default of a superior tenant, makes any payment for the purpose of releasing such produce from distraint, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall, in like manner, be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect any other remedy to which such inferior tenant would be entitled.

B.T.A. 139.

[96] **90.** When any conflict arises between the distraint of a landlord under this chapter and an order issued by a Civil Court in execution of a decree for the attachment and sale of the property distrained by such landlord, the landlord's distraint shall prevail; but if the property is sold by a Collector in consequence of such landlord's distraint, the surplus proceeds of the sale shall not be paid under section 87 to the owner of the property without the sanction of the Court by which the order of attachment or sale in execution of a decree was issued.

Conflict between distraint by landlord and attachment by Court.

M.R.A. 84.

91. Landlords are empowered to proceed under this Act against a tenant, or his security, or against both; provided that no more than the total sum of arrears and interest with costs and charges shall be realized from both, and provided also that no distraint shall be made upon the property of a surety until the arrear has been demanded from the defaulter, unless the defaulter has absconded.

Power of landlord to proceed against security.

92. No appeal shall lie from any order passed by a Collector under sections 72 to 79 and 85, but any tenant whose property is distrained by his landlord under section 62 in any case in which such distraint is not permitted by that section may institute a suit before a Civil Court against his landlord for the recovery of compensation. [97] B.T.A. 140.

Right to sue for compensation for wrongful distraint.

93. The Local Government may, from time to time, make rules consistent with this Act regulating the scale of charges which may be levied as costs of distraint, custody of property and sale, and of inquiries by Collectors under sections 74 to 77, and regulating the procedure in such inquiries and in all cases of distraint and sale of moveable property under this chapter. [98] B.T.A. 142. M.R.A. 34.

Power of Local Government to make rules.

Attachment and Sale of Occupancy Right in Land.

94. An occupancy ryot shall not be liable to ejectment for arrears of rent, but his occupancy right in his holding or in part of his holding shall be liable to attachment and sale in execution of a decree for the rent thereof. [59] B.T.A. 65.

Liability of occupancy ryot to sale of occupancy right for arrears of rent.

95. When an arrear of rent due to a proprietor by an occupancy ryot may not be liquidated within the current revenue year, it shall be lawful for the proprietor to attach and sell the defaulter's occupancy right in his holding or in part of his holding, in the manner hereinafter provided, in satisfaction of the arrear and of interest thereon at the prescribed rate and of costs, if any, of the attachment. M.R.A. 38.

When occupancy right may be attached.

96. When the proprietor to whom an arrear is due intends to avail himself of the powers given by the last preceding section, he shall give the defaulter a written notice of his intention to sell, and such notice shall state the amount due for arrears, interest and costs, if any, and shall inform him that, if the amount is not liquidated within one month from the date of service upon him, his occupancy right in his holding or in any part thereof specified in the said notice, shall be sold. M.R.A. 39.

Notice of attachment.

The notice shall be served as prescribed in section 64 and a duplicate of the notice

shall be sent to the Collector with an endorsement stating the date of service and the mode in which it was effected.

97. If no suit is instituted before the Collector within thirty days from the date of service to set aside the notice, or if such suit is decided against the defaulter, the proprietor shall be authorized to take measures for the sale, which shall be conducted under the rules for the sale of moveable property distrained for arrears of rent. The officer conducting the sale may place the purchaser in possession. M.R.A. 40.

When and how occupancy right may be sold.

98. Rent shall be a first charge upon the occupancy right in the holding, and the proprietor's claim to sell shall not be defeated by any other encumbrance. [59] B.T.A. 65.

Rent a first charge on occupancy right.

99. When the occupancy right in a holding or in part of a holding is sold for arrears due in respect thereof, the purchaser shall take subject to any right or interest which the ryot has created therein with the proprietor's written permission, and subject also to any encumbrances created before the passing of this Act, but to no others. [114] B.T.A. 159.

Liabilities of purchaser as to encumbrances.

100. The proceeds of a sale of the occupancy right in a holding or in part of a holding for arrears of rent shall be disbursed in like manner as the proceeds of a sale of distrained property are to be disbursed under section 87, and the defaulter shall receive from the officer who has conducted the sale a receipt for arrears of rent discharged from the proceeds of sale. The rules prescribed by section 295 of the Code of Civil Procedure shall not apply to a sale in execution of a decree for arrears of rent. [115] B.T.A. 169.

Rules for disposal of sale-proceeds.

101. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon. [116] B.T.A. 170.

When occupancy right may be released from attachment.

(2) After a sale of the occupancy right in a holding or in part of a holding has been authorized, it shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of arrears, interest and costs

due to the proprietor is paid, or the proprietor makes an application for the release of the holding on the ground that the debt has been otherwise satisfied.

(3) The defaulting ryot or any person having in the occupancy right in the holding or in part of the holding which is to be sold for arrears any interest voidable on the sale may, where the sale is authorized in execution of a decree, pay money under this section to the officer conducting the sale or into Court, and may, where the sale is authorized under section 97, pay money to the officer conducting the sale or to the Collector or such other officer of the Department of Land Revenue as the Local Government may order.

[117]

Amount paid to prevent sale to be in certain cases a mortgage-debt on the holding.

102. (1) When any person having in the occupancy right in a holding or in part of a holding advertised for sale an interest which would be voidable upon the sale, pays to the officer conducting the sale or into Court or to the Collector or other officer aforesaid, as the case may be, the amount requisite to prevent the sale—

(*a*) the amount so deposited by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the occupancy right in the holding to him;

(*b*) such mortgage shall take priority of every other charge on the occupancy right in the holding other than a charge for arrear of rent; and

(*c*) the depositor shall be entitled to possession of the holding as mortgagee of the tenant and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

(3) When more than one person having interest as described in sub-section (1) desires to make payment as therein provided, preference shall be given to the person having priority of interest.

[118]

Inferior tenant paying money to prevent sale may deduct from rent.

103. When the occupancy right in a holding or in part of a holding is advertised for sale in execution of a decree against, or for

arrears of rent due by, a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court or to the Collector or such other officer of the Department of Land Revenue aforesaid, as the case may be, in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord and so on, until the defaulter is reached.

[119]

Proprietor may bid at sale: defaulting ryot may not.

104. (1) A proprietor who has brought to sale a ryot's occupancy right in his holding or in part of his holding for arrears of rent may, notwithstanding anything contained in section 294 of the Code of Civil Procedure, bid for or purchase the occupancy right in the holding or in part thereof without the permission of the Court or the Collector, as the case may be.

(2) The defaulting ryot shall not bid for or purchase the occupancy right in the holding or in part thereof so sold.

(3) When a defaulting ryot purchases by himself or through another person the occupancy right in a holding or in part of a holding so sold, the Court or Collector, as the case may be, may, if it or he thinks fit, on the application of the proprietor or of any person interested in the land, by order set aside the sale; and the cost of the application and order and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the defaulting ryot.

[120]

Application by defaulting ryot to set aside sale.

105. (1) When the occupancy right in a holding or in part of a holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the defaulting ryot may apply to have the sale set aside on his depositing in Court or with the Collector or such other officer of the Department of Land Revenue aforesaid, as the case may be, for payment to the proprietor, the arrears with interest and costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase money.

(2) If such deposit is made within the thirty days, the Court or the Collector shall pass an order setting aside the sale and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside.

Provided that if a defaulting ryot applies under section 311 of the Code of Civil Procedure to set aside the sale of his occupancy right in his holding or in part of his holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

CHAPTER VIII.

Miscellaneous Provisions as to Landlords and Tenants.

Repair of Irrigation Works.

[25] **106.** Any ryot or ryots holding irrigated land under a proprietor may apply to the District Collector stating that the irrigation work whereby the land held by the applicant or applicants is served is out of repair and praying for the issue of an order under section 107 for the repair of the said work. The application shall state in sufficient detail the nature of the repairs deemed necessary and the probable cost of the same, and the extent and rental of the land irrigated by the work. The District Collector shall then by himself or by a Collector subordinate to him, to whom he may depute the inquiry, cause to be served on the proprietor a copy of the application and a notice to show cause, on a date to be stated in the notice, why the order prayed for should not issue. The notice shall also be placarded in the village or villages wherein the land irrigated is situated.

Application to District Collector for repair of irrigation works.

[26] **107.** On the day fixed in the notice, or on any other date to which the inquiry may be adjourned, the District Collector or Collector shall hear the applicant or applicants, the proprietor and any ryots of land irrigated by the work who may attend, and may take any evidence that he may think fit. If the inquiry is made by a Collector other than the District Collector, he shall make a report thereon to the District Collector. If satisfied that the irrigation work is in

Inquiry and order on application.

disrepair and that the proprietor is by the custom of the country or otherwise bound to provide for its maintenance, the District Collector shall pass an order authorizing the execution, by the applicant or applicants or by them and any ryots willing to join with them, of any of the works stated in the application or shown at the inquiry to be necessary to restore the irrigation work to efficiency and stating the estimated cost of the same. The order shall also fix a reasonable time within which the works should be executed.

Provided that such works shall be works of repair only and shall not include additions or improvements unless with the consent of the proprietor; nor shall they include any works, such as the clearance of supply and distribution channels, which by the custom of the country should be carried out by the ryots.

[27] **108.** When the works have been carried out, the parties authorised to execute them may apply to the District Collector for an order for the recovery of the cost of the same. The District Collector shall then take such steps as he may deem necessary to satisfy himself that the works have been executed properly and within the time fixed, and that the cost claimed is not excessive. He shall, if so satisfied, pass an order for the recovery, from the ryots holding land under the irrigation work, of such amount as he may find to be reasonably due on account of the works executed and not exceeding in the total one year's rental of the lands irrigated by the irrigation work. The order shall set out the amount payable by each ryot in proportion to the rental of the land held by him and such amount shall be recoverable as arrears of land revenue.

Recovery of cost of repair from ryots.

[28] **109.** The amount recovered, less the cost, if any, of inspection of the works executed, shall be paid to the parties authorized under section 107. The cost of estimates and of inspection may be included in the amount to be stated in the order passed under section 107.

Payment to persons executing repairs.

[29] **110.** Every ryot from whom any sum may be recovered under section 108 shall be entitled to deduct such sum from any rent payable

Amount recovered for cost of repairs may be deducted from rent.

by him to the proprietor: and a receipt for the sum recovered shall be valid as a receipt for rent due by such ryot.

Right of Appeal.

111. No Civil Court shall entertain a suit or issue an injunction regarding a District Collector's proceedings under sections 106 to 110, but from any order issued by a District Collector under the said sections, an appeal shall lie to the Board of Revenue, whose decision shall be final.

Illegal Cesses.

[129] B.T.A. 74 and 75. M.R.A. 5.

Penalty for illegal exactions.

112. (1) Landlords shall not levy any unauthorized tax or cess on their tenants under any name or pretence. Every tenant from whom anything is exacted in excess of his rent or other authorized charge specified in his puttah or lease shall be entitled to recover by suit before the Collector, in addition to the amount of the exaction, such sum by way of penalty as the Collector thinks fit, not exceeding ten times the amount exacted.

(2) All stipulations and reservations for the payment of any such tax or cess shall be void.

Explanation.—The levy of any tax on trees or other tax not included in the assets on which the peshcush of a permanently-settled estate has been fixed, is illegal.

Improvements.

[130] B.T.A. 76.

What constitutes an improvement.

113. (1) For the purposes of this Act the term "improvement" used with reference to a ryot's holding shall mean any work which adds to, or is designed to add to, the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section—

(*a*) the construction of wells, tanks, water channels and other works for the supply, storage or distribution of water for the purposes of agriculture or for the use of men and cattle employed in agriculture;

(*b*) the levelling and ridging of land to fit it for irrigation;

(*c*) the drainage, reclamation from rivers, or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes, or of waste land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the repair, renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto;

(*f*) the erection of a suitable dwelling-house or houses for the ryot and the members of his family residing with him, together with all necessary out-offices; and

(*g*) the plantation of trees and useful plants.

(3) But no work executed by a ryot shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of the proprietor's property.

B.T.A. 77. [131]

Right to make improvements in case of occupancy holdings.

114. (1) Where a ryot has occupancy right in his holding, neither the ryot nor the proprietor shall, as such, be entitled to prevent the other from making an improvement in respect of the holding except on the ground that he is willing to make it himself.

(2) If both the ryot and the proprietor wish to make the same improvement, the ryot shall have the prior right to make it, unless it affects another holding or other holdings under the same proprietor.

B.T.A. 78. [132]

Collector to decide question as to right to make improvement, &c.

115. If a question arises between the ryot and the proprietor—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision, if he be the District Collector, shall be final. If he be not the District Collector, an appeal shall lie to the District Collector, whose decision shall be final.

116. (1) A non-occupancy ryot shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house or houses for himself and for the members of his family residing with him, with all necessary out-offices, and to grow trees and useful plants; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without the proprietor's permission.

Right to make improvement in case of non-occupancy holdings.

[133] B.T.A. 79.

(2) A non-occupancy ryot who would, but for the want of the proprietor's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to the proprietor a request in writing calling upon him to make the improvement within a reasonable time; and if the proprietor is unable or neglects to comply with that request, may make the improvement himself.

117. (1) A proprietor may, by application to the Collector, register any improvement which he has lawfully made, or which has been lawfully made at his expense or which he has assisted a ryot in making.

Registration of proprietor's improvements.

[134] B.T.A. 80.

(2) The application shall be in such form, shall contain such information and shall be verified in such manner by local inquiry or otherwise as the Local Government from time to time by rule directs.

(3) The Collector receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

118. (1) If any proprietor or ryot desires that evidence relating to any improvement made in respect of the ryot's holding be recorded, he may apply to the Collector, who shall thereupon, at a time and place of which notice shall be given to the parties, record or cause to be recorded the evidence, unless he considers that there are no

Application to record evidence as to improvements.

[135] B.T.A. 81.

reasonable grounds for making the application or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any evidence has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the proprietor and ryot or any persons claiming under them.

[136] B.T.A. 82.

119. (1) Every ryot who is ejected from his holding or from part thereof otherwise than by sale under chapter VII of this Act, shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessors in interest, and for which compensation has not already been paid.

Right to compensation for improvements.

(2) Whenever a Court or Collector makes a decree or order for the ejectment of a ryot otherwise than by sale under chapter VII of this Act, the Court or Collector shall determine the amount of compensation (if any) due under this section to the ryot for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the ryot. All arrears of rent due by the ryot at the date of the execution of the decree or order shall be set off against the amount of compensation for improvements ordered to be paid.

(3) No compensation under this section for an improvement shall be claimable where the ryot has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a ryot between the (here enter date of first publication of the Bill) and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court or Collector to associate with itself or himself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting and remmerating them.

120. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had— [137]

How compensation to be estimated.

B.T.A. 83.

(*a*) to the amount by which the value or the letting value or the produce of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement and the probable duration of its effects;

(*c*) to the labour and capital expended on the making of the improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the proprietor to the ryot in consideration of the improvement; and

(*e*) in the case of trees and plants, to the probable market value of the same.

(2) When the amount of the compensation has been assessed, the Court or Collector may, if the proprietor and ryot agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of Land for Building and other Purposes.

121. (1) A Principal Civil Court of original jurisdiction may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose, having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground or for any religious, educational or charitable purpose or for the opening and working of mines or factories, and on being satisfied that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord, upon such terms as may be approved by the Court, including full compensation to the tenant. [138]

Acquisition of land for building and other purposes.

B.T.A. 84.

(2) In determining the amount of compensation, the Court shall be guided, so far as may be practicable, by the rules

contained in sections 23 and 24 of the Land Acquisition Act I of 1894, and shall add fifteen per centum to the full value of land and improvements as compensation for the compulsory acquisition.

Surrender and Abandonment.

B.T.A. 86.
M.R.A. 12.

122. (1) A tenant, not bound by a lease or other agreement to hold for a fixed period, may, at the end of any revenue year, surrender his holding or, with the consent of the landlord, any part thereof. [139]

Surrender.

(2) A tenant who surrenders his holding or part of his holding shall be liable to indemnify the landlord against any loss of the rent of the holding for the revenue year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a tenant has surrendered his entire holding, if the tenant takes a new holding in the same village from the same landlord during the same revenue year or during the revenue year next following the surrender, it shall be presumed, for the purposes of sub-section (2), that such notice was so given.

(4) The tenant may, if he thinks fit, cause the notice to be served through the Collector.

(5) When a tenant has surrendered his holding or part thereof, the landlord may enter on the holding or part thereof and either let it to another tenant or take it into cultivation himself.

(6) Nothing in this section shall affect any arrangement by which a tenant and his landlord may arrange for surrender of the whole or a part of the holding.

B.T.A. 87.

123. (1) If a tenant voluntarily abandons his residence in the village without notice to his landlord, and without arrangement for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may at any time after the expiration of the revenue year in which the tenant so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself. [140]

Abandonment.

(2) Before a landlord enters under this section, he shall file a notice in the

prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government by rule directs.

(3) When a landlord enters under this section, the tenant shall be entitled to institute a suit in the Civil Court for recovery of possession of the land at any time not later than the expiration of one year, or in the case of a non-occupancy tenant, six months from the date of the publication of the notice and thereupon the Court may, on being satisfied that the tenant did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent, as to the Court shall seem just.

(4) If an occupancy tenant who has abandoned his holding does not sue for recovery of possession within the period above prescribed, his occupancy right shall be extinguished.

B.T.A. 87 (4)

124. Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering on the holding under either of the last two preceding sections, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that tenant. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as hereinbefore provided.

Obligation of landlord to sub-lessee in respect of surrendered or abandoned holding wholly or partly sub-let.

Sub-division of Tenancy and Transfers.

B.T.A.88

[141]

125. It shall not be competent to a landlord to refuse to consent to the division of a holding and to the proportionate distribution of the rent payable in respect thereof, and to enter into separate engagements with the several holders of the parts thereof so divided.

Provided that no landlord shall be compelled to consent to the division, or further division, as the case may be, of a revenue

Division of tenancy binding on landlord.

83

field, or to the distribution of the rent due on the field or on the part thereof included in the holding, as the case may be.

B.T.A. 73.

[142]

126. When a tenant transfers his interest in the whole or part of his holding, the tenant and the transferee shall give notice of such transfer in writing to the landlord, and, unless and until such notice is given, they shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, and all proceedings taken under this Act against the tenant shall be as effectual and binding upon the transferee as if they had been taken against the transferee himself.

Notice of transfer by tenant.

B.T.A. 72.

[143]

127. When any proprietor transfers the whole or a portion of his estate, the proprietor and the transferee shall give notice of the transfer, by publication in the District Gazette and in such other manner as the Local Government by rule directs, to the ryots in the occupation of the land transferred, and, unless and until such notice is given, no ryot shall be liable to the transferee for rent which became due after the transfer and was paid to the proprietor before notice of such transfer was given to him, and all proceedings taken by any of the ryots to whom no such notice was given against the proprietor shall be as effectual and binding on the transferee as if they had been taken in the first instance against the transferee himself.

Notice of transfer by proprietor.

Ejectment.

B.T.A. 89.

[144]

128. No tenant shall be ejected from his holding except in execution of a decree of a Civil Court or order of a Collector passed in accordance with this Act.

No ejectment except under Court's decree or Collector's order.

M.R.A. 41.

129. When any non-occupancy ryot or under-tenant shall be in arrear at the end of a revenue year and when there is no sufficient distress upon the premises to satisfy the arrear, the landlord or his authorized agent may apply to the Collector for a warrant authorizing him to enter upon and take possession of the premises. Such warrant shall be granted upon the production of a written statement of the person applying for the warrant, which statement shall contain the name of the defaulter, the

Ejectment of non-occupancy tenant under Collector's warrant.

description and extent of the premises, the amount due for arrears, interest and costs of distraint, if any, and the date at which it fell due, and also a declaration that there is no sufficient distress upon the premises. Such statement shall be filed in the office from which the warrant issues.

M.R A 42.

130. The warrant shall state the defaulter's name, the whole amount due and the description and extent of the premises, and shall set forth that, unless payment is made within fifteen days, the defaulter will be turned out of possession. The Collector may, for special reasons, extend the period of fifteen days mentioned in this section.

Contents of warrant.

M.R.A. 43

131. The warrant shall be entrusted to an officer of police, who shall serve it in the manner laid down in section 64 of this Act. If within fifteen days after service, or within the period extended by the Collector under the last foregoing section, the amount named in the warrant is not discharged, and if no suit has been filed by the defaulter before the Collector to set aside the warrant, or if such suit has been decided against the defaulter, the police officer shall place the landlord or his authorized agent in possession.

Execution of warrant.

M.R.A. 44.

132. Upon delivery of possession, the tenancy existing between the defaulter and the landlord shall cease and determine unless a suit shall be filed within one month in a Civil Court to reverse the delivery of possession and shall be prosecuted to a successful termination.

Determination of tenancy.

CHAPTER IX.

Survey, Record of Rights and Settlement of Rents.

B.T.A. 101.

133. (1) The Local Government may make an order directing that a survey be made and a record of rights be prepared in respect of a local area or estate by such officer or officers as it shall see fit to empower in this behalf.

Power to order survey and record of rights.

(2) An order may be made under this section in any case in which the Local Government thinks fit to make such an order, including the following cases (namely):—

B.T.A. 102

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; and

(*c*) where the local area is comprised in or constitutes an estate managed by the Government or by the Court of Wards.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

134. When an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and shall include, either without or in addition to other particulars, all of the following, namely:—

Particulars to be recorded.

(*a*) the name of the landlord;

(*b*) the name of the tenant;

(*c*) the class to which he belongs, that is to say, whether he is an occupancy ryot, a non-occupancy ryot, or an under-tenant;

(*d*) the situation, extent and boundaries of the land held by the tenant;

(*e*) the rent payable at the time the record is being prepared;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Collector or otherwise;

(*g*) the special conditions and incidents, if any, of the tenancy.

B.T.A. 103.

135. On the application of a proprietor and on his depositing or giving security for the required amount for expenses, the District Collector may, subject to and in accordance with rules made in this behalf by the Local Government, make an order directing an officer or officers to ascertain and record the particulars specified in the last foregoing section with respect to the estate or any part thereof.

Power to record particulars on application of proprietor.

Provided that when an estate or part of an estate has been leased, assigned or mortgaged with possession and a question arises between the owner and such lessee, assignee or mortgagee as to the right to make the application, the lessee, assignee or mortgagee shall be held to be the person entitled to make the application.

Publication of preliminary record, and entertainment of objections thereto.

136. (1) When the officer preparing the record of rights has, after making such inquiry as he sees fit, completed a preliminary record for the local area, estate or part of an estate included in the order, he shall cause a draft thereof to be locally published in the prescribed manner, under rules to be framed in this behalf by the Local Government, for a period of six months, and shall receive and hear any objection which may be made to any entry therein during the said period.

(2) No objection shall be entertained by the officer to any entry in the record unless it is made within the said period: and every entry to which objection has not been so made shall be final and conclusive as to the fact or facts which it records.

Procedure in disposing of objections to preliminary record.

137. In hearing objections to entries in the record, the officer shall, subject to any rules made from time to time in this behalf by the Local Government, adopt the procedure laid down in this Act for the trial of suits by Collectors, and his decision in every such proceeding shall have the force of a decree.

Provided that when, on an objection to an entry in the record a *bonâ fide* dispute arises as to the title to be recorded as landlord, or as to the right to be recorded as tenant, or as to a claim to have land recorded as rent-free, the officer shall, and, in any other case in which he deems fit, may, stay proceedings and refer the objector to the Civil Court. If the objector does not, within thirty days of such order of reference, file a suit in the Civil Court to set aside the entry objected to, the officer shall proceed to hear and dispose of the objection as if no such dispute had arisen.

Publication of final record.

138. When all objections to the preliminary record have been disposed of, the officer shall frame the final record and shall cause it to be published in the prescribed manner under

B.T.A. 105 and 106.

B.T.A. 107.

B.T.A. 104.

B.T.A. 108.

rules to be framed in this behalf by the Local Government, and the publication shall be conclusive evidence that the record has been duly made under this chapter. The entries so published shall be final and conclusive as to the facts which they record.

Provided that when it appears to the officer that undue delay will be caused by deferring publication of the final record until all suits and appeals on objections to the preliminary record have been decided, the officer may first publish a final record of the cases in which no such suits and appeals have been filed and may thereafter publish, from time to time, supplementary final records of the cases in which such suits and appeals have been filed.

Settlement of rent.

139. (1) When, in any proceeding under this chapter, either the landlord or the tenant applies for a settlement of rent or when it appears that a tenant is holding land in excess of or less than that for which he is paying rent, or when rent is admittedly payable but a dispute arises as to the amount or rate of rent payable, the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(2) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable and shall have regard to the rules laid down in this Act for the guidance of Collectors in enhancing, reducing or altering rents, or in deciding disputes regarding rates of rent, as the case may be.

Appeals from decisions of officers preparing records of rights.

140. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of an officer under this chapter; and the provisions of the Code of Civil Procedure shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under this chapter as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter.

141. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the revenue year next after the publication of the final record.

Time from which settlement of rent is to take effect.

B.T.A. 110.

142. When an order has been made under section 133—

Stay of proceedings during preparation of record.

B.T.A. 111.

(1) no Collector shall, until the publication of the final record, entertain a suit or application for the alteration of the rent, and no Civil Court shall, until the publication of the final record, entertain a suit or application for the determination of the status, of any tenant in the area or estate to which the order applies; and

(2) the High Court may, if it thinks fit, transfer to the officer preparing the record any proceedings pending before a Collector or in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 134.

143. When an order is made under this chapter, the expenses incurred by the Government in carrying out the provisions of this chapter in any local area or estate, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area or estate in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Expenses of proceedings under chapter.

B.T.A. 114.

CHAPTER X.

Record of Proprietor's Private Lands.

144. Nothing in chapter III shall confer a right of occupancy in, and nothing in chapter IV shall apply to a proprietor's private lands known as kambattam, khas, seri, pannai and the like, or to lands in which the proprietor has acquired the occupancy right by transfer.

Saving as to proprietor's private lands.

[145]

B.T.A. 116.

145. The Local Government may, from time to time, make an order directing such officer or officers as it shall see fit to empower in this behalf to make a survey and record of

Power to order survey and record of proprietor's private lands.

[146]

B.T.A. 117.

all the lands in a specified local area, which are a proprietor's private lands within the meaning of the last foregoing section.

B.T.A. 118.

[147] **146.** In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land and on his depositing the required amount for expenses, the District Collector may, subject to and in accordance with rules made in this behalf by the Local Government, direct an officer to ascertain and record whether the land is or is not a proprietor's private land.

Power to record private land on application of proprietor or tenant.

B.T.A. 119.

[149 to 152] **147.** When an officer proceeds under either of the two last foregoing sections, the provisions of sections 136 to 138, both inclusive, and section 140, shall apply.

Procedure for recording private land.

B.T.A. 120.

[148] **148.** (1) The officer preparing the record shall record as a proprietor's private land—

Rules for determination of proprietor's private land.

(*a*) land which is proved to have been cultivated as kambattam, khas, seri or pannai by the proprietor himself with his own stock or by his own servants or by hired labour for three continuous years immediately before the date of the order directing the preparation of the record;

(*b*) cultivated land which is recognised by village usage as proprietor's kambattam, khas, seri or pannai; and

(*c*) land in which the proprietor has, by transfer, become possessed of the occupancy right.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the 1st day of May 1871, specifically let as his private land, and to any other evidence that may be produced; but shall presume that the land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether certain land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of officers preparing records of proprietors' private lands.

CHAPTER XI.

JUDICIAL PROCEDURE.

149. The Local Government may invest any Revenue or Judicial officer with all or any of the powers of a Collector, to be exclusively exercised within any local area, in respect of all or any classes of original suits or proceedings instituted under this Act, and may withdraw such powers, and the decisions passed by such Revenue or Judicial officer shall be appealable as if they were the decisions of the Collector who would have taken cognizance of the suits or proceedings if the Revenue or Judicial officer had not been so invested. [99]

Power to invest Revenue or Judicial officer with powers of Collector.

150. Subject to the provisions of this Act, the Code of Civil Procedure shall apply to all suits tried by Collectors under this Act. [100 (2)] B.T A. 143 (2)

Restriction on application of Civil Procedure Code to suits tried by Collectors.

151. (1) The cause of action in all suits triable by Civil Courts between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the holding in connection with which the suit is brought. [101] B.T.A. 144.

Jurisdiction in proceedings under Act.

(2) When a suit is triable by a Collector, the cause of action shall be deemed to have arisen in the revenue division of the district where the land is situated.

152. Every agent of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognised agent of the landlord. [102] B.T.A. 145. M.R.A. 52.

Landlord's agents.

153. Every Collector shall keep a register, in the following form, of the suits heard and decided by him:— [103] B.TA. 146. M.R.A. 77.

Special register of suits.

Number of suit.	Date of plaint.	Abstract of plaint.	Abstract of defence.	Date and abstract of judgment.

B.T.A. 148.
M.R.A. 53 to 57, 61, 63, 68 and 69. [105]

154. The following rules shall apply to suits before Collectors under this Act:—

Procedure in suits before Collectors.

(*a*) The District Collector may transfer any suit on the file of any Revenue Officer in charge of a division of the district to his own file or from the file of one such officer to that of another or to the file of an Assistant or Deputy Collector not in charge of a division, for disposal.

(*b*) The trial of suits by Collectors under this Act shall be regulated by rules, consistent with this Act, made by the Local Government and by the following provisions:—

(i) A date shall be fixed for the hearing of the suit, and the same shall be notified to the parties, who shall be entitled to be heard in person or by agent.

(ii) The parties shall be entitled to produce witnesses and to demand that any person whose evidence they require shall be summoned as a witness, and the officer trying the suit shall comply with such demand unless, for reasons to be recorded, he considers it unnecessary to do so.

(iii) The officer trying the suit shall record with his own hand, in English, a memorandum containing the material portions of the evidence and he shall record, either in the same way or by dictation to a short-hand writer, whose transcript he shall correct where necessary and sign, his decision and the reasons therefor.

(iv) Except where it is otherwise prescribed in this Act, an appeal from the decision of a Collector trying a suit under this Act shall lie to the District Judge, and a second appeal on any point of law shall lie to the High Court. No judgment of a Collector under this Act shall be set aside for want of form or for irregularity in the procedure, but upon the merits only.

(v) In every decree or order passed in any suit under this Act, the Collector shall have full power to give and apportion costs of the suit or application in any manner he thinks fit, and he shall direct by whom the costs of each party are to be paid and whether in whole or in what part or proportion.

155. (1) In any suit for rent or in any proceeding under this Act to recover rent, if a tenant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff or applicant but to a third person, the Court or Collector, as the case may be, shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the tenant pays into the Court or office of the Collector the amount so admitted to be due. [106]

Payment of money admitted to be due to third person.

B.T.A. 149.

(2) Where such a payment is made, the Court or Collector shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

156. In any suit for rent or in any proceeding under this Act to recover rent; if a tenant admits that money is due from him to the plaintiff or applicant on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court or Collector, as the case may be, shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the tenant pays into the Court or office the amount so admitted to be due. [107]

Payment of money admitted to be due to landlord.

B.T.A 150.

157. When a tenant is liable to pay money into the Court or office of the Collector under either of the last two foregoing sections, if the Court or Collector thinks that there are sufficient reasons for so doing, the Court or Collector may take cognizance of [108]

Provision as to payment of portion of money.

B.T.A. 15[illegible]

93

the tenant's plea on his paying such reasonable portion of the money as the Court or Collector directs.

B.T.A. 152.

158. When a tenant pays money under either of the said sections, the Court or Collector shall give the tenant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff, the applicant or the third person, as the case may be. [109]

Court or Collector to grant receipt.

B.T.A. 154.

159. Except where otherwise expressly provided by this Act, a decree for enhancement of rent or for ejectment under this Act, if passed in the first eight months of any revenue year, shall take effect on the commencement of the revenue year next following; and if passed in the last four months of the revenue year, shall take effect on the commencement of the revenue year next but one following; but nothing in this section shall prevent the Collector or Court, as the case may be, from fixing, for special reasons, a later date from which any such decree shall take effect. [110]

Date from which decree for enhancement or ejectment shall take effect.

B.T.A. 155.

160. (1) A suit for the ejectment of a tenant on the ground— [111]

Relief against forfeitures.

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy; or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the manner prescribed for service of notice under section 64 a notice on the tenant specifying the particular misuse or breach complained of and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with the request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach and whether in the

opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend the period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

161. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim an alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court; and the Court may grant such relief accordingly.

Power of Court to fix fair rent as alternative to ejectment of trespasser.

[113] B.T A. 157.

CHAPTER XII.

Contract and Custom.

162. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

Restrictions on exclusion of Act by agreement.

[121] B.T.A. 178.

(*a*) shall bar in perpetuity the acquisition of an occupancy right in land, or

(*b*) shall take away an occupancy right in existence at the date of the contract, or

(*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 ryot, as provided in this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 1st day of May 1871 and before the passing of this Act shall prevent a ryot from acquiring in accordance with this Act an occupancy right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a ryot from acquiring in accordance with this Act an occupancy right in land;

(*b*) take away or limit the right of an occupancy ryot to use land as provided by section 9;

(*c*) take away the right of a tenant to surrender his holding or part of his holding in accordance with section 122;

(*d*) take away the right of a tenant to transfer or to bequeath his holding or part of his holding in accordance with any law or custom to which he is subject;

(*e*) take away the right of a ryot to apply for a reduction of rent under section 25 or section 28;

(*f*) take away the right of a proprietor or of a ryot to apply for a commutation of rent under section 27;

(*g*) affect the provisions of section 41 relating to interest payable on arrears of rent:

B.T.A. 182. [122]

163. When a tenant holds his dwelling-house, with cattle-sheds and other appurtenances necessary or convenient for the purpose of agriculture, otherwise than as part of his holding as a tenant, the incidents of his tenancy of the same shall be regulated by local custom or usage and, subject to local custom or usage, by the provisions of this Act.

Homesteads.

B.T.A. 183. [123]

164. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

CHAPTER XIII.

Limitation.

B.T.A. 184. [124]

165. (1) The suits, appeals and applications specified in schedule II annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or

Limitation in suits, &c., in schedule II.

appeal instituted or application made after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or to make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

[125] B.T.A. 185.

166. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

Portions of Indian Limitation Act not applicable to such suits, &c.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

CHAPTER XIV.

SUPPLEMENTAL.

Penalties.

[126] B.T.A. 186. M.R.A. 30.

167. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force—

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding; or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any produce duly distrained under this Act; or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding:

he shall be liable to imprisonment of either description for a term which may extend to three months or to fine which may extend to five hundred rupees, or to both.

(2) Any person who, within the meaning of the Indian Penal Code, abets the doing of any act mentioned in sub-section (1) shall be deemed to have abetted an offence within the meaning of that Code.

(3) Persons entering the apartments of women or forcing open the outer doors of dwelling houses contrary to the provisions of this Act shall be deemed to have committed house trespass within the meaning of the Indian Penal Code.

Agents of Landlords.

B.T.A. 187. M.R.A. 79. [127]

168. (1) Any appearance, application or act before, or to any Court, Collector or officer, required or authorized by this Act to be made or done by a landlord, may, unless the Court, Collector or officer otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power of landlord to act through agent.

(2) Every notice required by this Act to be served on or given to a landlord shall, if served on or given to an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on or given to the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

B.T.A. 188. [128]

169. Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all these persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint landlords to act collectively or by common agent.

Leases Binding on Successors in Interest.

M.R.A. 11. [24 (6)]

170. Notwithstanding any law or custom to the contrary every *bonâ fide* grant or lease of land on favourable terms by a landlord for the purpose of erecting dwelling houses, factories or other permanent buildings or for the purposes of mining, quarrying or bringing waste lands into cultivation or for making any permanent improvements thereon, shall be binding on his successors in interest: provided that the terms of such grant or lease have been substantially acted up to.

Leases for special purposes.

Saving of rent enhanced during Publication of Act.

171. No enhancement of rent made or agreed to between the (here enter date of first publication of this Act shall be valid or binding on any tenant.

Invalidation of enhancement during publication of Act.

Publication of Rules under Act.

172. Wherever power is expressed to be given to the Local Government to make rules under this Act, such power is given subject to the condition of the rules being made after previous publication.

Rules to be made after previous publication.

Delegation of Powers.

173. The Local Government may delegate to the Board of Revenue all or any of its powers under this Act save and except the powers specified in the next following section and in sections 1, 3 (2), 133, 140, 145 and 149.

Delegation of powers to Board of Revenue.

174. The Local Government may from time to time appoint an officer to exercise, in addition to the District Collector, all or any of the powers of the District Collector under this Act.

Investiture of officer with powers of District Collector.

B.T.A. 190.

SCHEDULE I.

FORM OF RECEIPT.

Patta No. *of Fasli*

Receipt granted to tenant of the village of situated in the taluk of in the district of for the amount of rent paid by him for lands in his holding.

Date of payment, Month and Year.	Name of Payer.	Fasli for which paid.	Items.	Amount paid.		Signature of the landlord or his agent or village officer acknowledging receipt thereof.
				In ready-money.	In kind.	

Date of payment, Month and Year.	Name of Payer.	Fasli for which paid.	Items.	Amount paid.	
				In ready-money.	In kind.

SCHEDULE II.

LIMITATION.

Part I.—Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
Suit to eject under section 11	One year	Date of misuse or breach.
Suit to eject under section 34 (*a*) or (*b*)	Do.	Date of arrear, misuse or breach.
Suit for penalty under section 43	Three months ..	Date of payment.
Suit to obtain patta under section 57	Thirty days ..	Expiration of three months from demand.
Suit to enforce patta under section 58	Do.	Expiration of one month from tender.
Suit for damages under section 85	Six months	Date of Collector's order.
Suit to recover penalty under section 112	Thirty days	Date of exaction.

Part II.—Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
Appeal to District Collector under section 31	Thirty days ..	Date of decree or order of Collector.
Do. to Board of Revenue do. 111 ..	Do. ..	Date of order appealed against.
Appeal to Special or District Judge under section 140 or 147.	Do. ..	Date of decree appealed against.
Second appeal to High Court under section 140 or 147	Ninety days ..	Do. do.
Appeal to District Judge under section 154 (*b*) (4) ..	Thirty days ..	Date of Collector's decree.
Second appeal to High Court under section 154 (*b*) (4)	Ninety days ..	Date of District Judge's decree.

Part III.—Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
Application by depositor under section 48 (3) ..	Thirty days ..	Expiration of three years from date of deposit
Do. under section 74	Do. ..	Date of theft, loss, damage or destruction.
Do. do. 76	Do. ..	Date on which conveyance was known to applicant.
Do. do. 77	Do. ..	Date of removal.
Do. to set aside sale under sections 104 and 105	Do. ..	Date of sale.
Do. to recover cost under section 108 ..	One year	Date of completion of work.
Do. for warrant under section 129	Do.	Expiration of revenue year in which the arrear fell due.

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STATEMENT OF OBJECTS AND REASONS.

The law in force in this Presidency on the subject of landlord and tenant is Madras Act VIII of 1865. The imperfections of this Act, which, with the exception of one section (section 11) laying down certain rules for the decision of suits involving disputes regarding rates of rent, is a purely processual Act relating to the recovery of rent, have long been recognised. Its most serious defect is that it nowhere defines and declares the substantive rights of ryots in zemindari tracts. In respect of the most important of these rights, the right of occupancy, the received opinion has always been that, by the custom of the country, it exists as an inherent right in every permanent ryot of a village, so that every permanent ryot, from the mere fact of his personal status as such, becomes entitled to hold as an occupancy ryot all land for the time being held by him as a ryot in his village. This right has, generally speaking, been consistently respected by proprietors of estates in the southern districts of the Presidency; but in the northern districts it has been steadily encroached upon until, in many estates, the ryots have been reduced practically to the position of mere tenants-at-will. It is one of the main objects of this Bill, while securing the occupancy right to every ryot already possessing it as a customary right or otherwise, to restore the right, as a matter of personal heritable status, to every permanent ryot of a village and to facilitate the acquisition of that status by every other ryot.

2. Another serious defect in the existing law is that it contains no definite rules regulating the enhancement of rent; and where, as in many estates in the northern districts, the ryot has proved too unequally matched with the proprietor to refuse to agree to even undue raising of his rent, it has not sufficed to prevent arbitrary enhancement and rack-renting. It is one of the main objects of this Bill, by permitting enhancement only on certain clearly-defined grounds, and then only by suit before the Collector, to secure the occupancy ryot in a fair and equitable rent.

3. Of other substantive rights of ryots for which it is a main object of this Bill to provide, the principal are the right of free transfer, the right to a puttah or written agreement as a prerequisite to the recovery of rent, and the right to make and be compensated for improvements.

4. In respect of the rights of proprietors, it is a serious defect of the existing law that by omitting to secure the rent as a first charge on the land and by requiring the absolute accuracy of a puttah in every particular, however unimportant, as a condition precedent to the recovery of rent, it often fails, as in many estates in the southern districts, to protect the proprietor in the realisation of even his just dues. It is one of the main objects of this Bill, by making rent a first charge on the land indefeasible by any other encumbrance, and by declaring the sufficiency of a substantially correct puttah, to secure the proprietor in the recovery of his just dues.

5. Of other substantive rights of proprietors for which it is a main object of this Bill to provide, the principal are the right of entry and measurement, the right of distraint and sale for arrears, the right of ejectment, the right to acquire tenants' holdings for building and other purposes, and the right of absolute disposal of pannai or private lands.

6. Chapter I provides for the commencement and local extent of the Act, and for definitions.

7. The Act is to come into force on the first day of a revenue year. That is the period to which very many of its important provisions particularly relate, and the object is to avoid difficulties of the kind which were experienced when Madras Act VIII of 1865 was brought into force in the middle of a revenue year.

8. The Act is to extend to the whole Presidency except Malabar and the South-East Wynaad, where the peculiar land system demands entirely separate treatment. South Canara, though a ryotwari and not a zemindari district, is thus included. The existing Act, VIII of 1865, is in force there, and this Bill is intended to regulate not only the relations between proprietors and their ryots in proprietary estates, but also the relations, as landlord and tenant, between ryots, whether proprietary-estate or Government ryots, and their under-tenants.

9. As all landlords will not be proprietors and all tenants will not be ryots, though all proprietors will be landlords and all ryots will be tenants, the four terms "proprietor," "ryot," "landlord" and "tenant" are defined. The terms "estate" and "village" are defined in connection with the term "proprietor", which is limited, so as to avoid the absurdity of petty inamdars of perhaps an acre or two being ranked as "proprietors," to proprietors of estates comprising at least one whole village. The term, subject to the same limit, is defined so as to include persons for the time being in the shoes of the proprietor—lessees, mortgagees with possession, managers of estates of disqualified owners and the like—between whom and the tenants of the estate it is necessary, for the proper carrying on of the business of the estate, that the provisions of the Act should be made applicable.

10. In defining "rent," care has been taken to admit of the necessary distinction being made, in the actual working of the Act, between the rent proper of the land and what is legally or usually recoverable as, or along with, rent,—namely, water-tax, cesses, customary fees and the like.

11. Chapter II, recognising that in proprietary estates there are, in fact, ryots without occupancy right as well as ryots with occupancy right, enumerates and defines the three classes of tenants which there will be under the Act, namely, occupancy ryots, non-occupancy ryots and under-tenants, the latter including tenants holding under Government ryots, who are "landlords other than proprietors."

12. Chapter III deals with occupancy ryots. By section 5, it permits occupancy right in land to be created at any time by written agreement between proprietor and ryot: by section 6, it secures occupancy right to every ryot already possessing it as a customary right or otherwise: and by section 7, it presumes of every ryot, until the contrary is shown, that he possesses occupancy right in all his holding. It thus remedies that part of the ruling in the leading case known as Chockalingam's case (VI M.H.C.R., 164), which threw upon the ryot the burden of setting up and proving his possession of occupancy right as a customary right.

13. Section 8 provides for the acquisition of occupancy right by attainment of the personal status of a permanent ryot of the village and, for this purpose, treats every ryot as a permanent ryot of the village who has by himself, or by a person whose heir he is, held land as a ryot in the village continuously for twelve years, whether under lease or otherwise, and whether the land held has been the same throughout or has been different at different times. It further presumes of every ryot, until the contrary is shown, that he has continuously held land in his village as a ryot for twelve years. This section has, however, to be read with section 144 which excludes the proprietor's private lands from the operation of this statutory acquisition of occupancy right, and with the definition of "ryot" in section 3 which restricts its operation to land held for agricultural purposes, including horticulture and grazing: so that occupancy right can be acquired by reason of the ryot's personal status as a permanent ryot only in land held for agricultural purposes and other than proprietor's private land. The period of twelve years, which has been taken as sufficient to entitle a ryot to be looked upon as a permanent ryot of his village, is the period prescribed in the corresponding section of the Bengal Tenancy Act.

14. Under the incidents of occupancy right, provision is made for the ryot's right to use the land in any manner which does not impair its value (section 9), for his payment of a fair and equitable rent (section 10), for his right of free transfer (section 12) and for his protection from eviction except in execution of the decree of a Civil Court passed on the ground of misuse of the land or breach of conditions of his contract with the proprietor (section 11)—which are usual incidents of tenant right.

15. Experience having proved it unsafe to permit enhancement of rent by contract, where the ryot is so unequally matched with the proprietor as in many estates, particularly in the northern districts, enhancement of the occupancy ryot's rent is permitted only by suit before the Collector on certain specified grounds (sections 16 and 17) and only in the case of money-rent. Where rent is paid in kind, the proprietor already participates, by the very nature of things, in the effects of any increase in the productive power of the land or in the price of its produce; and the proprietor is enabled, by section 27, to have his produce-rents converted into money-rents, if he seeks enhancement under the provisions of this Bill. There is nothing in the Bill to prevent rent being reduced by contract; and section 25 enables the occupancy ryot, when he pays a money-rent, to sue before the Collector for its reduction on certain specified grounds.

16. Disputes as to the correctness of a ryot's rent with reference to the *extent* of his holding being of very common occurrence, sections 28 to 30 of the Bill enable either proprietor or ryot to obtain a rectification of the rent with reference to the area of the holding, by order of the Collector on application duly made for that purpose, section 29 giving the proprietor the right of entry and measurement at any time.

17. Chapter IV deals with non-occupancy ryots. By section 34, read with section 128, the non-occupancy ryot, as long as he pays his rent, is protected against eviction except by decree of a Civil Court passed on certain grounds under which special protection is given to a non-occupancy ryot who by having held continuously for at least seven years, may be taken to have proved himself a good tenant. He is liable (section 32) to pay the rent agreed upon at the time of his admission to his holding, and he may be asked to agree to an enhancement of rent and may be sued in ejectment before the Collector for refusal, and he may be forthwith ejected if he refuses to agree even to a fair and equitable enhancement determined by the Collector in such suit. If he agrees to the enhanced rent so determined, he becomes entitled to hold at that rent for such further period, not exceeding five years, as may be required to make up a total continuous holding of twelve years,—the object of these provisions being, while enabling the proprietor to obtain an equitable enhancement of rent, to facilitate the acquisition of the personal status of a permanent ryot of the village by every non-occupancy ryot who by seven years' continuous holding has proved himself a good tenant. Except by such agreement or by registered agreement, the non-occupancy ryot's rent is, by section 33, protected against enhancement.

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18. Chapter V deals with under-tenants, protecting them, as in section 49 of the Bengal Tenancy Act, against ejectment, as long as they pay their rent, except on expiration of a written lease, or when holding otherwise than under a written lease, at the end of the revenue year next following that in which a notice to quit has been served upon them.

19. Chapter VI contains general provisions as to rent. For the decision of disputes regarding rates of rent, the presumption has to be made that the tenant holds at the same rent as in the preceding year (section 39); and contracts to pay rent have, by section 38, to be enforced as long as they are not inconsistent with the other provisions of the Bill. Enhancement by contract of the rent of an occupancy ryot being, for instance, prohibited, any contract for enhanced rent of such a ryot would be inconsistent with the provisions of the Bill: and in any dispute where enhanced rent is claimed, the Collector will simply have to see whether such enhancement has been decreed in a separate suit for the purpose and, if not, to maintain the existing rent as in the preceding year.

20. The rate of interest on arrears of rent has, by section 41, been increased from 12 to 12½ per cent. per annum which works out to 2 pies per rupee, and fractions of a month and of a rupee are permitted to be disregarded—the object being to facilitate calculation.

21. The provisions of the Bengal Tenancy Act for safeguarding the tenant by proper receipts in a prescribed form and by permitting him to deposit his rent in cases of dispute or doubt, have been substantially adopted in sections 42 to 48 of the Bill, every facility being afforded to the tenant by permitting payment of rent by postal order or to the village headman unless the proprietor has appointed an authorised agent in the village or within three miles of it, and by permitting deposit in a convenient Revenue office.

22. Chapter VI embodies everything connected with the recovery of rent. The existing system of puttahs and muchilikas is maintained; and in the case of the occupancy ryot, the tender of proper puttah is, in accordance with the Full Bench ruling in VII, Madras, H.C.R., 312, made a pre-requisite to the recovery of rent either by ordinary suit in a Civil Court or by the special procedure of distraint and sale of movable property, or attachment and sale of occupancy right in the defaulter's holding, by proceedings before the Collector. But in order to prevent the defeating of the proprietor, in the recovery of his just dues, by reason of some perhaps unimportant defect in the stipulations of the puttah, section 52 holds a substantially correct puttah to be a proper puttah, valid to the extent to which it is correct, as long as it contains no stipulations in restraint of cultivation or of harvesting or for termination of the tenancy at any specified time which are stipulations of a kind consistently held by the Madras High Court to be invalid. And for the further advantage of the proprietor, section 53 permits him to tender puttahs by filing them in a convenient Revenue office, and thus obviates the common plea of the tenant, in proceedings for the recovery of his rent, that no puttah has been tendered.

23. The provisions of the Bill (sections 62 to 93) for the distraint and sale of movable property are substantially those of the existing law.

24. Though an occupancy ryot is not liable to ejectment for arrears of rent, his occupancy right in his holding is, by section 94, made liable to attachment and sale in execution of a decree for arrears, and by section 95, to attachment and sale by proceedings before the Collector, as under the existing law, when the ryot is in arrear at the end of a revenue year. And for the further security of the proprietor in the recovery of his just dues, rent is, by section 98, made a first charge on occupancy right, indefeasible by any other encumbrance. The rules regarding the attachment and sale of the occupancy ryot's interest in his holding (sections 96 to 105) combine those of the existing law and of the Bengal Tenancy Act so as to provide for attachment and sale either in execution of a Court's decree for arrears or in pursuance of the special procedure before the Collector.

25. Chapter VIII contains miscellaneous provisions as to landlords and tenants.

26. The upkeep of irrigation works being a matter of importance for the welfare of the country, provision is made, by sections 106 to 110, enabling the ryots holding irrigated land under works neglected by the proprietor to enforce repairs thereof by order of the District Collector on application made to him in that behalf, and empowering them to deduct the cost of the same from any rent due by them to the proprietor.

27. By sections 113 to 120, all ryots, occupancy or non-occupancy, but not under-tenants, are secured in the right to make improvements and to be compensated for the same on ejectment. The occupancy ryot's right in this respect is practically unrestricted as long as he causes thereby no substantial diminution of the value of his landlord's property. The non-occupancy ryot, except with the proprietor's permission or on the proprietor's refusal to make the improvement himself, is not entitled to make and be compensated for any improvements except a well for the irrigation of his holding, a suitable dwelling for himself and his family, and the culture of trees and useful plants. The rules as to compensation are substantially the same as in the Bengal Tenancy Act.

28. By section 121, every landlord is secured in the right to acquire a tenant's holding or part thereof for any reasonable and sufficient purpose, including building purposes, religious, educational or charitable purposes, or for the opening and working of mines or factories; but in view of the importance of the matter, the jurisdiction to dispose of applications for such acquisition is limited to the Principal Civil Court.

29. The provisions relating to surrender and abandonment of holdings (sections 122 to 124) are substantially the same as those of the Bengal Tenancy Act, except that they are made applicable to all tenants and not limited to ryots as in that Act.

30. In connection with the sub-division and transfer of tenancies, section 125 makes it incompetent to a landlord to refuse to consent to the division of a holding and to the proportionate distribution of the rent payable in respect thereof, except in the case of such minute division as that of a revenue field. This is in accord with the idea which has always obtained in this Presidency, and which it is desired to foster, that the ryot possesses rights in his holding which he can deal with as property.

31. While providing, by section 128, that no tenant shall be ejected from his holding except in execution of a decree of a Civil Court or order of a Collector passed in accordance with its provisions, the Bill, by sections 129 to 132, empowers summary ejectment, under the Collector's warrant, of non-occupancy ryots or under-tenants who are in arrear at the end of a revenue year and on whose premises there is no sufficient distress to satisfy the arrear. It is only fair to the landlord that, in the case of such hopeless tenants, he should be saved the tedious and expensive process of ejectment by regular suit.

32. Chapter IX provides for the making of a survey, record-of-rights and settlement of rents in estates, either by the order of the Local Government where circumstances—such as the likelihood of averting serious disputes between the tenants and their landlords generally—call for such a step, or on the application of the proprietor himself. The procedure under the Bill is substantially the same as that of the Bengal Tenancy Act in this matter, with such modifications as experience of the working of that Act has shown to be advisable.

33. The officer preparing the record-of-rights is, by section 136, required to publish it in draft for six months (and not for only one month as in Bengal) so as to give parties ample time to file objections; but ample time being given, all entries to which no objections are filed are made final and conclusive as to the facts which they record. In hearing objections to entries the officer is, by section 137, bound to refer the objector to the Civil Court in all cases of *bonâ fide* dispute involving questions of title, status or the right to hold land rent-free, which are difficult questions calling for determination by regular Courts of law. In other cases, the officer's decisions are, by section 140, made appealable to a Special Judge. When all objections to the preliminary record have been disposed of, section 138 requires the officer to frame and publish the final record-of-rights, and the entries so published are declared to be final and conclusive as to the facts which they record. The object of these provisions is to secure the framing of a record-of-rights which shall be really a complete and conclusive record of the rights of landlord and tenant existing at the time, which shall not be liable to be re-opened in the Civil Courts after final publication, and which will therefore give everybody concerned a definite unmistakeable starting point for the future.

34. Where, in cases of general rack-renting and discontent likely to give rise to disturbances, the Local Government finds it necessary to order survey and record-of-rights in a particular estate, it is of importance that the means should be at hand of effecting a fair and equitable settlement of rents as part of the operation. Provision to this end is therefore made in section 139 of the Bill.

35. Chapter X provides for the record of proprietors' private lands. By section 144, such lands are exempted from the operation of chapter III for the acquisition of occupancy right, and from the operation of chapter IV as to non-occupancy ryots; and by section 148, not only the pannai lands of the proprietor, but also lands in which he has, by transfer, become possessed of the occupancy right, are to be recorded as his private lands. In this way, the proprietor is at once secured in the right of absolute disposal of his private lands and enabled, by purchase of the occupancy right, if he so chooses, to convert the whole land in his estate into his private land.

36. Chapter XI deals with judicial procedure in suits and proceedings under the Act. While leaving suits before Civil Courts—which will only be suits of an important nature, such as suits in ejectment—to be tried under the provisions of the Civil Procedure Code, a simplified procedure in the trial of suits before Collectors—which will be of a simpler and more summary nature—is prescribed by section 154. And to prevent hardship in the case of standing crops and the like, it is enacted by section 159 that, except where otherwise expressly provided by the Bill (as in the case of non-occupancy ryots ejected under section 36 for refusal to agree to an equitable enhancement of rent), a decree for ejectment, if passed in the first eight months of a revenue year, is not to take effect until the commencement of the revenue year next following, and if passed in the last four months of a revenue year, is not to take effect until the commencement of the revenue year next but one following.

37. Chapter XII deals with contract and custom. Experience having proved the zemindari ryot, in a large area of the Presidency, to be too unequally matched with the zemindar to protect himself against stipulations to the obvious prejudice of his rights, every tenant is, by section 162, prevented from contracting himself out of his statutory rights in respect of occupancy, ejectment, improvement, user of land, surrender, commutation and reduction of rent. Section 164 saves custom and usage not inconsistent with, or not modified or abolished by the provisions of, this Bill; and by section 163, the tenancy of homesteads held otherwise than as part of a tenant's agricultural holding is, in the first instance, regulated by local custom or usage.

38. Chapter XIII reproduces the provisions of the Bengal Tenancy Act as to limitation.

39. Chapter XIV, completing the Bill, deals with supplemental matters. The most important of these is that, to prevent tenants from being induced to agree to improper raising of their rents for the purpose of forestalling the provisions of the Bill against enhancement, section 171 provides that no enhancement of rent made or agreed to between the date of publication of the Bill and the date of commencement of the Act shall be valid or binding on any tenant.

40. The foregoing statement shows that, in its main provisions, the Bill is based upon the Bengal Tenancy Act VIII of 1885 modified, to suit local conditions, chiefly by embodying in the Bill those provisions of the existing law, Madras Act VIII of 1865, which it is considered desirable to retain. The Bengal Act has been taken as a model, because it was the product of very full discussion and deliberation, was applied to a state of facts in the main the same as that obtaining in this Presidency, and has been proved by experience to be practical and beneficial in its working.

[G/24]
1,000-18-9-97.

Legislative DEPARTMENT.

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Papers to be read in proceedings :--

Again G.O., No.	, dated		189 .
Again G.O., No.	, dated		189 .
Current No.	of 189	, dated	, from
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26/11/7

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No. 95
Date 26/4/7

89-A
19-11-97

Copd to 29.11.97 1/12/97

ORDER. No 95 dy 26.11.97

R. In continuation of G.O. R. No. 114 Legislative dated 16 November 1893, the rev draft of the Madras Tenancy B together with the Statement of objects & R will be forwarded to the Tamil, Telu ~~Malayalam~~ Canarese & Hindustani translators Government, for such revision of translations of the previous bill may be found necessary. The rev translations, however, when comp should not be sent to the Supr-tendent Government Press, pend receipt of further orders.

H.T.
26.11.97

To
The Tamil
" Telugu
" Canarese
" Hindustani
} Translators to Govt

Note Please see Mr Garstin's D.O. under of Go. 114 R / 16.11.93 flag-A. The Bill has to the Govt of India for previous sa & to the local Advocate-General for The alterations that may be found necess to make in the Bill, on receipt of thei it is submitted, will not be such as to much trouble to the translators in further revision that may be requir A special tenancy law is under prepar for Malabar, & it is therefore consider -necessary to have the present Bill w not applicable to Malabar &c, translated in

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Legislative Department

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No.

From The Secretary to the Government of India,
Department of Revenue and Agriculture.

Dated 1897.

Sir,

With reference to the marginally-noted correspondence on the subject of Madras Tenancy Legislation, I am directed to submit, for the sanction of His Excellency the Governor under sec. 5 of the Indian Councils Act, 1892, the Governor General, a revised Bill which it is proposed to introduce into the local Legislative Council and which is the result of a fresh scrutiny, by the present Government, of the Tenancy Bill commented upon by the Government of India in Mr. Finucane's letter No. 902-352 (Revenue) of the 30th March 1896.

From Madras Govt. No. 124 dated 11th Nov. 1893.
To Madras Govt. No. 114-352 dated 11th Jany 1894.
From Madras Govt. No. 387 dated 30th Jany 1894.
To Madras Govt. No. 902-352 dated 30th March 1894.
From Madras Govt. No. 1947 dated 17th May 1894.
To Madras Govt. No. 376-71-1 dated 8th Feb. 1896.
From Madras Govt. No. 1444 dated 10th April 1896.

2. In that letter, exception was taken to that Bill on the grounds —

(1) that it failed to provide sufficiently protect the ryot in the acquisition of occupancy right for the establishment of "settled ryots", as defined in the Bengal Tenancy Act, being urged as absolutely necessary to meet the case:

(2) that it barred the growth of occupancy right in waste:

(3) that it failed to provide for the protection of under-tenants — secs. 48 and 49 of the Bengal Tenancy Act being commended as a basis for legislation:

(4) that it gave no power to the Government to make a survey, record of rights and settlement of rents in proprietary estates:

and it was suggested for further consideration

(5) whether protection, in the acquisition of occupancy right, should not be carried even further than by providing for the establishment of "settled ryots":

(6) whether the free transfer of occupancy right, by sale, gift or otherwise, should be permitted:

(7) whether the 1st section, empowering farmers of public revenue to proceed against their sub-tenants, should be retained: and

(8) whether the jurisdiction in suits under the Act should be vested in the Revenue Courts, or in the ordinary Civil Courts — the Government of India, as then advised, being in favour of the former.

The opinion was also expressed —

that, to ensure clear statutory

definition of the substantive rights of ryots in proprietary estates, the various classes of tenants — settled ryots, occupancy ryots, non-occupancy ryots and under-tenants — should be enacted in an early part of the Bill, and then their substantive rights be defined and declared.

3. The present Bill meets these objections and suggestions by providing for the acquisition of occupancy right by attainment of a certain period of the status of the "settled ryot", though the term itself is not actually used:

(2) permitting the growth of occupancy right on waste let for ordinary agricultural purposes, while leaving the proprietor free to reserve waste for forest purposes or to let it for building, mining or other special purposes as he may choose:

(3) protecting the under-tenant against ejectment in the manner provided by sec. 65 of the Bengal Tenancy Act,

(4) empowering the Government to make a

Survey, record-of-rights and settlement of rents in proprietary estates;

(5) omitting the section as to farmers of public revenue:

(6) vesting the jurisdiction in suits and proceedings under the Act in the Revenue Courts, except in a few matters to the Civil Courts with which they are best qualified to deal: and

(7) enumerating the various classes of tenants — occupancy ryots, non-occupancy ryots and under-tenants — in an early part of the Bill, and then proceeding to define and declare their respective substantive rights.

But the Bill does not carry protection further, in the acquisition of occupancy right, than by providing for the personal status of the "settled ryot": it does not protect the under-tenant as sec. 48 of the Bengal Act does, by a statutory limit of his rent: and it does not interfere with the free transferability of occupancy right.

4. On these three points, the Government is not prepared, for reasons which will be presently explained and which it is hoped will commend themselves to the Government of India, to go further, in the directions suggested, than the present Bill; but, in any

case, those three matters bulk so small in the large number of important questions of principle on which both Governments are now in accord, that any difference of opinion in regard to them will not, it is trusted, be allowed to stand in the way of the sanction now sought for the introduction of this Bill.

5. In arriving at the leading principles of the Bill, the Government has been guided by the broad considerations that while, historically examined, the aim of legislation should undoubtedly be to place the zamindar and ryot and the zamindar, in respect of substantive rights, in the same relative positions as the Government ryot and the Government, the circumstances have, during nearly a century of defective legislation and unrestricted freedom of contract, become so altered in important respects — for instance, in the matters of occupancy right and rent — that it is now practicable to do only as nearly as existing facts, which cannot be ignored, will reasonably permit.

6. Originally, in this Presidency, the only two parties interested in the soil were the State and the ryot; and when the Government, under the Permanent Settlement of 1802, transferred

to the zemindars, within the areas in which ~~[illegible]~~ they had been the farmers or assignees of the right to collect the State revenue from the ryots and which areas were now confirmed to them as proprietary estates, the State's rights as landed proprietor, it obviously could transfer no higher rights, in relation to the ryots in those areas, than itself possessed. What these relative rights of proprietor and ryot actually were, the Government, deliberately ~~[illegible]~~ abstained (in making the transfer,) from defining and declaring, and nowhere in the whole course of tenancy legislation since 1802 has this been done; but — as legislatively explained in Regulation IV of 1822 — the Government, ~~[illegible]~~ at the same time, left those rights, whatever they were, absolutely unaffected by the transfer. In other words, the plain intention was to leave the relative rights of proprietor and ryot, in the transferred estates, exactly as they would have continued to be, under the State as proprietor, had no such transfer been made; and it is by analogy, therefore, with the relative rights as continued to be exercised between the State and its ryots that the substantive rights of the zemindar and the zemindari ryot, as intended to be preserved by the Permanent Settlement and subsequent legislation,

Many of the estates which were permanently settled in 1802 have since been bought in by Government for arrears of revenue and become ryotwarry land; and thus the permanently settled estates are so interspersed with ryotwary land, in this Presidency, that it is difficult, in any case, to adopt measures with regard to zemindari ryots which cannot be adopted with regard to Government ryots.

have now to be ascertained and declared.

Unfortunately, the whole course of tenancy legislation since the Permanent Settlement (Regulations XXVIII and XXX of 1802, Regulation V of 1812, and Act VIII of 1865) has been confined to processual measures — chiefly the puttah, intended to ensure to the ryot a just rent and just and conditions; distraint, intended to ensure to the proprietor the recovery of his just dues — which it was hoped would suffice to secure the substantive rights of both zemindar and ryot. But the experience of now nearly a century of practically unrestricted freedom of contract — if the term 'freedom' can be fairly used of parties so unequally matched as the average zemindar and the average zemindari ryot — has proved mere processual measures to be inadequate for the preservation of substantive rights, and there has resulted a state of circumstances which, in the endeavour to restore those rights, with due moderation, Subject to legislation cannot ignore. such circumstances, therefore, however, the present Bill endeavours to place the zemindar, ryot and as nearly as possible the zemindar in the same relative positions as the Government ryot and the Government.

7. It is on these considerations that the Government, while providing, in this Bill, for the acquisition of occupancy right by attain-

ment of the personal status of the 'settled' ryot, is not prepared to adopt the suggestion of the Government of India that protection might perhaps be carried even further in the same direction — presumably by the simple provision that every ryot in Madras has occupancy right in any land he holds. (X) That, no doubt, is the case as regards every ryot under Government from the moment of his admission to the occupation of land; and such a provision might be theoretically justified in the Zemindaries on the ground that, under the ancient system of sharing the produce between the State and the ryot, the latter had a customary right — which remained unaffected by the transfer of the State's rights to the zemindar under the Permanent Settlement — to hold without liquidation of rent, from the moment of his admission, as long as he paid the State's, or proprietor's, share. But the fact remains that in Zemindaries, owing to a variety of causes continued under the long regime of 'freedom' of contract, there are now, and have been from time immemorial, ryots without such occupancy right; and this fact cannot be ignored [illegible] becomes im-

practicable, accordingly, to effect a violation of existing conditions which moderation forbids, to at once place the zemindari ryot in the same position as the Government ryot by declaring that every zemindari ryot has occupancy right in his holding from the moment of his admission thereto. The furthest that it at present appears practicable for legislation to go in this direction is to secure the occupancy right, as a matter of personal status, to every zemindari ryot who by long residence and cultivation in his village has become entitled to be looked upon as a permanent, settled ryot thereof, and to facilitate, as far as possible, the acquisition of that status by every other ryot. It will be nowhere denied that every permanent ryot is, by the custom of the country, considered to be entitled, by the mere fact of his personal status as a permanent ryot, to have occupancy right in any land held by him as a ryot in his village. Now the present Bill, by section 8, secures that status — without, however, using the term 'settled ryot', which is unfamiliar in Madras and may give rise to some difficulty in distinguishing between the settled ryot and the occupancy ryot — to every zemindari ryot who has continuously held land as a ryot in his village for twelve years, whether

er under lease or otherwise and whether the land held has been the same throughout or has been different at different times. Every such ryot will thus be placed in the same position as the Government ryot in that he will have occupancy right in his present holding, and hereafter, in any land he may hold in his village, from the moment of his admission thereto, and to every other ryot the same facilities for acquiring that status as are provided by the Bengal Tenancy Act will be secured by sections 34 to 36 of this Bill. This, accordingly, is as far as the Government is at present prepared to go in the direction suggested.

8. Similarly, in the matter of rent, if the zemindar ryot could be placed at once in the same position as the Government ryot, he would be secured in a rent regulated — as the Permanent Settlement undoubtedly intended — on the customary basis that the proprietor was only entitled to a certain share of the crop, deducting cost of cultivation. But the long régime of defective legislation and 'freedom' of contract has resulted, in most zemindaries, in a state of rents which it would be impracticable, without an unjustifiable violation of existing rights, to alter conditions

at once

to the Government basis ; and the most that can, in the circumstances, be done in this direction is to start with existing rents, presume them to be fair and equitable, and leave them to be adjusted, in time, under well-considered provisions for enhancement and reduction. This the present Bill, following the Bengal Tenancy Act, aims at effecting.

7. In the matter of the free transferability of occupancy right, by sale, gift or otherwise, there is no reason why the Zamindari ryot should not be placed in precisely the same position as the Government ryot, who has absolute freedom of transfer and with whose freedom the Government is strongly opposed to sanctioning any interference. X Sub Para The suggestion of the Government of India, that the right of transfer should not be recognised where the custom of transfer does not already exist, has no application in this Presidency, where the right is universally acknowledged ; and whatever may be the merits of the case in other parts of India, the Government is satisfied that, in Madras, this right has so far been exercised without injury to the ryots themselves as a class or to the community and that there

is no ground for apprehending danger from its continued exercise in the future. In some parts of India, no doubt, agricultural property is passing from the hands of the hereditary cultivators into those of the sowcar; that there is no general tendency of the kind here. Here, in fact, the sowcar, speaking generally, does not form a class apart, as in other parts of India, and is hardly to be distinguished from other members of the land-holding classes except by the circumstance that he is not solely dependent on the land but has some capital which he employs by lending to his neighbours on the security of their land, not with the object, or with the frequent result, of acquiring the property in that land, so much as with the object of getting a good rate of interest. To interfere with the free transferability of occupancy right in this Presidency would, the Government is convinced, be a serious blow to the prosperity of the people and would give rise to extreme discontent. The Government, therefore, considers it to be the plain duty

to strenuously oppose any and every attempt, by revolutionary proposals of the kind — and which, it may be added, would certainly never pass the local Legislative Council — to withdraw from the ryots of Madras a power and a right which they have always enjoyed and exercised without any ill effects, and which have been consistently upheld by the Civil Courts. The Government is accordingly not prepared to modify in any way the provision of the present Bill, section 12, which secures to every Zemindari ryot absolute freedom to transfer his occupancy right.

10. I am also, on the question of protecting the under-tenant by a statutory limit of his rent in the manner provided by sec. 48 of the Bengal Tenancy Act, there appears no reason why the Zemindari ryot should not be placed in the same position as the Government ryot, who is under no restrictions as to the terms of rent which he may arrange with his sub-tenants. Nor, except perhaps in Malabar, for which special

legislation is now under preparation, has any case been made out for general interference of the kind. In Tanjore, for instance, where the ryot-landlord now often gets from 25 to 30 per cent more rent from his sub-tenant than the proposed restrictions would allow him, the sub-tenants are in fact more than holding their own. The average holdings of ryots in this Presidency are so small that sub-letting is comparatively rare; and there is no ground, generally speaking, for imposing a restriction so calculated, as that suggested, to create unnecessary discontent.

X Sub-Part

The Government is, therefore, not prepared to add a statutory limit of his rent to the protection already afforded to the under-tenant by section 37 of the present Bill which, following section 49 of the Bengal Tenancy Act, provides that he shall not be ejected before expiration of the term of a written lease or, when holding otherwise than under a written lease, before the end of the Revenue year next following that in which a notice to quit has been served upon him by his landlord. This protection, however, the Government considers should only be ex-

tended to the under-tenant who pays his rent: and it is therefore made subject to the provisions of sections 129 to 132 of the Bill which enable the landlord, when the under-tenant is in arrear at the end of a Kharif year and when there is no sufficient distress upon the premises to satisfy the arrear, to have him summarily ejected under the Collector's warrant, subject to certain sufficiently liberal conditions which admit of the under-tenant saving himself by paying up within fifteen days after service of the warrant or by a suit before the Collector to set aside the warrant or even after delivery of possession, by a suit in the Civil Court to reverse the ejectment. Beyond these provisions, in the direction of protecting the under-tenant, the Government is not prepared to go.

11. It is on the same broad principle of placing the zamindari ryot and the zamindar in the same relative position as the Government ryot and the Government that, turning to the substantive rights of the proprietor, the Bill, by Chapter VII, secures his rent to the proprietor as a first charge on the ryot's holding, while preserving to the ryot the pattah as a pre-requisite to the recovery of rent;

the proprietor
serves to ~~him~~ the same mentailed right
of recovery by distraint and sale for ar-
rears as the Government exercises in
respect of its own defaulting tenants
— a right which, indeed, the landlords
in this Presidency have enjoyed for nearly
a century, of their exercise of which
there has been no general complaint, and
of which there can be no possible reason
for now depriving them.

12. In regard to the proprietor's rights
over the waste in his estate, there has
been some difficulty. The Government
itself has, since the Permanent Settlement,
been dealing as it pleases with the waste
lands within its own possessions — reserv-
ing them for forest purposes, selling the
occupancy right in them for valuable con-
sideration, and so forth — without any re-
gard to any customary rights which the
ryots may have at one time possessed there-
in; and if the Zemindars were to be
placed in the same position as the Govern-
ment in this respect, his right to treat
the waste in his estate as private land,
in which occupancy right could only be ac-
quired by contract ~~with him~~, would have to

be allowed. This would, further, be in accord with the opinion expressed by the Government, in forwarding the previous Bill, that a gift of absolute rights in the waste within their estates was conferred upon the Zemindars at the Permanent Settlement, and that to permit the growth of occupancy right therein as against the Zemindar would be to reverse that gift.

The Government of India demurred to that view and, referring to para 27 of the Instructions issued to Collectors for the introduction of the Permanent Settlement in Madras, considered the true meaning of that paragraph to be that the State simply transferred to the Zemindars, for their sole benefit, the right to let waste lands at the established rates of sharing the produce and subject to the recognised customs of the country. Without admitting this to be the plain construction of the language used in that paragraph the Government is reminded that in para 14 of its letter to the Government of India, Home Department (Legislative) dated 16th August 1866, No. 324, referring to the

Bill which subsequently became Act VIII of 1865, it was distinctly stated that "in this Presidency, from the earliest times to which our records reach, the rights of the resident ryots of each village to retain their existing holdings or to extend them to the waste lands included in the village boundary, paying the established rate as recorded in the village Kerichuana as evidenced by the immemorial and perfectly well-known custom of the village for the class of land concerned, have never been questioned." This pronouncement, made more than sixty years after the Permanent Settlement, recognised in the State only a no higher right limited right in the waste, than which, by that Settlement, could certainly have been conferred thereon upon the Zamindars; and the Government has now ascertained from numerous natives of position and intelligence that the right of proprietors in immemorial waste is believed, almost without exception, to be limited by the rights of the villagers, occupancy right being one. In these circumstances, the Government does not propose to legis-

rule for the waste as proprietors' private land, so as to bar the accrual of occupancy right therein except by contract. But it is impracticable now to go back to the complete original right, which has everywhere fallen into desuetude, of the resident ryots to extend their holdings as they pleased to the waste, subject only to payment of the customary assessment, and in view of this fact, and of the manner in which the Government itself has been exercising its rights over waste, the question is how far legislation can reasonably go in the direction of permitting the accrual of occupancy right, as against the proprietor, in the waste. The Government itself, while maintaining the right to reserve waste for forest or other special purposes, has in practice always admitted the ryot with occupancy right to waste let for ordinary agricultural purposes. The liberty to reserve waste for forest purposes or to let it for agricultural or building or mining or other special purposes, as he may choose, cannot in equity be denied to the proprietor; but when he does let the waste for ordinary agricultural purposes, it may well be provided that he cannot prevent the

accrual of occupancy right therein — so that if the ryot admitted to waste has the status of an occupancy ryot of the village he will at once hold with occupancy right, while, if he has not, he will hold with the right to count time towards the twelve years which will give him that status. This object will be attained by simply excluding waste from the category of proprietors' private land. All land, excluding private land, let for ordinary agricultural purposes, be it waste or be it cultivated land, till then be held in which occupancy right can be acquired against the proprietor and apart from contract. The present Bill, accordingly, while leaving the proprietor free to reserve waste for other than agricultural purposes omits, by section 148, the waste from the category of his private land.

13. On the question of jurisdiction in suits and proceedings under the proposed Act, the Government, in forwarding the previous Bill, expressed itself strongly in favour of the ordinary Civil Courts. The Government of India, with the experience

before it of the Bengal Tenancy Act, which reserves all such jurisdiction to the regular civil courts, was, as then advised, in favour of the view that jurisdiction should be retained in the Revenue Courts; and commended the matter to the fuller consideration of this Government. In view of an opinion founded on such experience, and believing that nothing short of the retention of jurisdiction will keep Revenue Officers properly informed as to the conditions of zemindaries and that it is essential to good administration that Revenue Officers should be in full possession of such information, the Government, on a close reconsideration of the subject, has come to the conclusion that jurisdiction should be retained in the Revenue Courts, except in a few important matters with which, in the opinion of the Government, the regular Civil Courts are best qualified to deal. Such are (1) suits in ejectment of occupancy ryots (2) suits in ejectment of non-occupancy ryots on any ground other than refusal to agree to an equitable enhancement of rent (3) applications by a landlord for the acquisition of tenants' land for

building or other special purposes (4) suits for recovery of possession of holdings treated as abandoned (5) suits to reverse summary ejectment by Collectors of non-occupancy ryots and under-tenants, and (6) suits to set aside disputed entries in the record-of-rights or record of proprietors' private lands, involving questions of title or status or the right to hold land rent-free. In all other suits and proceedings under its provisions, the present Bill vests jurisdiction in the Revenue Courts.

14. With the foregoing observations on the various points which appeared to require explanation with reference to the ~~remainder~~ comments of the Government of India on the previous Bill, I am to proceed to the details of the present Bill.

In its general arrangement, it will be observed, the present Bill differs materially from the previous one and, following the suggestion of the Government of India, that the various classes of tenants should be enumerated in an early part and then their respective substantive rights be defined and declared, it pursues the natural evolution of subjects from this starting point. After the usual preliminary Chapter I, dealing with the short title, com-

Where the latter follows the former Bill, it has not been thought necessary to repeat the reasons to be found in the explanatory papers which were therewith forwarded. And for facility of reference, a statement is appended to this letter comparing the sections of the present Bill with those of the previous Bill and of the Bengal Tenancy Act, Madras Act VIII of 1865 and other Acts from which these sections have been taken.

mencement and local extent of the Act, Repeal and definitions; Chapter II sets out the three classes of tenants — occupancy ryots, non-occupancy ryots and under-tenants; and the ensuing three Chapters, III, IV and V, define and declare their respective substantive rights. This having been done, the next chapters naturally deal with the main question of Rent, Chapter VI containing general provisions as to rates of rent, arrears, receipts, deposit of rent and produce rents; and Chapter VII embodying everything connected with the recovery of rent — partial and incidental, distraint, attachment and sale of land. Proceeding from the main question of rent to the other questions arising between landlord and tenant, Chapter VIII deals with the repair of irrigation works, illegal cesses, improvements, the acquisition of land for special purposes, surrender and abandonment, sub-division of tenancy, and transfers, and ejectment. The remaining chapters provide for general matters, Chapter IX for survey, record-of-rights and settlement of rents; Chapter X for record of proprietors' private lands; Chapter XI, judicial procedure; Chapter XII, contract and custom; Chapter XIII, limitation; and Chapter XIV, completing the Bill, for sup-

plemental matters — penalties, agents of landlords, saving clauses and the publication of rules. The general arrangement, in fact follows, as nearly as may be, that of the Bengal Tenancy Act.

15. Chapter I, sec. 1: commencement and local extent of the Act: — Provision is made for the Act to come into force on the first day of a Revenue year. This is the period to which so many important provisions are made to refer; and if the Act were to commence in the middle of a Revenue year, difficulties would probably arise of the kind experienced — and of which the case reported at 6 M. H. C. R. 122 is an example — when the mistake was made of bringing the existing Rent Recovery Act, VIII of 1865, into force on 1st of January. So long as saving clauses, such as section 172, of the Bill, are provided to prevent defeating of the Act from the time when the Bill is first published — and such clauses will be necessary whatever be the date fixed for bringing the Act into force — its commencement can always safely be deferred to the first day of a Revenue year.

South Canara is not, as it was in

the previous Bill (it is not known why), excluded from the local extent of the Act. The district is, no doubt, a ryotwari and not a zemindari district; but the existing Act VIII of 1865, now to be repealed, is in force there as between the ryot-landlords and their tenants, and there appears to be no reason why the protection of the new Act should not be extended to them. The late Advocate General was of opinion that South Canara should not be excluded. In any case, the further consideration of the question may be left to the Select Committee. The present Bill accordingly applies to the whole Presidency outside the Presidency Town, except Malabar and the South-East Wynaad, for which a special Tenancy Bill is now under preparation.

Cl. 17. Sec. 3: Definitions: — The terms 'proprietor' and 'ryot' have now been defined in addition to 'landlord' and 'tenant'. In the previous Bill, the only one of these four terms defined was 'tenant.' That Bill merely enumerated under the term 'landlord' two broad classes of landlords, neither of which included the zemindari ryot in his position as landlord of his under-tenants, though he was so included the Government ryot in the same position. But, obviously, in regard to their respective

Cl. 16. Sec. 2: Repeal: — The Malabar Tenancy Act (Act XIV of 1887) will come into force on the 1st October 1887. This Act, which will then be repealing Act VIII of 1865, is the principal Act now in force in Malabar. Its provisions that [illegible] Government is liable to the [illegible] Courts, [illegible] Civil Courts, which will then be constituted under the Civil Courts Act, [illegible] Act, [illegible] Act — a plaint which must be stamped under the Court-fees Act, [illegible] Act — a plaint which must be stamped under the Court-fees Act, [illegible] Act — a plaint which must be stamped under the Court-fees

under-tenants, the zemindari ryot and the Government ryot are landlords of precisely the same kind, equally to be legislated for as such; and both will fall under the general definition, in the present Bill, of a 'landlord' as "a person immediately under whom a tenant holds". This definition, it will be observed, does not, as in the Bengal Tenancy Act, include the Government; nor does the definition of 'ryot', as now framed, include the Government ryot — the relations between the Government and the Government ryot as landlord and tenant being already legislated for, in this Presidency, by Madras Act II of 1864. The definition of 'tenant' in the present Bill is the same as in the Bengal Tenancy Act. The definition of 'ryot' has been adapted from that Act so as to limit the term to ryots in proprietary estates, the Government ryot, as ryot, not falling within the scope of the present Bill. The definition confines the term to tenants holding for ordinary agricultural purposes immediately under a proprietor, and thus correctly expresses what the people themselves understand by a 'ryot' in a proprietary estate. The definition of 'proprietor',

To the explanation to the definition, a proviso has been added so as to make it clear that a tenant cannot, by the mere right to cultivate the compound or yard attached to his house, acquire the status of a 'ryot'.

~~which has been taken, with some amplifications, from the Madras Proprietary Estates' Village Service Act (II of 1894), limits the~~ ~~[illegible]~~ when ~~taken~~ read with the definition of 'estate' which has been taken from the Madras Proprietary Estates' Village Service ~~[illegible]~~ Act (II of 1894), limits the term ~~[illegible]~~ to proprietors of estates comprising at least one whole village. Some reasonable limit of this sort is necessary to avoid the absurdity, for instance, of a village ~~[illegible]~~ sweeper, owning a service ~~[illegible]~~ inam of an acre or so, being ranked as a 'proprietor.' Such owners will be merely 'landlords'. The term 'inamdar' was defined in the previous Bill; but in view of clause (d) of the present definition of 'estate' such definition is unnecessary. The ~~[illegible]~~ inamdar is ~~being~~ only a particular kind of proprietor whom there is no necessity to define ~~[illegible]~~ any more than 'zemindar' or 'jaghirdar', ~~[illegible]~~ ~~particular kind of proprietor~~. To the definition ~~of proprietors~~, an explanation has been added which ~~makes~~ clear what was ruled in I. L. R. XV Mad. 484, that in a zemindari the only zemindar, in cases of dispute, is the registered zemindar, and which also removes doubt in the case of joint-owners of estates. These four terms — 'proprietor', 'ryot', 'landlord' and 'tenant' — as now defined, will completely cover every position of the persons whose relations are intended to be regulated by the ~~present~~ new

In the term 'proprietor' are included persons for the time being in the shoes of the proprietor — assignees, mortgagees with possession, ~~[illegible]~~ managers of estates of disqualified owners, and the like — between whom and the tenants of the estate it is necessary, for the proper carrying on of the business of the estate, that the provisions of the act should be made applicable.

Act. The separate definition of 'proprietor' and 'ryot', as distinguished from 'landlord' and 'tenant', is especially necessary because the proprietor and the ryot are in fact, as so distinguished, the important persons in the Bill. It is the particular relation of proprietor and ryot, and not the general relation of landlord and tenant, which dominates the greatest object of the whole measure — the securing of the occupancy right, which is, as in the Bengal Act, to be prescriptively acquired only by the ryot against the proprietor and not by the under-tenant against the ryot qua landlord.

X In defining the definition of 'village' from the Madras Proprietary Estates' Village Service Act (II of 1894), the circumstance that the village forms the unit for the census's revenue accounts has supplied a convenient basis for definition. In the Presidency there have always been Census and village accounts in proprietary estates, and where revenue survey — which supplies the basis of the definition in the Bengal Tenancy Act — takes place, the village map will follow the area according to the census's accounts.

In the Bengal Tenancy Act, the term 'holding' is defined in contradistinction to 'tenure'

and is limited to the interest of a 'ryot'; but in this Presidency the Bengal provisions for 'tenure-holders' are inapplicable, nor is any necessity to confine the term to holdings immediately under a proprietor. The definition has in the present Bill accordingly been extended so as to cover the interest of every 'tenant'.

In defining 'rent', care has been taken to admit of the necessary distinction being made, in the actual working of the Act, between the rent proper of land and what is legally or usually recoverable as, or along with, rent. The definition in the previous Bill brought water-tax, tree-tax, lawful cesses, &c, as well as the rent proper of the land under the whole range of the Act, though the intention was only to bring such charges within the Act for the purpose of permitting them to be paid, deposited and recovered in the same manner as the rent proper. This would have given rise to difficulties in connection with certain portions of the Act — e.g. those relating to enhancement and reduction of rent — properly applicable only to the land-rent: and the better plan of the Bengal Tenancy Act has, therefore, now been followed, by specially providing that such cesses &c are only included in the term 'rent' for the purposes of certain appropriate

sections. In the case of water-tax, such special provision is made only where the tax is not consolidated with the rent of the land; for where it is so consolidated, as in the case of land permanently classified as 'wet', the whole becomes, under existing rulings, rent proper.

18. Chapter II: Sec. 4: classes of tenants: — The only three classes enumerated are occupancy ryots, non-occupancy ryots and under-tenants. There are no 'tenure-holders' in this Presidency of the kind to which the provisions of the Bengal Act would be applicable. There are cases in which villages and groups of villages have been assigned, mortgaged with possession or let out on terms of years; but these tenures have been created by contracts, the terms of which must be enforced and which it would be neither necessary nor equitable to vary by the operation of such provisions. Such lessees, mortgagees and assignees, who are for the time being in the shoes (as already explained) of the proprietor, are properly included, for the purposes of this Bill, in the definition of 'proprietor'. There appears no necessity for any special classification of 'ryots holding at fixed rates'. The provisions of the Bill for enhancement of

'The other two classes enumerated in the Bengal Tenancy Act — 'tenure-holders' and 'ryots holding at fixed rates' are omitted.'

money-rents are made inapplicable to rents fixed in perpetuity. The definition of 'under-tenants' has been extended so as to include those holding under Government ryots, who may be 'landlords' but are not 'ryots' within the meaning of this Bill.

17. Chapter III : Occupancy ryots : secs 6 to 8 : general : — Although, for the reasons already given, every proprietary-estate ryot cannot be at once declared to be an occupancy ryot, every presumption is made, by section 7 and sub-section (5) of section 8 of the Bill, in favor of his possession of the occupancy right. These provisions effectually cure that part of the ruling in Chockalingam's case (VI M. H. C. R. 64) which, while in effect it recognised the existence of occupancy right in the zamindari ryot as a customary right, threw upon the ryot the burden of proving the custom. This in itself is an immense advance in the protection of the ryot. Further, while sub-section 5 of section 8 of the Bill permits the ryot to acquire occupancy right at any time by written agreement with the proprietor section 8 enables him to acquire it prescriptively, as against the proprietor, [illegible] by the mere fact of continuously holding

any land as a ryot in the village, whether under lease or otherwise, for a period of twelve years — in other words, by attainment of the personal status of a twelve-years ryot (or 'settled' ryot, as the Bengal Act phrases it), such status giving the occupancy right not merely, as the previous Bill limited it, in particular land held for twelve years, but in all land for the time being held by the ryot as a ryot, in the village. It may happen, however, that the completion of the twelve years' continuous holding occurs during the currency of a lease for a term; and this creates a position of considerable difficulty. It appears manifestly unfair to the proprietor, and indeed unpracticable, to confer occupancy right in the land by sheer statutory force in the middle of a lease; while it is practically certain that to exclude holding underleases from counting towards the twelve-years rule will be tantamount to conferring non-occupancy ryots from the prescriptive acquisition of occupancy right altogether. For with so simple a means at his hand of preventing the acquisition of occupancy right against himself, it is not likely that any proprietor will admit a non-

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occupancy ryot to the cultivation of his land except under a lease for a term. The fairest solution of the difficulty seems to be a provision which, while not impeding the ryot's attainment of the personal status of a twelve-year ryot, will leave the proprietor free to let the particular land, on expiration of the current lease, to another non-occupancy ryot if he so chooses. It is with this object that the proviso to sub-section (1) of section 8 has been inserted? The definition of 'ryot' in section 3 confines the prescriptive acquisition of occupancy right to lands held for ordinary agricultural purposes, while section 184 bars such acquisition in the case of the proprietor's private lands — in which, it need hardly be said, occupancy right can properly be acquirable only by contract. In sub-section (3) of section 8 the words "or assign," which were inserted after the word "heir" in the corresponding sub-section of the previous Bill, have been omitted in view of the fact that the personal status under the twelve-years rule is only heritable and not transferable. It would defeat the whole principle of the rule if the stranger-purchaser

from a non-occupancy ryot of eleven years' standing, for instance, could in one year acquire the personal status of a permanent ryot of the village. All these provisions taken together, the Government considers, place the acquisition of the occupancy right on the simplest, fairest and firmest basis practicable.

20. Secs 9 to 14: incidents of occupancy right: — By section 10, the Bill, following the Bengal Tenancy Act, adds to the incidents of occupancy right provided for in the previous Bill the important right that the occupancy ryot shall pay rent for his holding at fair and equitable rates. And by the last part of section 9, the Bill, unlike the previous Bill, adopts the salutary provision of section 23 of the Bengal Tenancy Act which prevents the occupancy ryot from cutting down trees in contravention of any local custom. By section 11 the occupancy ryot is protected from ejectment except on the same grounds as in Bengal.

21. Secs 15 to 24: enhancement of rent: — The rent of an occupancy ryot can, by this Bill, be enhanced only if it is on certain specified grounds. money-rent and then only by suit. The protection of the ryot against enhancement is thus carried further than by either the

previous Bill or the Bengal Tenancy Act.

* It is only money-rent which is, by the Bengal Act, protected from enhancement except in the manner therein provided; but by section 16 of the present Bill no rent, whether money-rent or rent in kind, can be enhanced except under its provisions and these provide only for the enhancement of money-rent. Where rent is paid in kind, that is, at a certain proportion of the produce, the proprietor already participates in the effects of increase in the productive power of the land or in the price of its produce, and thereby obtains the practical advantage of an enhanced rent on either of those grounds. And where the system of produce-rents exists, it forms, as stated by the Government in forwarding the previous Bill, "a most formidable obstacle to landlords realising fair rents and offers to the tenants great opportunities for fraud." The provisions for commutation will enable proprietors to avail themselves, by converting grain-rents into money-rents, of the rules for enhancement. On the principle, therefore, and as a means of discouraging produce-rents and so assimilating the system to that obtaining between Government and its ryots, enhancement is, by the present Bill, limited to money-rents.* Special provision for enhancement by contract in the circumstances of this Province, is, unnecessary and unsafe. Under the system of puttahs and muchilkas which obtain there, and which this Bill maintains,

these record the existing rent agreed to by the parties; and by simply omitting special provision for enhancement by contract, the effect would be that what the parties agreed to, as evidenced by the exchange of puttah and muchilka, would be valid; while, if they disagreed, they would have to go before the authority empowered to adjudicate on such disputes. No necessity, therefore, appears for special provision, even if enhancement by contract be allowed. But in view of the rack-renting which, in the northern Districts, has resulted from enhancement by contract — some of the Godaveri zemindars, for instance, charging Rs 40 per acre on lands of the same quality as those on which the neighbouring Government ryots pay Rs 9 — and of the insecure position to which the ryots have been thereby reduced in their unequal contest with the proprietors in so large an area of the Presidency,* it would be very unsafe to continue to allow enhancement except with the sanction of the Collector or a Court. Nothing short of such a restriction, where the ryot is so unequally matched with the proprietor in the matter of refusing to agree to an enhancement of rent, will, in the opinion of the Government, considers, suffice for the adequate protection of the ryot. The Bill accordingly permits enhancement only by suit before the Collector. * Sub-para. The previous Bill, following the Bengal Tenancy Act, vested the jurisdiction, in such suits, in the ordinary Civil

* Mr Chentsal Rao, an experienced native, depicted the state of affairs, so far back as 1881, (and matters have not improved since then) in these terms — "At present

(here entry from page 34 of my note)

Courts. Questions of the alteration of rent will, however, be usually mere questions of fact, in adjudicating which the Revenue Officer's facilities for local inspection and his ordinary Revenue experience are, in the opinion of the Government, calculated to give him a distinct advantage. The present Bill accordingly extends the jurisdiction in enhancement suits — and, indeed, in all suits and proceedings relating to the alteration of rent whether by enhancement, reduction, commutation or change with area — to the Collector. In matters of this kind which can rarely involve questions of law and on which the Revenue Officer's decisions will, in fact, not be decisions to endure for all time but only for fifteen years (section 24), the Government further considers it desirable to restrict the right of second appeal and the re-opening of questions in the Civil Courts, which are privileges all in favour of the man with the long purse. In such matters, therefore, it may at once be stated, the Bill, by section 31, absolutely bars the intervention of the Civil Courts either by suit or by injunction and, while allowing an appeal to the District Collector from the decision of the Collector, makes the District Collector's decision at the same time providing final, subject only to the provision, in order

to secure the necessary uniformity on such points of law as may possibly arise, that the ~~[illegible]~~ Officer trying the suit or appeal may, as in section 18 of the Madras Hereditary Village Offices Act (III of 1895) refer any question of law, usage or construction to the Board of Revenue, the correctness ~~[illegible]~~ whose decision is not allowed to ~~[illegible]~~ be contested. ✗ Sub-para Turning to the grounds on which enhancement of rent is permitted, as compared with the Bengal Tenancy Act, the ground of the ryot's rent being below the prevailing rate for similar lands in the village has ~~[illegible]~~ been omitted, and the ground of increase in the productive powers ~~of~~ the ryot's land by a Government work, in consequence of which the proprietor has been required to pay additional revenue, has been added, ~~[illegible]~~ as in the previous Bill. ✗ Sub-para In connection with enhancement on the ground of rise in prices, the circumstance has had to be considered that while in the northern districts the zemindars have for nearly a century been exercising the power of raising rents and it is now difficult to go back on transactions extending over so long a period, ~~[illegible]~~ this has not been the case in some ~~[illegible]~~ at least of ~~speaking~~ the Southern Districts; and it may be necessary, therefore, to treat these portions of the Presidency differently in regard

A proviso, the equitableness of which is obvious, has however been inserted which protects the ryot, in such cases, against an enhancement exceeding the sum which the proprietor has to pay to Government on account of the improvement made by it.

to enhancement (and conversely, reduction) of rents on this ground. The doubt is whether, where it has not been customary for the proprietor to raise rents on the ground of rise in prices, he should now be permitted to do so by statute. The Government, as at present advised, considers it safer to make provision for barring enhancement on this ground in those estates or districts in which it has not been customary. If, however, this object were sought to be attained by a mere general proviso to this effect, it is feared that such a proviso would lead to a great deal of litigation in which the proprietor, with his longer purse and his superior position in regard to the power of producing proof of custom, would be at an undue advantage over the ryot. The better course, the Government considers, is to provide that the clause for enhancement on the ground of rise in prices shall not apply in particular named districts or estates in which it shall have first been ascertained that such enhancement has not been customary. It is believed that such enhancement has never been customary in the estates in Salem, Madura and Tinnevelly districts. A proviso has accordingly been added to section 17 (and, of course, to the cor-

responding section for reduction of rents)
excluding these three districts from the
application of that clause. At the same
time, the Government is making further
enquiry as to the existence or non-existence
of the custom in these or any other dis-
tricts, and this proviso must not be
taken as a definite pronouncement on the
point. Should the results of such further
enquiry show modification or deletion of
the proviso to be advisable, this can be
effected in Select Committee; but it is
not thought desirable to delay the pas-
sing of this Bill pending the com-
pletion of that enquiry, which must neces-
sarily take considerable time. X A pro-
vision similar to sec. 38 of the Bengal
Tenancy Act has been added to this Bill
(section 22) empowering the Collector to
refuse any enhancement which, under the
circumstances of the case, would be unfair
or inequitable. In the Northern Districts
the existing rents are in many cases already
so high that, if increased on any of the
grounds sanctioned, they would be higher
than the lands could bear. No such pro-
vision was made in the previous Bill.
X Money-rents fixed in perpetuity, as for in-
stance under ancient grants, are of course
saved from enhancement.

22. Secs 25 and 26 : reduction of rent :
— There is nothing, however, in the Bill to prevent rents, whether fixed in perpetuity or not and whether payable in money or in kind, being reduced by ~~contract~~ agreement. And for the further protection of the ryot, the Bill, by sec. 25 (1) clause (d) provides for reduction of his rent on the ground that it has been unduly raised since the 1st May 1871, the date of the decision in Chockalingam's case, to which reference has already been made and in consequence of which it is believed that rents have from time to time been arbitrarily enhanced in the northern districts. This was the object of the corresponding clause of the previous Bill, though it was differently worded.

23. Sec. 27 : commutation of rent : — The provisions for commutation, which reproduce those of the previous Bill, are practically the same as in the Bengal Tenancy Act.

24. Secs. 28 to 31 : alteration of rent with area : — Provision is now made, as in the Bengal Tenancy Act, for alteration of rent with area. This was omitted in the previous Bill ; but there is nothing of more common occurrence in the trial of rent suits, in this Presidency, than

disputes as to the correctness of the rent with reference to the extent of the holding: and the usual course, in such cases, is to appoint a more or less untrustworthy Commissioner, on whose report as to measurements &c, the accuracy or otherwise of the puttah is determined. Instead of leaving such disputes to be settled in this manner after matters have reached the stage of a suit, it appears very advisable that proprietor or ryot should be enabled in the first instance, independently of any suit, to obtain a rectification of the rent with reference to the area of the holding wherever such rectification appears right and equitable. ~~[illegible]~~ ~~the proprietor's own fault if, by omitting to take advantage of such provision, he risks the loss of his dues on a puttah inaccurate in its most important particular, the amount of rent~~ In the Bengal Tenancy Act, the provisions for alteration of rent with area are made applicable to all tenants; ~~[illegible]~~ but in this Bill, they are limited to occupancy ryots. It is in the case of occupancy ryots ~~[illegible]~~ holding under puttahs, which are generally left unchanged year after year notwithstanding actual changes in the holding by encroachment or otherwise, that the matter becomes really serious. In the case of non-occupancy ryots, who will generally be holding under leases for ~~[illegible]~~ terms, ~~[illegible]~~ and in the case of under-tenants, it

~~the Government considers it indirectly to~~
~~[illegible] by the~~
~~[illegible]~~
~~[illegible]~~

will be for the parties ~~[illegible]~~ once for all, to see, that everything is correctly entered in the lease. ~~[illegible]~~ ~~[illegible]~~. It is the fact ~~[illegible]~~ that, in this Presidency, proprietors have always possessed the right of entry and measurement in respect of holdings in their estates. This right was recognised in section 34, clause 8, of Regulation XXVIII of 1802; and the Government is unable to discover sufficient ~~[illegible]~~ ground for limiting the exercise of the right, when such right is allowed, to ~~[illegible]~~ one occasion in ten years, as is done by sec. 90 of the Bengal Tenancy Act. But, while allowing free exercise of the right to enter upon and measure in order to prevent proprietors from making practical enhancements of rent under colour of rectification with area, and in order to protect ryots from being induced to agree to fictitious areas, ~~[illegible]~~ that alteration of rent with area should be permitted only by order of the Collector upon application in that behalf made to him by either party. With these modifications, the Bill adopts the provisions of the Bengal Tenancy Act on this subject.

~~[illegible]~~ the holdings of occupancy ryots, the Government considers it necessary,

This restriction is imposed by the latter part of section 29 of the present Bill.

25. Chapter IV: secs 32 to 36: non-occupancy ryots: — The scheme of the Bill for facilitating the acquisition of the status of an occupancy ryot by the non-occupancy ryot ~~[illegible]~~ is, with some ~~slight~~

fications, the same as that of the Bengal Tenancy Act, which was followed in the previous Bill. Under that scheme, the non-occupancy ryot cannot be ejected on the ground of expiration of the term of lease unless it is his initial lease and has been registered; while if he is allowed to remain on and submits to the equitable enhancement of rent determined by the Court, he becomes entitled to continuance of occupation at that rent for a term of five years, on expiration of which term he is liable to ejectment unless he has meanwhile acquired a right of occupancy — that is, unless he has meanwhile completed twelve years' continuous holding as a ryot in the village. While conceding that some special facility for acquiring the status of an occupancy ryot should be afforded to the non-occupancy ryot who, by having been allowed to remain for at least seven years, may be presumed to have proved himself a good tenant, the Government does not see why ejectment on the ground of expiration of the term of a lease should be altogether limited to the initial lease. Supposing the proprietor lets a non-occupancy ryot in first for three years and then again for one to the Government to be proprietor there appears no sufficient reason why the should not be at liberty to eject the ryot on expira-

tion of the second term. The present Bill, by sec. 34 clause (c), accordingly admits of the ryot's ejectment either on expiration of an initial registered lease, or on expiration of a subsequent registered lease when the ryot has not been in continuous occupation for altogether seven years. X Again, the proper object of ensuring a further term to a non-occupancy ryot who, by seven or more years' continuous occupation, is presumed to have proved himself a good tenant and who has submitted to an equitable enhancement of rent, is only to secure to him such continuous holding as will make up the twelve years requisite to give him the personal status of an occupancy ryot. ~~The attainment of this status is also that such a ryot can reasonably expect. But the Bengal Legislature [illegible] a ryot who has already held for, say, 10 years a further term of 5 years thereby giving him an [illegible]~~. This being the proper object of the rule, the ryot can fairly be required to be content with having attained that personal status, without being entitled to continue with occupancy right in the particular land leased to him after expiration of the further term for which the tenancy of it was continued to him just for the purpose of making up the necessary period of twelve years. X The present Bill accordingly, by sec. 36 clause (7), secures to the non-occupancy ryot whose occupation has be

— omitting the section of the previous Bill which corresponded to section 47 of the Bengal Tenancy Act.

continued beyond his initial lease, ~~[illegible]~~ ~~further~~ and who has submitted to an equitable enhancement of rent by the Collector, only such further term, ~~[illegible]~~ not exceeding five years, as may be requisite to make up a total continuous holding of twelve years, and ~~[illegible]~~ renders him liable to ejectment on the expiration of that term. This provision, following the same principle of not imposing occupancy right by sheer statutory force during currency of a lease on which the proviso to sub-section (1) of section 8 has (as explained in para 19 of this letter) been based, will secure the position which seems to the Government to be fairest to both parties, leaving the proprietor free to let that particular land to another non-occupancy ryot if he chooses, and leaving that particular ryot in possession of the personal status entitling him to occupancy right thenceforward in that land if again continued in its occupation, or in any other land to which he may be admitted in the same village.

~~[illegible]~~

X Subpara

Following the principle on which questions of rent have (as explained in para 21 of this letter) been left to the Revenue Courts, the determination of an equitable rent, where the proprietor and the non-occupancy ryot cannot agree as to enhancement, and consequently the jurisdiction in suits for ejectment on the ground of refusal to agree to an enhancement of rent is, by clause (b) of section 36 of the

Bill, entrusted to the Collector and not, as in the previous Bill and in the Bengal Tenancy Act, to the Civil Court, ~~[illegible]~~

The effect is that if the proprietor seeks to eject a non-occupancy ryot for failure to pay rent or for misuse of the land or breach of conditions of the tenancy or on the ground of expiration of a lease, he will have to resort to the Civil Court; but if he seeks to eject the ryot for refusal to agree to an enhancement of rent, he will have to go to the Collector who, in the opinion of the Government, is the proper person to decide suits regarding rates of rent. The 'prevailing rate' of rent for similar lands in the village ~~[illegible]~~ not being ~~[illegible]~~ a safe criterion for enhancement where rack-renting is general, as in the Northern Districts, the present Bill does not, as in the previous Bill and in the Bengal Tenancy Act, lay down any such criterion for the guidance of the Collector in determining what rent is fair and equitable in a suit for ejectment on the ground of refusal to agree to an enhancement. Nor does the present Bill bar a decree for ejectment ~~[illegible]~~ in such a suit from taking effect until the end of the revenue year in which it is passed. The Government sees no reason why, ~~[illegible]~~ in case of refusal to agree to an equitable enhancement of rent deter-

mined by the Collector, the tenant should not be forthwith ejected. The present Bill, again, omits, in section 33, the proviso contained in the corresponding sections of the previous Bill and of the Bengal Tenancy Act that nothing in the section limiting the enhancement of a non-occupancy ryot's rent to enhancement by registered agreement or by agreement under section 56 shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed. The effect of such a proviso might be that the ryot, having been induced by his landlord to agree verbally to an increased rate of rent, might afterwards be bound to it — which is precisely that it is desired to prevent ... By this Bill the non-occupancy ryot is not, besides that he may be ejected by a regular suit in the Civil Court for failure to pay arrears of rent, by sections 129 to 132,

be summarily ejected under the Collector's warrant when he is found to be in arrear at the end of a revenue year and when there is no sufficient distress upon the premises to satisfy the arrear. Non-payment of rent is, in the case of the occupancy ryot, not made a ground for ejectment; but in the case of the non-occupancy ryot, who is not so protected, ~~the~~ the Government considers it only fair to the landlord to provide a summary means of ejectment, instead of the tedious and expensive process of a regular suit, when the tenant is over at the end of the revenue year proved, by ineffectual distraint, unable to pay the rent.

26. Chapter V: sec. 37: under-tenants: — For the same reason, the protection of the under-tenant against ejectment except on the ground of expiration of the term of his lease is, by section 37 of the Bill, made subject to the provisions of sections 129 to 132.

27. Chapter VI: Secs 36 and 37: Rates of rent: — In the decision of suits involving disputes regarding rates of rent, the Bill, by section 38, merely directs that all contracts to pay rent, not inconsistent with its other provisions, shall be enforced: and by section 39, following sec. 51 of the Bengal Tenancy

Act, the Bill provides that the tenant shall be presumed, until the contrary is shown, to hold at the same rent as in the last preceding revenue year. X Lib. para The previous Bill, following more or less the provisions of sec. 11 of the existing Act VIII of 1865, laid down further rules for determining disputed rates of rent in such suits; but, in view of the other provisions of the present Bill, these rules become unnecessary or inappropriate. The suits in which disputes regarding rates of rent commonly occur are suits to enforce acceptance of puttahs or to set aside distraints or attachments, the usual contention of the ryot in such suits being that the puttah tendered or alleged to have been tendered to him is bad for demanding an improper rent. In such suits pending when the new Act comes into force, disputed rates of rent will be determined (as explained in para 16 of this letter) under the provisions of sec. 11 of the existing Act VIII of 1865. In such suits instituted after the new Act comes into force, if an enhanced rent over that of the previous year is claimed — and this is the most common cause of dispute — the Collector will simply have to see, in the case of an occupancy ryot, whether such enhancement (enhancement by contract being prohibited in the case of occupancy ryots) has been decreed in a separate suit for the purpose under section 17, or (for there is nothing in the Bill to prevent a proprietor from giving a puttah to a non-occupancy ryot, if he chooses) in the case of a non-occupancy ryot whether

there is a registered agreement under section 33, or an agreement under section 36, for such enhancement — failing which, the Collector will pronounce the puttah bad in respect of the rent demanded, and will determine the proper rent by that payable in the preceding year, ~~[illegible]~~ unless the ryot ~~being an occupancy ryot~~ is able to show that he is entitled to a reduction of the existing rent. ~~by contract or by decree in a suit under section 35~~ In cases where there is no existing rent as a starting-point, that is, in the first letting of immemorial waste for ordinary agricultural purposes or in the first re-letting of cultivated land which has been left waste through abandonment or surrender; as also in cases of agreements for reduced rent of occupancy ryots; in cases of provisions in puttahs for the rate of rent varying with the nature of the crop cultivated; in cases of non-occupancy ryots and under-tenants holding under written leases; and in cases relating to proprietors' private lands, the rule (section 38) that contracts not inconsistent with the Act are to govern the decision of disputes as to rates of rent will apply. This rule, taken together with the other provisions of the Bill that the tenant is presumed to hold at the same rent as in the preceding

(section 39)

year, that the existing rent is presumed (section 15)
to be fair and equitable, and that it can
only be altered in certain ways and on
(sections 16, 17 and 28)
certain grounds specified. Supplies all that
the of Courts and Collectors
appears to be necessary for guidance in
disputes regarding
settling rates of rent.

28. Secs 40 and 41: arrears of rent:— The
rate of interest on arrears, as compared
with that prescribed in the previous Bill,
in Act VIII of 1865 and in the Bengal
Tenancy Act, has been increased by section
41 of the present Bill, from 12 to 12½
per cent per annum. This rate works
out to 2 pies per rupee per mensem, and
will simplify calculation — for which
purpose also, it is provided that fractions
of a month and of a rupee may be
disregarded. The increase in rate is very
slight and a high rate of interest is,
in the opinion of the Government, desirable
in such cases, as it tends to make the
tenant punctual as to payment. The
further provisions of the previous Bill which,
following sec. 68 of the Bengal Tenancy Act,
was proposed to impose penalties by way
of damages for unreasonable neglect or refusal
by the tenant to pay rent and for unreason-
able demand by the landlord, have been
omitted. The idea is an entirely strange
to this Presidency, and if there is wrongful
loss caused by either party the ordinary remedy

by a suit for damages appears to be sufficient. The provision of the previous Bill which, as in sec. 55 of the Bengal Tenancy Act, would enable the tenant, in making a payment on account of rent, to have it credited to any year or instalment declared by him and, in the absence of such declaration, would enable the landlord to credit it to such year and instalment as he thought fit, has also been omitted. It merely re-iterates the existing law, under the Contract Act, as to appropriation of payments.

27. Secs 42 to 44 : receipts : — To facilitate the paying of their rents, and the obtaining of receipts, by tenants and to prevent their being driven perhaps to go many miles for such purposes, the present Bill, by section 44, besides providing for payment by postal money-orders, presumes the headman of each village to be the landlord authorised agent for the purpose of receiving rents and granting receipts, unless the landlord has duly appointed for such purpose as his authorised agent some other person resident within the village or within three miles of it. This provision is intended to maintain as far as poss

ible, ~~the general custom~~ consistently with not imposing on the proprietor a perhaps inefficient or untrustworthy agent in each village, the general custom of the country whereby the ryots pay their kists to the village headman.

X Lb para The remaining provisions of the Bill, in regard to receipts, are the same as in the previous Bill, which omitted such portions of the corresponding part of the Bengal Tenancy Act as are inapplicable ~~[illegible]~~ or unnecessary in Madras.

30. Secs 45 to 48: deposit of rent: — These provisions, which substantially reproduce those of the previous Bill and of the Bengal Tenancy Act, now make it clear that the rules as to deposit of rent have reference only to money-rents; that the deposit must be a deposit after, and not before, the rent has become due; and that the ~~[illegible]~~ rent which the tenant may apply for permission to deposit is that the tenant considers to be the full amount due ~~for~~ by him at the time, as decided in I.L.R. XV Cal. 166, and not necessarily the amount actually then due. X Lb para The power ~~[illegible]~~ of receiving and disposing ~~[illegible]~~ of deposits is, like ~~[illegible]~~ all other questions

of rent, vested in the Collector instead of; as in the previous Bill and in the Bengal Tenancy Act, in the Civil Court; and in order that every reasonable facility may be given to the tenant to preserve his rights by the deposit of his rent provision is made by section 45, for similarly empowering any other Revenue Officer — for instance, the Tahsildar or Deputy Tahsildar — whom the Government may appoint in this behalf. ~~The Bill is thus more liberal than its predecessors in respect of this important privilege of the ryot.~~

31. Secs 49 to 51: produce rents: — In regard to produce rents, the Bill exactly follows the Bengal Tenancy Act and the previous Bill.

32. Chapter VII: Recovery of Rent: secs 52 to 61: puttahs and muchilkas, and written agreements: — In the case of occupancy ryots, the puttah is, by section 52 of the Bill, and in accordance with the existing law as laid down by the Full Bench in VII Mad. H. C. R. 312, made a pre-requisite to the recovery of rent whether by ordinary suit in the Civil Court or by the special procedure of distraint or attachment and sale under the Act itself. In the case of non-occupancy ryots and under-tenants, the taking of a written agreement specifying the rent to be paid is, by section 61, made a pre-requisite to recovery by distraint under the Act, but not to recovery by ordinary suit. But there is nothing in the present Bill, as there was in the previous Bill which limited the term 'puttah'

to the engagement with an occupancy ryot, to prevent a proprietor from giving a puttah ~~to~~ that is, an engagement without limitation of term — to a non-occupancy ryot. ~~[illegible]~~

Instead of permitting puttahs and muchilkas to be altogether dispensed with by ~~[illegible]~~ agreement of the parties, and thus leaving the Courts without anything documentary to assist them in the settlement of disputes, the existing Act VIII of 1865 does, the Bill, by section 60, provides that puttahs and muchilkas once exchanged ~~may~~ shall remain in force until the revenue year for which fresh puttahs and muchilkas are executed, even when the puttah and muchilka have been exchanged for only one year; while section 56 permits them to be exchanged for periods of any number of years. ~~The~~ provisions, while ensuring that there will always be a puttah and muchilka to go by, will obviate the immense and needless trouble which would be entailed if the proprietor of an estate were compelled to grant a fresh puttah to each ryot for each revenue year, and will thus assimilate ~~[illegible]~~ the system to that obtaining between the Government and its ryots. Under the existing Act VIII of 1865, the propriety of the puttah in every single particular is a necessary condition precedent to the recovery of rent. ~~under its provisions~~ This

There are innumerable cases in which the holding and the charge on it do not alter for many years, and these

has been proved by experience, particularly
in the Southern districts where the ryots have
always been able to more than hold their
own with their landlords, to interpose a
serious obstacle to the recovery of even
their just dues by proprietors; and it
is necessary, in fairness to the landlords,
to prevent a puttah from
being completely annihilated by some perhaps
unimportant inaccuracy in a multitude of de-
tailed stipulations. The present Bill
accordingly provides, by section 52, that when
proceedings for the recovery of rent are
taken on a puttah which is not entirely
but substantially correct, such proceedings
shall be valid to the extent that the
puttah is correct. It will be for the
Court to decide in each case whether, in
view of the various conditions, the puttah
is substantially correct; but inasmuch as
stipulations for termination of the tenancy at
a time stated (which transgresses the essential
principle of a puttah as an engagement
without limitation of term) or in restriction
of cultivation or harvesting (which interfered
with the legitimate freedom of the ryot)
are such as go to the root of the proper
relation between the parties and have, in
numerous cases decided by the Madras Hyde
Court, been consistently held to be invalid,
the Bill also provides, for the guidance of
the Courts, that no puttah can in fact be
held to be substantially correct which contains

any stipulation of these particular kinds.

X. Before The jurisdiction in suits and proceedings for the alteration of rent ~~being~~ being vested in the Collector and the rate of rent to be paid being the most important item in a puttah, the disposal of suits to obtain puttahs and ~~for~~ to enforce the acceptance of puttahs is, by sections 57 and 58 of the Bill, retained in the Revenue Courts instead of being transferred, as in the previous Bill, to the Civil Courts.

33. Secs 62 to 93: Distraint and sale of movable property: — Except that the various sections have been re-arranged in the proper sequence of events, and that the jurisdiction in suits and proceedings ~~the provisions~~ relating to distraint and sale of movable property has been retained in the Revenue Courts, the provisions of the present Bill for the recovery of rent by this ~~[illegible]~~ special procedure are, with the few differences hereinafter noted, the same as in the previous Bill.

While allowing distraint only in cases in which the rent has been in arrear for any period not exceeding a year, the Bill, by section 62, provides that when a suit has been filed by a tenant to obtain a proper puttah from his landlord, the rent shall be taken to become due only from the date of final decree in the suit — the object being to prevent loss of the rent to the landlord when the litigation becomes prolonged, as it often does, for more than a year.

In connection with the service of notice of distraint, it is now made clear, by section 64 of the Bill, that the "usual place of abode" of the defaulter at which service is to be effected denotes some place in the neighbourhood of the land to which the distraint refers. This is in accordance with the ruling at I. L. R. XVIII Mad. 30, and will prevent such a contention as was therein raised that the phrase "usual place of abode" includes a residence in foreign territory.

Sale of the distrained property is, by section 78, as by the existing law, only authorised if the tenant does not, within thirty days from the date of distraint file a suit before the Collector or if such a suit is filed and is decided against the tenant, to set aside the distraint and the obligation upon the landlord to produce the distrained property at the time and place of sale is, by the proviso to section 79, made inapplicable to distrained products of a speedily perishable nature, such as mangoes or brinjals and the like, which it would be absurd to require the landlord to produce and which are, therefore, to be sold as early as possible by the distrainer under rules to be framed in this behalf by the Local Government.

By section 91, the landlord's power to proceed against a surety or his security obtains under the existing law but was omitted in the previous Bill, is preserved, with the additional proviso that no distraint is to be made upon the property of a surety until the arrear has been demanded

from the defaulter, unless the defaulter has absconded.

34. Secs 94 to 105: attachment and sale of land: — Occupancy right being the only saleable interest as against the landlord which a tenant has in his holding, the Bill makes it clear that the provisions for recovery of rent by attachment and sale of the tenant's interest in his holding are limited to occupancy ryots. Such attachment and sale may, by section 94, be, as in the previous Bill and in the Bengal Tenancy Act, in execution of a decree in the ordinary Civil Court for arrears of rent; or it may, by sections 95 to 97 following sections 38 to 40 of the existing Act VIII of 1865, be by special procedure before the Collector, that is, by service of notice upon the ryot of the proprietor's intention to sell the occupancy right and by the Collector's authority to sell if no suit is instituted before the Collector within thirty days from the date of service by the defaulter to set aside the notice, or if such suit is decided against the defaulter. To meet both courses, the provisions of the Bill after authorisation of sale of the occupancy right (sections 99 to 105) are framed so as to be applicable to all cases of attachment and sale whether in execution of a decree or in pursuance of the special procedure under the Act. These provisions, subject to the rule (section 100) that ~~the sales is to be conducted under the rules for the sale of movable property distrained~~

of a sale of occupancy right the proceeds are to be disbursed in the same manner as the proceeds of a sale of distrained property, are practically identical with those of the previous Bill. X Fol. para By section 98, rent is made a first charge upon occupancy right indefeasible by any other incumbrance.

Under all these provisions (from section 52 to section 105) for the recovery of rent, the landlord is, by this Bill, given every possible facility, considerably beyond that afforded by the existing law or the previous Bill or the Bengal Tenancy Act, to obtain payment of his just dues.

35. Chapter VIII: Secs 106 to 111: Repair of irrigation works: — While restricting to the District Collector the power to order the execution by the ryots of repairs to irrigation works neglected by the proprietor and the power to order recovery of the cost of such repairs by ultimate deduction from the rents payable to the proprietor, the Bill, by section 106, enables the District Collector to depute to a subordinate Collector the making of the necessary enquiry upon the ryots' application for an order authorising their execution of repairs; and by section 111, the interference of the Civil Courts with the District Collector's proceedings in the matter is absolutely barred, an appeal from any order issued by the District Collector being, however, allowed to the Board of Revenue whose decision will be final. The matter, though very important and novel, is one which, in the opinion of the

Government, should be left entirely in the hands of the Revenue authorities.

The provision, in the previous Bill, that no order authorising the expenditure of repairs to an irrigation work shall be passed only if twelve years shall have elapsed from the completion of repairs to the same work authorised by a previous order, has now been omitted. In the case of a work repaired in one year and breached in consequence of a cyclone the very next year, it seems indefensible that the ryots should be compelled to wait eleven years before being enabled to force the proprietor to repair, and the Government considers that the ryots should have power to enforce repairs in such a case at any time. The provision of section 25 (1) clause (b) of the Bill, which enables co-partnery ryots, in case of the complete failure of an irrigation work, to sue for reduction of rent, will no doubt afford relief while the work remains in disrepair; but the great object is to ensure that proprietors shall keep their irrigation works in proper order, and that provision is not in itself sufficient to secure this object effectually. With the foregoing modifications, the provisions of the present Bill for the repair of irrigation works are precisely the same

as those of the previous Bill.

36. Sec. 112 : illegal cesses : — Complaints having reached the Government of the levy of tree-tax in certain estates in the Salem District, it has been considered advisable to add to section 112 — which is in other respects the same as in the previous Bill — an explanation making it clear that the levy of any tax or fees, or other tax not included in the assets on which the pesheush of a permanently-settled estate has been fixed, is illegal.

37. Secs. 113 to 120 : improvements : — Compensation for improvements is, by the present Bill, following the principle of the Bengal Tenancy Act, restricted to ryots and not allowed to tenants generally, as in the previous Bill; and by section 119 compensation is awardable only in the case of ryots ejected otherwise than by sale for arrears of rent. An occupancy ryot whose holding is sold for arrears of rent will get compensation in the sale price if his improvements are worth anything, and should not get compensation as well. In the case of dispute as to the right to make an improvement or as to whether a particular work is an improvement, the

decision of the Collector is, by section 115, made final only if he is the District Collector. If the Collector is not the District Collector an appeal is allowed to the latter. It would, in the opinion of the Government, be unsafe, in disputes of the kind, to entrust such absolute power to a perhaps inexperienced Divisional officer. ~~[illegible]~~

In all other respects, the Bill is practically the same as the previous Bill and the Bengal Tenancy Act in the matter of improvements.

38. Sec. 121: acquisition of land for building and other purposes: — In view of the importance of the matter, and on the analogy of the Land Acquisition Act (I of 1894), the disposal of applications by landlords for the acquisition of their tenants' land for building and other special purposes is, by section 121 of the Bill, reserved to the Principal Civil Court of original jurisdiction, and in determining the amount of compensation to be awarded to the tenants in such cases, the Court is to add 15 per cent to the full value of the land and improvements, if any, ~~[illegible]~~ for the compulsory nature of the acquisition, and to be guided by the rules ~~[illegible]~~ enacted in Sections 23 and 24 of Act I of 1894 aforesaid. The opening and working of mines and factories is also added to the special purposes for which land may be acquired under

this section.

With these modifications the Bill follows the corresponding section of the previous Bill and of the Bengal Tenancy Act.

39. Sees 122 to 124 : Surrender and abandonment :— The provisions for surrender and abandonment of holdings are, as in the previous Bill, made applicable to all tenants, and are not limited to ryots as in the Bengal Tenancy Act; nor is provision made only, as in that Act, for surrender of the whole holding. By section 122 of the present Bill, provision is also made for the surrender of any part of a tenant's holding with such consent.

While surrender only of the whole holding is permitted without the landlord's consent

The presumption that notice of the tenant's intention to surrender has been given if the tenant ceases to reside in the village at least three months before the end of the reaping year — which formed place in the previous Bill, following the Bengal Tenancy Act — has not been omitted. It is a common case, in the Presidency, that a tenant does not live at all in the village in which his holding is situated.

To protect the undertenant in case of surrender or abandonment of his holding by his immediate landlord, section 124 of the Bill, following sub-section (4) of section 87 of the Bengal Tenancy Act, which

compels the superior landlord, where the whole or part of a surrendered or abandoned holding has been sub-let by a registered instrument, to offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant who has ceased to cultivate the holding and on condition of the sub-lessee paying up all arrears due by that tenant.

In other respects, the provisions of the Bill in regard to surrender and abandonment are the same as those of the previous Bill.

40. Secs 125 to 127: Sub-division of tenancy and transfers: — Instead of providing, as in the previous Bill, that a division of a holding shall not be binding on the landlord unless made with his consent, the present Bill, by section 125, enacts that it shall not be competent to a landlord to refuse to consent to the division of a holding and to the proportionate distribution of the rent payable in respect thereof, except in the case of division of a revenue field. X Sub para This is in accordance with the principle of placing the zemindari ryot in the same position as the Government ryot, who has always had the power to transfer the whole or any part of his holding as he pleases; and to impose such a restriction on sub-division as that which the previous Bill, following the Bengal Tenancy Act, would

have imposed, ~~[illegible]~~ would be to unsettle the ideas which have always obtained in this Presidency and which it is, in the opinion of the Government, essential to foster, that the ryot possesses rights in his holding which he can deal with as property. It is in order to prevent the inconveniences which might arise ~~[illegible]~~ from such minute sub-division as that of a revenue field, that it has been considered advisable to fix this limit ~~[illegible]~~ as that beyond which the landlord may veto further division.

The provisions of the Bill (sections 126 and 127) for the obligations and liabilities of tenants and their transferees in cases of transfer of holdings, and for the obligations ~~[illegible]~~ of proprietors and their transferees and ~~[illegible]~~ the liabilities of ryots in cases of transfer of estates, are the same as in the previous Bill except that, in the latter cases, the proprietor and transferee are not required to give written notice of the transfer to each ryot in the estate — which is practically impossible where ~~they~~ there may be thousands of tenants — but may give general notice by publication in the District Gazette and by placarding in the villages and in the public offices. ~~[illegible]~~

41. Secs. 128 to 132 : ejectment : — While providing, by section 128, that no tenant shall be ejected from his holding except in execution of a decree of a Civil Court or order of a Collector passed in accordance with the Act, the ~~[illegible]~~

Bill, by sections 129 to 132, provides for summary ejectment, by order of the Collector, of tenants who have no occupancy right to be sold, who are in arrear at the end of a revenue year and on whose premises there is no sufficient distress to satisfy the arrear. It seems to the Government to be only fair that the landlord, in the case of such hopeless tenants, should be saved the tedious and expensive process of ejectment by regular suit. At the same time the tenant (as already explained in para 10 of this letter) is given every reasonable opportunity of saving himself from ejectment up to the very last.

42. Chapter IX : sees 133 to 143 : Survey, record of rights and settlement of rents : — In connection with this subject, the Government has given full consideration to the suggested amendments of Chapter X of the Bengal Tenancy Act contained in the Minute and Bills prepared by Sir Alexander Mackenzie and in the other papers received with Mr. Sly's A.O.'s

(Por. Sept.) No. 4088/337-K.W. dated 31st Oct. 1896 and No. 296/71-K.W. dated 12th Feb. 1897. So far as those suggestions have special reference to a general settlement of rents on a large scale as matter preliminary to a settlement of Government land revenue, they are, of course, inapplicable to the circumstances of this Presidency;

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and it is only with reference to the preparation of a record-of-rights as a final record of existing facts that the subject has properly to be considered in Madras. In respect of the preparation of such a record, it will be found that the main difficulties experienced in the working of the Bengal Act, as interpreted by the Calcutta High Court, have been provided for in the present Bill.

The proper ultimate object of any procedure in this matter must be, in the opinion of this Government, to secure, as the last act of all, the publication of a record absolutely final and conclusive as to facts and rights existing at the time, which will give everybody concerned a definite unmistakeable starting-point for the future; and it is with this object that the proper sequence of the procedure, its character and its scope have to be determined. The framing of any record-of-rights which, after final publication, is made open to question in any particular will, the Government considers, be so much waste of money, time and labour.

The proper sequence of procedure, as pointed out by Sir Alex. Mackenzie, should be as follows—

(1) A rough record of existing facts under the various heads particularised — (a) the name of the landlord (b) the name of the tenant

(c) the class to which he belongs (d) the situation, extent and boundaries of his holding (e) the rent payable at the time the record is being prepared (f) the mode in which that rent has been fixed and (g) the special conditions and incidents if any, of the tenancy — is first ~~prepared~~ compiled by a subordinate staff working under the ~~[illegible]~~ officer deputed to prepare the record-of-rights;

(2) This rough record is read out locally and objections to it are heard and decided summarily, or after local inquiry, by the ~~[illegible]~~ said officer;

(3) The record thus framed is published in draft as a preliminary record;

(4) Further objections and proposals for alteration, after such draft publication, are heard and decided ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~; and

(5) The record, thus completed, is finally framed and published.

The present Bill, after specifying in section 134 the particulars aforesaid as those which must be included in the record, leaves the ~~[illegible]~~ ~~[illegible]~~ officer deputed to the duty free, by section 136, to frame the preliminary record as such enquiry as he sees fit, which will ordinarily be a departmental enquiry disposing of objections to rough records prepared in the villages by his establishments; and then compels him to make a draft publication of the preliminary record for a period of six months and to receive and hear any objection which may be made to any entry therein ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~

~~[illegible]~~ during ~~[illegible]~~ that period. When all objections to the preliminary record have been disposed of, section 138 directs the Officer to frame and publish the final record. ~~[illegible]~~ The Bill thus secures the right sequence of procedure, ~~[illegible]~~ under which there are two well-marked stages in the preparation of the record — (1) the enquiry ~~before~~ and disposal of objections before preparation and publication of the preliminary record (2) the disposal of objections to the preliminary record after its publication.

~~[illegible]~~ The later is the important stage, ~~[illegible]~~ experience having shown that until full publicity has been given to the ~~[illegible]~~ Officer's proceedings by draft publication, parties do not properly find out what has been recorded, ~~[illegible]~~

It is, therefore, only during the later stage that anything in the nature of regular judicial enquiry and trial of objections is called for; ~~[illegible]~~ and there appears no necessity to require more than a summary departmental disposal of objections during the earlier stage. The ~~[illegible]~~ difficulty experienced in ~~[illegible]~~ working this part of the Bengal Tenancy Act has been that even objections during the stage preceding draft publication have had ~~[illegible]~~ to be formally tried by the Revenue Officer under the provisions of the Civil Procedure Code for the trial of suits, with the result of needless ~~[illegible]~~ delay, expense and trouble even in trivial matters of which the ~~[illegible]~~ Officer, if given a freer hand could dispose more speedily and equitably by an unfettered summary enquiry. ~~[illegible]~~

A further difficulty has been that, notwithstanding that such formal judicial trial is required of the officer at every stage, his decisions are held not to be res judicata and the very same disputes are liable to be re-opened in the regular Civil Courts.

In view of these difficulties, Sir Alexander Mackenzie's Bill is, which is not favoured by the Government of India, proposes to lease to the Revenue Officer's decisions even at the later stage a mere presumptive value — thus leaving it open to the parties to dispute any entry, in the Civil Court, even after final publication of the record — but not to require formal judicial trial at any stage. To this Government, however, it appears of the first importance, if the final record is to be, as it ought to be, a record conclusive as to existing facts and rights, that declared value, and not mere presumptive value, should attach to the decisions, by whatsoever authority, of objections to the preliminary record made during the period of draft publication. For the objections filed to entries in the preliminary record, as experience in Bengal has shown, difficult questions are likely to be raised — as, for instance, questions of title, or of boundary between contiguous estates, or an entry of the name of the landlord: questions of rival claims to tenancy, or an entry of the name of the tenant: or questions of

the validity of claims to hold land under, or an entry of the rent payable; and these are questions which, in the opinion of the Government, had better be left to the decision of the regular Civil Courts. If provision be made for the officer preparing the record to refer the objector, when such questions are raised, to the Civil Court — whose decisions thereon will perforce have decretal value — the same decretal value may safely be given to the officer's decisions in the comparatively simple matters which will be left for his own disposal, without requiring the formality of regular judicial trial under the Civil Procedure Code, the more so if his decisions be, like those of the Civil Court, subject to appeal and second appeal. But, besides requiring every objection to be decided before publication of the final record and giving to every decision the value of a decree, the Government would go further in the direction of securing absolute conclusiveness to the final record as a record of existing facts and Rights. The Government considers that, so long as ample time is given to the parties to object to any entry published in the preliminary record, the same finality as it is proposed to attach to entries settled by decree or objections raised should

be given to every entry left undisputed during the period of such publication.

The present Bill, while leaving the Officer deputed to prepare the record of rights a perfectly free hand to dispose summarily and departmentally, on such enquiry as he thinks fit, of objections during the earlier stage preceding draft publication of the preliminary record, prescribes publication thereof (section 136) for a period of six months, during which, instead of the short period of one month allowed by the Bengal Tenancy Act, any entry so published can be objected to and put to the test of regular trial; but having given such ample time for objection, the same section bars the officer from entertaining any objection not made within that period, and enacts that every entry to which objection has not been so made shall be final and conclusive as to the fact & facts which it records. The next section, 137, provides that in hearing objections to the preliminary record, the officer shall adopt the simplified procedure prescribed by the Bill (section 154) for the trial of suits by Collectors; and gives discretion to him to decide at that stage, but enacts that when, on an objection to an entry in the preliminary record a bonâ fide dispute arises as to the title to be recorded

as landlord, or as to the right to be recorded as tenant, or as to a claim to have land recorded as rent-free, the officer shall, and in any other case in which he deems fit, may, stay proceedings and refer the objector to the Civil Court, the section further providing that if, in such cases, the objector does not within thirty days of the order of reference, file a suit in the Civil Court to set aside the entry objected to, the officer shall proceed to hear and dispose of the objection as if no such dispute had arisen. By section 140 an appeal is allowed to a Special Judge and a second appeal, on points of law, to the High Court, from the officer's decisions, while in cases taken to the Civil Court there will of course be the usual right of appeal and second appeal under the Civil Procedure Code. By section 138, when all objections to the preliminary record have been disposed of, the Officer is required to frame and publish the final record, and the entries so published are made conclusive as to the facts which they record. It, however, the publication of the final record might be unduly delayed if it were deferred until all

suits and appeals and second appeals on objections to the preliminary record have been decided, the same section permits the officer to first publish a final record of the cases in which no such suits and appeals have been filed and thereafter to publish, from time to time, a supplementary final record of the cases in which such suits and appeals have been filed.

If the record-of-rights as finally published is to be really a complete and conclusive record of the rights of landlord and tenant existing at the time, nothing short of the foregoing provisions will, in the opinion of the Government, suffice to secure this end.

As it may be found convenient to have the survey made by a Survey officer and the record-of-rights prepared by a Revenue officer, or, in some cases, to have both operations conducted by the same officer, the duty is not limited by the present Bill as in the Bengal Tenancy Act to a Revenue officer, but provision is made, by section 133, for having the survey and record prepared by such officer or officers as the Government may see fit to empower in that behalf.

Accuracy being the first object to be attained if the ultimate record is to be final and conclusive as to existing facts, no modification should, in the opinion of the Government, be made, as proposed in Sir Alexander Mackenzie's Bill No. I, in clause (d) (section 134) of the particulars to be recorded, which

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requires that all the boundaries of the tenant's holding shall be specified. Now does there appear any necessity to include the point whether the land is held rent-free or not, in the particulars to be recorded; because if the land is actually held rent-free the entry against "the rent payable" (clause e of section 134) will be "nil".

Section 136 empowers a proprietor to apply for the preparation of a record of rights in his estate; and as, under the definition of 'proprietor' in the Bill, where a proprietor has leased, pledged or mortgaged his estate with possession, the lessee or mortgagee becomes the proprietor for the purposes of the Act, it will be such lessee or mortgagee who will be entitled to make the application. This effects what appears to the Government to be the proper course in such cases. Otherwise, if the original proprietor were allowed to make the application, the lessee or mortgagee might find the whole basis on which he made his bargain with the proprietor completely upset. Lest any doubt should arise, however, in such cases, it has been thought better to add an explanation to section 135 which will make this point clear. In view of the explanation to the definition of "proprietor", it will be the registered proprietor only or the recognised managing co-owner who, in the event of any dispute among co-proprietors, will be the person empowered to make application for the preparation of a record-of-rights in an estate; and in this view it becomes unnecessary to add both the explanation in Sir Alex. Mackenzie's Bill. I.e. that the words "on the application of one or more of the proprietors" should be substituted for "on the

application of a proprietor "(section 135) so as to prevent an obstructive co-sharer from impeding other co-sharers in obtaining a survey and record-of-rights if they wish to do so. The suggested amendment would place it in the power of any one co-sharer to obtain survey and settlement of rents against the wishes of the majority of co-sharers — a power which, in the opinion of the Government should not be allowed to any but the registered proprietor or the recognised managing joint-owner, in such cases.

Where, in cases of general backwardness and discontent likely to give rise to serious disputes, the Government thinks it necessary to order survey and record-of-rights in a particular estate, it is of importance that the means should be at hand of effecting a fair and equitable settlement of rents as part of the operation. Provision is, therefore, made in section 139 of the Bill that when, in any proceeding under this Chapter — that is, in proceedings before or after publication of the preliminary record — either the landlord or the tenant applies for a settlement of rent or when it appears that a tenant is holding land in excess of

less than that for which he is paying
rent, or when rent is admittedly payable
but a dispute arises as to the amount
or rate of rent payable, the officer
preparing the record-of-rights shall settle
a fair and equitable rent in respect of
the land held by the tenant. In doing
so, the officer is to presume, until the
contrary is proved, that the existing rent
is fair and equitable and is to have
regard to the rules laid down in the
Act for the guidance of Collectors in
allowing rents and in deciding disputes
regarding rates of rent. Practically,
the officer conducting the survey and record
operations will relieve the
Collector of all cases of alteration of
rent in the estate concerned, with this
difference that while the Collector's decisions
are appealable to the District Collector (section
31) the officer's decisions will be appealable
to the Special Judge appointed to hear appeals
from all decisions of officers preparing records
of rights (section 140). The rents settled by
the officer under section 137 will of course
not be entered in the record-of-rights, which
is only to record the existing rent payable
at the time the record is being prepared
(clause (a) of section 134), but they will be the
rents payable in future, section 141 providing

that rents settled under section 139 are to take effect from the beginning of the revenue year next after the publication of the final record.

To section 143, regarding the recovery of the costs of survey &c., it has not been thought necessary to add the amendment proposed in section 114 of Sir Alexander Mackenzie's Bill I, which was suggested by the difficulty experienced in Behar, where there are small estates and a great ~~number~~ number of co-sharer proprietors, in apportioning the amount recoverable from each individual landlord. There is no reason to anticipate such difficulty in Madras.

43. Chapter X : secs 144 to 148 : record of proprietor's private lands : — If, for the reasons given in para 12 of this letter, the waste in a proprietary estate is not, merely as such, to be treated as proprietor's private land, the only lands properly falling under this category will be those known as kha's, pannai and the like, and those in which the proprietor has, by transfer, become possessed, ~~[illegible]~~ of the occupancy right. These, accordingly, are the only two classes of land which are exempted, by section 144 of the present Bill, from

the operation of the provisions for acquisition of occupancy right as against the proprietor, and which, when the preparation of a record of proprietor's private lands has been ordered, ~~the~~ officer preparing the record is bound, by section 148, to enter as private land of the proprietor. In the previous Bill, lands in which the occupancy right has been purchased by the proprietor were omitted, from the category of his private lands it is not known why, for these are precisely the lands in which the proprietor has the fullest ownership possible and to which the ~~occupancy right~~ provisions for acquisition of occupancy right as against the proprietor can no longer apply.

In the case of Khás, pannai and such like lands to be recorded as proprietor's private land on the ground of their having been cultivated as such by the proprietor himself with his own stock or by his own servants or hired labourers, the previous Bill, following the Bengal Tenancy Act, required proof of such cultivation for a period of twelve continuous years immediately before the passing of the Act. This, in the opinion of the Government, is an unnecessarily long period; and the present Bill, by section 148, only requires proof of cultivation, in such cases, for

three continuous years immediately before the date of the order directing preparation of the record.

As in the case of survey and record-of-rights, power is reserved to the Government, by section 145 of the present Bill, to depute a revenue officer or such other officer or officers as it thinks fit to the duty of preparing a record of proprietor's private lands; and in the case of application by a proprietor or a tenant to ascertain and record whether particular land is or is not proprietor's land, under section 146, it has been considered safer to empower only the District Collector to direct a revenue officer to take the necessary action. Instead of re-producing in a series of sections, as the previous Bill did, the provisions as to the procedure to be followed by officers in preparing a record-of-rights as the procedure to be also followed in preparing a record of proprietor's private lands, the present Bill, by section 147, adopts the simpler plan of the Bengal Tenancy Act by merely enacting that the provisions of sections 136 to 138 and 140 of this Bill shall apply when an officer proceeds to prepare a record of proprietor's private lands.

~~[illegible]~~

With these exceptions, the provisions of the Bill on this subject are the same as those of the previous Bill.

44. Chapter XI : secs. 149 to 161 : judicial procedure :— In respect of judicial procedure, the differences between this and the previous Bill are chiefly those necessitated in consequence of the jurisdiction in suits and proceedings being, for the most part, vested in Collectors instead of in the ordinary Civil Courts.* The previous Bill, having left all suits to the Civil Courts, permitted the High Court, from time to time, to make rules declaring that any portions of the Civil Procedure Code should not apply, or should apply subject to specified modifications, to suits under the Act : and, in the particular case of suits for the recovery of rent, it prescribed a certain procedure intended to simplify their disposal by omitting some, and modifying others, of those provisions of the Code which would otherwise apply. The Government sees no necessity to modify the procedure of the Code in the case of the suits and proceedings which will be, by the present Bill, left to the Civil Courts and which will be, for the most part, of an important nature — suits in ejectment and so forth — for the careful trial of

* Thus, for instance, instead of empowering the Government to invest any Revenue Officer with the powers of a Civil Court in respect of suits and proceedings under the Act, section 149 empowers the Government to invest any Revenue or Judicial officer with the powers of a Collector in respect of such suits and proceedings : instead of prescribing a special register for such suits in the Civil Courts, section 153 prescribes the register to be kept by Collectors : section 151 provides for the cause of action in suits triable by Collectors as well as in suits triable by Civil Courts : and section 152 recognises every agent of a landlord empowered in the behalf by a written authority to be the landlord's agent for the purposes of every such suit, without special reference to the provisions of the Civil Procedure Code in respect of agents.

which the whole procedure of the Code should certainly be available. The present Bill, accordingly, interferes in no way with the Civil Procedure Code in the actual trial of suits so far as the Civil Courts are concerned; but in view of the simpler nature of the suits which will come before the Revenue Courts under its provisions, the Bill, by section 154, permits of their trial being regulated by rules to be made, from time to time, by the Local Government and lays down a certain procedure which must, in any case, be adopted by Collectors — Section 150 at the same time enacting that subject to such provisions, the Code of Civil Procedure shall apply to all suits tried by Collectors under this Act.

As the procedure for trial of suits by Collectors, provision is made for enabling the officer trying the suit to dictate his judgment to a shorthand writer — a practice which the Government hopes will within a few years become the ordinary practice in this Presidency.

The provision of the previous Bill which, following section 147 of the Bengal Tenancy Act, would have barred a landlord from instituting a suit against a tenant for the recovery of rent until after three months from the date of a similar previous suit, has been

summary remedies

omitted. In view of the ~~provisions~~ of the present Bill (sections 95 to 97 and 129 to 132) for the ~~[illegible]~~ ejectment of tenants in arrears, a special provision of this kind appears objectless.

The rules which the previous Bill, following section 156 of the Bengal Tenancy Act, would have applied, as to crops sown or planted &c, in the case of every tenant ejected from his holding, have also been omitted. Such rules, the Government fears, would lead to a great deal of litigation; and ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~, in the opinion of the Government, a provision that a ryot whose ejectment is ~~not~~ decreed in the first eight months ~~[illegible]~~ of a revenue year ~~[illegible]~~, shall not be ejected till the commencement of the next revenue year and that a ryot whose ejectment is not decreed in the first eight months shall not be ejected till the commencement of the revenue year next but one following, is much preferable. Such provision is accordingly made in section 159 of the Bill. Occupancy ryots ejected on sale of their holdings under sections 95 to 97 and non-occupancy ryots ejected ~~[illegible]~~ summarily under sections 129 to 132 will, of course, have to go out at once. In

connection with section 159, it may be added, it is the date of the passing of the decree, in suits for enhancement of rent or for ejectment, and not the date of institution of the suit, as in the previous Bill, which is taken into account in determining whether the ryot is to be ejected at the commencement of the next revenue year or at the commencement of the next revenue year but one.

The remaining provisions of the Bill in regard to judicial procedure are the same as those of the previous Bill.

45. Chapter XII : sess 162 to 164 : contract and custom : — The rule (section 162) that nothing in any contract made between a landlord and a tenant after the passing of the Act shall prevent the acquisition of occupancy right thereunder, was by the previous Bill (following the Bengal Tenancy Act) made subject to the proviso that in the case of waste reclaimed by the landlord himself and subsequently let to

a tenant, occupancy right could be barred for thirty years by contract. This proviso, under which it is feared that tenants might be induced to agree that their holdings had been reclaimed by the landlord and which, in any circumstances appears to the Government to be uncalled for, has now been omitted.

In the districts included in the local extent of the Bill, the ryot's homestead is, except in South Canara, almost invariably in the village-site and held, quite independently of his agricultural holding, as part of the grāmanattam, in respect of which the ryot pays no rent and is in fact not the tenant of anybody. To such homesteads, which will be quite outside the purview of the Act, the provisions of section 163, which follows the Bengal Tenancy Act in regulating the incidents of the tenancy of ~~[illegible]~~ homesteads ~~by [illegible]~~ ~~[illegible]~~ held otherwise than ~~as~~ part of a ryot's agricultural holding, will of course not apply.

46. Chapter XIII: secs 165 and 166, and

Schedule II : limitation : — The periods of limitation for suits, appeals and applications, specified in Schedule II, are to be taken as merely tentative pending revision in Select Committee.

47. Chapter XIV : secs 167 to 174 : supplemental : — In the case of illegal distraint, resistance to lawful distraint &c, the Bill, by section 167, provides a specific penalty instead of, as in the previous Bill and in the Bengal Tenancy Act, declaring that the offender shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

By section 171, the Bill invalidates any enhancement of rent made or agreed to between the date of first publication of the Bill and the date of commencement of the Act. This provision, in order to prevent ~~[illegible]~~ tenants from being induced to agree to improper raising of their rents for the purpose of forestalling the provisions of the Act against enhancement is, in the opinion of the Government, very necessary.

It is anticipated that, in some districts, appeals to the District Collector against

revenue accounts are maintained; what local area constitutes a particular "village" ~~[illegible]~~ for the purposes of the Act (section 3, sub-section (2)):

(c) power to order a survey and record-of-rights to be prepared in any local area or estate (section 133):

(e) power to appoint a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of officers preparing records of rights and records of proprietors' private lands (sections 140 and 147): and

(d) power to ~~[illegible]~~ order the survey and record of proprietors' private lands (section 145): ~~and~~

(f) power to invest any Revenue or Judicial Officer with all or any of the powers of a Collector in respect of suits and proceedings under the Act (section 149).

48. Having thus reviewed the details of the Bill, more particularly with reference to the various ~~[illegible]~~ points of difference between its provisions and those of the previous Bill, I am

48. This completes the details of the Bill ~~as originally introduced~~ with reference more particularly to the points of difference between its provisions and those of the previous Bill, resulting from the fresh scrutiny to which the latter has been subjected by this Government.

49. Under this Bill, accordingly, there will be two broad classes of landlords, namely (a) proprietors of estates and other landlords; and two broad classes of tenants, namely, (a) ryots, occupancy or non-occupancy, holding directly under proprietors and (b) under-tenants, holding directly or indirectly under ryots or under landlords other than proprietors; and, for its purposes, all land held for agriculture in a proprietor's estate will be divided into two broad classes, namely, (a) the proprietor's private lands, over which he has the power of absolute disposal and in which occupancy right cannot be acquired except by contract with him, and (b) other lands,

waste or cultivated, over which his powers are limited and in which occupancy right can be acquired against him by statute or by custom, as well as by contract with him — the presumption always being that land is not proprietor's private land until the contrary is shown.

In land other than proprietor's private land, the occupancy right is secured to every ryot who possesses it as a customary right — which will be the case of practically every estate ryot in the Southern districts; and, for the strengthening of his position, it is presumed of every ryot, until the contrary is admitted or proved, that he possesses occupancy right in all his holding. The occupancy right is further secured, as a matter of personal heritable stat. carrying with it the right to hold as an occupancy ryot all land for the time being held by him as a ryot in his village, to every settled ryot of a village, that is, to every ryot who

ejectment on the ground of his misuse of the land or breach of conditions of his contract with the proprietor rendering him liable to ejectment; but though he is not liable to ejectment for failure to pay arrears of rent, his occupancy right is liable to attachment and sale therefor, either in execution of a Civil Court's decree for arrears or, where he is in arrear at the end of a revenue year, by the Collector's summary order on the proprietor's written notice of intention to sell. In either case, the ryot can save his occupancy right by payment at any time up to the last moment before the sale or, subject to a further payment to the auction-purchaser of 5 per cent on the sale amount, at any time within thirty days after the sale. Every occupancy ryot is entitled to pay only a fair and equitable rent for his holding; but his existing rent is presumed to be fair and equitable, and it can only be altered under specific provisions for enhancement, reduction or alteration with the area of his holding. It cannot be enhanced by contract or unless it is a money-rent, and then it can be enhanced [illegible] before the Collector only on

the ground of increase in the produc-
tive powers of the land otherwise than
by the ryot's own improvements, or
on the ground of a rise in prices
of produce except in districts where en-
hancement on this ground has not
been customary, and subject always to
the rule that no enhancement shall be
decreed which is, in the circumstances of
the case, unfair or inequitable. It
may be reduced, whether it be money-
rent or produce-rent, by contract or,
if it is a money-rent, by suit before the Collector on the
ground of permanent deterioration of the
land without the ryot's fault or in the
case of irrigated land, on the ground of
the irrigation work, or on the ground
of a fall in prices of produce except
in districts where reduction on this ground
has not been customary, or since
has been unduly raised, which
that the rent
the date of Chockalingam's case (1st May,
is believed to have
1871) which induced arbitrary enhancement
in certain of the Northern districts; and subject always
to the rule that, in any such suit, the
Collector may direct such reduction of
the rent as he thinks fair and equitable.

It is liable at any time, ~~[illegible]~~ whether money-rent or produce-rent, ~~[illegible]~~ to alteration with ~~[illegible]~~ the area of the ryot's holding, but only by the Collector's order upon application made ~~[illegible]~~ to him for that purpose by the proprietor or the ryot himself.

Every occupancy ryot is absolutely protected against any proceeding for the recovery of rent, whether by ordinary suit in the Civil Court or by the summary procedure of distraint and sale of his moveable property or attachment and sale of his occupancy right under the Collector's orders, unless the proprietor has given or tendered him a proper puttah; and he is secured in his existing right to obtain such a puttah or to set aside an improper distraint or attachment by summary suit before the Collector. He is at liberty to surrender his holding or, with the proprietor's consent, any part thereof, at the end of a revenue year; and his right to make improvements and to be compensated for them on ejectment, except when his occupancy right is sold for arrears of rent, is practically unrestricted as long as he causes thereby no

substantial diminution of the value of his landlord's property as long as he pays his rent,

Every non-occupancy ryot, is secured against ejectment except by decree of a Civil Court in a suit for ejectment on the ground of his misuse of the land or breach of conditions of his contract with the proprietor or, when holding under a lease, on the ground of expiration of the term of his lease, provided it is his initial lease and has been registered or, if it is not his initial lease, provided that he had not been in occupation of the land for seven years. ~~[illegible]~~ When he falls in arrears with his rent, he may be ejected by decree of a Civil Court in a suit for his ejectment on that ground, or, if he is in arrear at the end of a revenue year and the process of distraint has failed to realise the arrear, he may be summarily ejected by the Collector's warrant on his land-lord's application for that purpose, though he can always save himself by payment within a time allowed. He may be asked

to agree to an enhancement of rent and may be sued in ejectment before the Collector for refusal, and he may be forthwith ejected if he refuses to agree even to a fair and equitable enhancement determined by the Collector in such suit. If he agrees to the enhanced rent so determined ~~[illegible]~~ he becomes entitled to hold at that rent for such further period, ~~[illegible]~~ not exceeding five years, as may be required to make up a total continuous holding of twelve years — the acquisition of the personal status of a settled ryot of the village being thus facilitated in the case of every non-occupancy ryot toho, by at least seven years continuous holding as a ryot, may be taken to have proved himself a good tenant.

Every non-occupancy ryot is liable to pay the rent agreed upon at the time of his admission to occupation of his holding, and this cannot be enhanced except by agreement as aforesaid or by registered agree-

rent. It may be reduced at any time by agreement, but not by suit; nor when either party entitled to have it altered with the area of the holding.

Every non-occupancy ryot is protected against recovery of rent by distraint and sale of his moveable property unless the proprietor has taken from him written agreement specifying the rent to be paid, but he is in no way protected against recovery by ordinary suit in the Civil Court. He may be given a pattah but is not entitled to obtain one; and when bound by a lease to hold for a fixed period, he is not entitled to surrender at the end of any revenue year. Except with the proprietor's permission or on the proprietor's refusal to make the improvement himself, he is not entitled to make and he compensated for any improvements except a well for the irrigation of his holding, a suitable dwelling for himself and his family, and the planting of trees and useful plants. As long as he pays his rent, Every under-tenant, is secured against ejectment except on expiration of his lease, if a written lease, or when held

ing otherwise than under written lease, at the end of the revenue year next following the year in which a notice to quit has been served upon him by his landlord. ~~[illegible]~~ When in arrears at the end of a revenue year, he is liable to summary ejectment under the Collector's warrant in the same way as the non-occupancy ryot, ~~[illegible]~~ if distraint has proved ineffectual to realise the arrear; and he is protected only against recovery by distraint, but not by ordinary suit, in the same way as the non-occupancy ryot. In the event of his produce being distrained, or the occupancy right in his holding being attached, for default of a superior tenant, ~~[illegible]~~ and his paying money to stop the sale, he is entitled to deduct the same from any rent payable by him to his immediate landlord and so on ~~[illegible]~~ until the defaulter is reached. He is in the same position as the non-occupancy ryot as to surrender ~~of his holding~~; but he is not protected against enhancement of his rent, and he is not entitled to make any improvements in his holding.

Every tenant is prevented from contracting himself out of his statutory

rights in respect of occupancy, ejectment, improvements, user of land, surrender, commutation, and reduction of rent; and except in the cases of occupancy ryots whose occupancy right is sold for arrears, of non-occupancy ryots ejected for refusal to agree to an equitable enhancement of rent, and of non-occupancy ryots and under-tenants summarily ejected under the Collector's warrant, no ejectment decreed in the first eight months of a revenue year is to take effect until the commencement of the next revenue year, and no ejectment decreed in the last four months of a revenue year is to take effect until the commencement of the revenue year next but one following. Every tenant is entitled to sub-divide his holding and to have the rent proportionately distributed, whether the landlord consents or not, provided that subdivision does not extend to the division of a revenue field. Every tenant is entitled to a receipt in proper form for payment of his rent, the receipt, if not in proper form, being presumed to be an acquittance in full of all demands for rent to date: and every ten-

311 his landlord's
and is enabled, in the event of refusal
to receive rent from him or of dispute
or doubt as to who is entitled to re-
ceive the rent, to preserve his rights by
the deposit of his rent in a conveni-
ent Revenue office. When a survey and
record of rights has been ordered in an
estate, any tenant can apply for the
settlement of a fair and equitable rent
in respect of his holding; and in
settling disputes regarding rates of rent,
while contracts not inconsistent with the
Act have to be enforced, the presump-
ion has to be made that every
tenant holds at the same rent and
under the same conditions as in the
last preceding Revenue year. Every
ryot holding irrigated land is bound
to enforce the necessary re-
pairs of the irrigation work on which
the land depends, by application to
the District Collector, and to have the
cost of such repairs deducted from his share of
any rent payable by him to the
proprietor.

Every proprietor has his rents secured as

a first charge on occupancy right, indefeasible by any other incumbrance. So long as, in the ~~case~~ case of occupancy ryots, he ~~the~~ gives or tenders a substantially correct puttah free from stipulations in restraint of cultivation or harvesting or for termination of the tenancy at a specified time, or, in the case of non-occupancy ryots, he takes a written agreement specifying the rent to be paid, he has his choice of proceeding for recovery of rent either by ordinary suit in the Civil Court or by distraint and sale of the defaulter's movable property and (in the case of occupancy ryots in arrears at the end of a revenue year) by attachment and sale under the Collector's order, of the defaulter's occupancy right in his holding. ~~[illegible]~~ He is permitted to tender puttahs by filing them in a convenient Revenue office; and he is not required to grant a fresh puttah every year. Should distraint prove

ineffectual in the case of a non-occupancy ryot in arrears at the end of a revenue year, the proprietor is at liberty to have him summarily ejected under the Collector's warrant. Every proprietor has the right of enhancing rent, subject to the limitations above-noted; and, for the purpose of applying to the Collector for alteration of an occupancy ryot's rent with alteration in the area of his holding, he has the right of entry and measurement at any time. He can at any time apply for a survey and preparation of record-of-rights in his estate, or for preparation of a record of his private lands; and by purchase of the occupancy right in ryots' holdings he is at liberty, if so disposed, to transform the whole land in his estate into the category of proprietor's private land at his absolute disposal.

Every ryot-landlord who has taken from his under-tenant

~~[illegible]~~ a written agreement specifying the rent to be paid by him, has the same right of distraint and summary ejectment as that of a proprietor in respect of his non-occupancy ryots; and in the event of conflict between any landlord's distraint and a Civil Court's order for attachment and sale of the property distrained by the landlord, the landlord's distraint is to prevail. Every landlord can, on application to a Principal Civil Court and on payment of such compensation as the Court determines, acquire a tenant's holding or part thereof for any reasonable and sufficient purpose, including religious, educational or charitable purposes, building purposes and the opening and working of mines or factories; and he may himself cultivate any surrendered or abandoned holding.

50. In thus ~~[illegible]~~ defining and declaring ~~the~~ substantive rights ~~[illegible]~~

— for the proprietor, the right to rent as a first charge on the land; the right of enhancement; the right of entry and measurement and alteration of rent with area; the right of summary distraint, attachment, sale and ejectment through the Collector as well as by ordinary suit before the Civil Court; the right of acquisition for reasonable purposes, and the right of absolute disposal of his private lands; for the ryot, the right of occupancy; the right of free transfer; the right to a fair rent, including the right to reduction and alteration of rent with area; the right to a puttah or written agreement as a pre-requisite to the recovery of rent, the right to receipts, the right to deposit rent, the right to make and be compensated for improvements, the right to enforce repairs of irrigation works, and the right against ejectment except by a decree of Court or order of a Collector — this Bill, the Government believes, will be found effectually to remedy the most serious defect in the rent law of this Presidency, which has hitherto been the want of provision for substantive rights, and, in doing so, to hold the scales as exempt

as possible between landlord and
tenant, consistently with the
adequate protection of the latter.

The Bill, therefore, if it is treated,
will meet with the early approval of
His Excellency the Governor-General, and
I am to request that sanction may
be accorded in time for its introduction
into the local Legislative Council dur-
ing the approaching Session.

I have &c.

W.
17. 10. 57.

Statement of Objects and Reasons.

The law in force in this Presidency on the subject of landlord and tenant is Madras Act VIII of 1865. The imperfections of this Act, which, with the exception of one section (section 11) laying down certain rules for the decision of suits involving disputes regarding rates of rent, is a purely processual Act relating to the recovery of rent, have long been recognised. Its most serious defect is that it nowhere defines and declares the substantive rights of ryots in Zemindari tracts. In respect of the most important of these rights, the right of occupancy, the law has always been that, by the custom of the country, it exists as an inherent right in every permanent ryot of a village, so that every permanent ryot, from the mere fact of his personal status as such,

becomes entitled to hold as an occupancy ryot all land for the time being held by him as a ryot in his village. This right has, generally speaking, been consistently respected by proprietors of estates in the Southern districts of the Presidency; but in the Northern districts it has been steadily encroached upon until, in many estates, the ryots have been reduced practically to the position of mere tenants-at-will.

It is one of the main objects of this Bill, while securing the occupancy right to every ryot already possessing it or a customary right otherwise, to restore the right, as a matter of personal heritable status, to every permanent ryot of a village and to facilitate the acquisition of that status by every other ryot.

Another serious defect in the existing law is that it contains no definite rules regulating the

enhancement of rent. It assumes the
ryot able to protect himself against
enhancement except with his free
consent and, on this assumption, it pro-
vides that, in deciding disputes regard-
ing rates of rent, a contract, express or
implied shall be the first guiding
principle. But there, at many
estates in the northern districts, the ryot
has proved too unequally matched with
the proprietor to refute to agree to even
undue raising of the rent, this pro-
vision has not sufficed to prevent
arbitrary enhancement and rack-renting.
It is one of the main objects of
this Bill, by permitting enhancement
only on certain clearly-defined grounds
and then only by suit before the
Collector, to secure the occupancy ryot
a fair and equitable rent.
Of other substantive rights of ryots
for which it is a main object of
this Bill to provide, the principal
are the right of free transfer, and
the right to a portion or
written agreement as a pre-requisite to
the recovery of rent

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rate and be compensated for improvements.

In respect of the rights of proprietors, it is a serious defect of the existing law that by omitting to secure the rent as a first charge on the land and by requiring the absolute accuracy of a puttah in every particular, however unimportant, as a condition precedent to the recovery of rent, it often fails, as in many estates in the Southern districts, where ryots are more than able to look after their landlords, to protect the proprietor in the realisation of even his just dues. One of the main objects of this Bill, by making rent a first charge on the land indefeasible by any other encumbrance and by declaring the sufficiency of a substantially correct puttah, to secure the proprietor in the recovery of his just dues. Of other substantive rights of proprietors for which it is a main object of this Bill to provide, the principal are the right of entry and measurement, the right of distraint and sale,

the right to acquire tenants' holdings for building and other purposes, and the right of absolute disposal of pannai or private lands.

2. Chapter I provides for the commencement and local extent of the Act, and for definitions. The Act is to come into force on the first day of a revenue year. That is the period to which very many of its important provisions particularly relate, and the object is to avoid difficulties of the kind which were experienced when Madras Act VIII of 1865 was brought into force in the middle of a revenue year. The Act is to extend to the whole Presidency except Malabar and the South-East Wynaad, where the peculiar land system demands entirely separate treatment. South Canara, though a ryotwari and not a zemindari district, is thus included. The existing Act, VIII of 1865, is in force there, and this Bill is intended to regulate not only the relations between proprietors and their ryots in proprietary estates but also the relations, as landlord and tenant, between ryots, whether proprietary-estate or Government ryots, and their under-tenants. As all

landlords will not be proprietors and all tenants will not be ryots, though all proprietors will be landlords and all ryots will be tenants, the four terms 'proprietor' 'ryot' 'landlord' and 'tenant' are defined. The terms 'proprietor' and 'landlord' are defined so that neither includes the Government, while the term 'ryot' is limited to tenants holding immediately under a proprietor. The Government ryot, therefore, comes under the Bill only in his capacity of a 'landlord' to his under-tenants, the relation between Government and its ryots as landlord and tenants being already provided for in Madras Act II of 1864. The terms 'estate' and 'village' are defined in connection with the term 'proprietor' which is limited, so as to avoid the absurdity of petty zamindars or perhaps an acre or two being ranked as 'proprietors', to proprietors of estates comprising at least one whole village. The term, subject to the same limit, is defined so as to include persons for the time being in the shoes of the proprietor — lessees, mortgagees with possession, managers of estates of disqualified owners and the like — between whom and the tenants of the estate it is necessary for the proper carrying on of

the business of the estate, that the provisions of the Bill should be made applicable. To the definition, an explanation is added which makes clear what was ruled in I. L. R. XX Madras 484 that in a zemindari the only zemindar, in cases of dispute, is the registered zemindar; and which also removes doubt in the case of joint-owners of estates. ~~[illegible]~~ ~~[illegible]~~ In defining 'rent' care has been taken to admit of the necessary distinction being made, in the actual working of the Act, between the rent proper of the land and what is legally or usually recoverable ~~[illegible]~~ as, or along with, rent, ~~[illegible]~~ namely, water-tax, cesses, customary fees and the like.

3. Chapter II enumerates and defines the three classes of tenants which there will be under the Act, namely, occupancy ryots, non-occupancy ryots and under-tenants, the latter including tenants holding under Government ryots, who are "landlords other than proprietors".

, recognising that in proprietary estates there are in fact ryots without occupancy right as well as ryots with occupancy right,

4. Chapter III deals with occupancy ryots. By section 5, it ~~[illegible]~~ permits occupancy right in land to be created at any time by written agreement between proprietor and

ryot: by section 6, it secures occupancy right to every ryot already possessing it as a customary right or otherwise: and by section 7, it presumes of every ryot, until the contrary is shown, that he possesses occupancy right in all his holding. It thus remedies that part of the ruling in the leading case known as Chockalingam's case (VI M.H.C.R. 164) which threw upon the ryot the burden of setting up and proving his possession of occupancy right as a customary right. ~~[illegible]~~

~~[illegible]~~

Section 8 ~~of~~ ~~[illegible]~~ provides for the acquisition of ~~[illegible]~~ occupancy right by attainment of ~~[illegible]~~ the personal status of ~~[illegible]~~ ryot of the village and

for this purpose, means every ryot or
a permanent ryot of the village who
has by himself or by a person whose
heir he is, held ~~land~~ land as a ryot
in the village ~~whether~~ continuously for
twelve years, whether under lease or
otherwise and whether the land held has
been the same throughout or has been
different at different times. It further
presumes of every ryot, until the contrary
is shown, that he has continuously held
land in his village as a ryot for twelve
years. This section has, however, to be
read with section 144 which excludes the
proprietor's private lands from the operation
of the statutory acquisition of occupancy
right, and with the definition of 'ryot' in
section 3 which restricts its operation to land
held for agricultural purposes, including horti-
culture and grazing: so that occupancy
right can be acquired by person of the
ryot's personal status as a permanent
ryot only in land held for
agricultural purposes and other than pro-
prietor's private land. The period of
twelve years which has been taken as
sufficient to entitle a ryot to be
looked upon as a permanent ryot of

his village is the period prescribed in the corresponding section of the Bengal Tenancy Act. When the expiration of this period falls during currency of a lease for a term, it is only fair to the proprietor that, while the ryot's acquisition of the personal status of a permanent ryot is in no way impeded, occupancy right in the particular land leased should not be conferred by sheer statutory force in the middle of a lease. To section 8 a proviso is therefore added which enacts that, when the expiration of the twelve years' period falls during currency of a lease for a term, the ryot shall not be deemed to have acquired occupancy right in the land so leased.

Under the incidents of occupancy right, provision is made for the ryot's right to use the land in any manner which does not impair its value (section 9), for his payment of a fair and equitable rent (section 10), for his right of free transfer (section 12) and for his protection from eviction except in execution of the decree of a Civil Court passed on

the ground of misuse of the land or
breach of conditions of his contract
(section 11) — which are the usual incidents of tenant right.
with the proprietor \ experience having
proved it unsafe to permit en-
hancement of rent by contract, where
the tyot is unequally matched with
the proprietor as manifested, particularly in the Northern Districts,
enhancement of the occupancy tyot's
rent is permitted only by suit before
the Collector on certain specified
grounds (sections 16 and 17) and only in the
case of money-rents. Where rent is
paid in kind, the proprietor already
participates, by the very nature of
things, in the effects of any increase
in the productive power of the land
or in the price of its produce;
the proprietor is enabled, by section 27,
and \ to have his produce-rents
converted into money-rents if he
seeks enhancement \
in the Bill to prevent rent (save
by contract; and \ section 25 enables the occupancy
reduced by when he pays a
tyot money-rent, to sue before the Collector
for its reduction on certain specified grounds
Neither enhancement nor reduction \ on the grounds

of rise or fall in prices is, however, claimable in the districts of Salem, Madura and Tinnevelly, where alteration on such ground has not been customary 345

disputes as to the correctness of ryot's rent with reference to the extent of his holding being of very common occurrence, sections 28 to 30 of the Bill enable either proprietor or ryot to obtain a rectification of the rent with reference to the area of the holding by order of the Collector on application duly made for that purpose.

Questions of the alteration of rent by enhancement, reduction, commutation or with area, being matters peculiarly suited to adjudication by revenue officers, whose facilities for local inspection and ordinary experience as district officers are calculated to give them a distinct advantage, the intervention of the Civil Courts by suit or by injunction in respect of a Collector's proceedings under this Chapter is, by section 31, prohibited.

5. Chapter IV deals with non-occupancy ryots. By section 34, read with section 128, the non-occupancy ryot, as long as he pays his rent, is protected against eviction except by decree of a Civil Court passed on certain grounds under which special protection is given to a non-occupancy ryot who by having held continuously for at least seven years may be taken to have proved himself a good tenant. He is liable (section 32) to pay the rent agreed upon at the time of his admission to his holding and he may be asked to agree to an enhancement of rent and may be sued in ejectment before the Collector for

refusal, and he may be forthwith ejected if he refuses to agree even to a fair and equitable enhancement determined by the Collector in such suit. If he agrees to the enhanced rent so determined, he becomes entitled to hold at that rent for such further period, not exceeding five years, as may be required to make up a total continuous holding of twelve years — the object of these provisions being, while enabling the proprietor to obtain an equitable enhancement of rent, to facilitate the acquisition of the personal status of a permanent ryot of the village by every non-occupancy ryot who by seven years' continuous holding has proved himself a good tenant. Except by such agreement or by registered agreement, the non-occupancy ryot's rent is, by section 33, protected against enhancement.

6. Chapter V deals with under-tenants, protecting them, as in section 49 of the Bengal Tenancy Act, against ejectment, as long as they pay their rent, except on expiration of a written lease, or when holding otherwise than under a written lease, at the end of the revenue year next following that

in which a notice to quit has been
served upon them.

7. Chapter VI contains general provisions
as to rent. For the decision of disputes
regarding rates of rent, the presumption has
to be made that the tenant holds at
the same rent as in the preceding year (section 39)
and contracts to pay rent have by section
38, to be enforced as long as they
are not inconsistent with the other
provisions of the Bill. Enhancement
of rent of an occupancy ryot being, for
instance, prohibited, any contract for
enhanced rent of such a ryot would be inconsistent
with the provisions of the Bill: and in any dispute
where enhanced rent is claimed, the
Collector will now simply have to see
whether such enhancement has been decreed
in a separate suit for the purpose and,
if not, to maintain the existing rent
as in the preceding year.

The rate of interest on arrears of
rent has, by section 41, been increased from
the object being to facilitate
calculation.

12 to 12½ per cent per annum which works out to 2 pies per rupee, and fractions of a month and of a rupee are permitted to be disregarded —

The provisions of the Bengal Tenancy Act for safeguarding the tenant by proper receipts in a prescribed form and by permitting him to deposit his rent in cases of dispute or doubt, have been substantially adopted in sections 42 to 48 of the Bill, every facility being afforded to the tenant by permitting payment of rent by postal order or to the village headman unless the proprietor has appointed an authorised agent in the village or within 3 miles of it, and by permitting deposit in a convenient Revenue Office.

8. Chapter VI embodies everything connected with the recovery of rent. The existing system of puttahs and muchilikas is maintained; and, in the case of the occupancy ryot, the tender of proper puttah is, in accordance with the Full Bench ruling in VII Mad. H. C. R. 312, made a pre-requisite to the recovery of rent either by ordinary suit in a Civil Court or by the special procedure of distraint and sale of movable property or attachment and sale of occupancy right in the defaulter's holding by proceedings before the Collector. But, in order to prevent the defeating

of the proprietor in the recovery of
his just dues. Hence by reason of
some perhaps unimportant defect in
the stipulations of the pattah, Section
52 holds a substantially correct pattah
to be a proper pattah, valid to the extent
to which it is correct, so long as it
contains no stipulations in restraint of
cultivation or of harvesting or pre-termina-
tion of the tenancy at any specified time
which are stipulations of a kind
consistently held by the High Court to
be invalid. And, Section 53 permits him to tender
advantage of the proprietor, the provisions of the Bill for
distraint and sale of movable property are
substantially those of the existing law.
Hence an occupancy ryot is not
liable to ejectment for arrears of
rent, his occupancy right is
liable to attachment and sale in exe-
cution of a decree for arrear, and by
section 95, to attachment and sale by
proceedings before the Collector, as under
the existing law, when the ryot is in
arrear at the end of a revenue
year. And for the further security of
the proprietor in the recovery of his just

further by filing them in a convenient Revenue Office, and thus obviates the common plea of the tenant, in proceedings for the recovery of his rent, that no pattah has been tendered.

dues, rent is by section 98 made a first charge on occupancy right indefeasible by any other encumbrance. The rules regarding the attachment and sale of the occupancy ryot's interest in his holding (sections 96 to 105) combine those of the existing law and of the Bengal Tenancy Act so as to provide for attachment and sale either in execution of a Court's decree for arrears or in pursuance of the special procedure before the Collector.

9. Chapter VII contains miscellaneous provisions as to landlords and tenants.

The upkeep of irrigation works being a matter of great importance for the welfare of the ryot, provision is made, by sections 106 to 110, enabling the ryots holding irrigated land under works neglected by the proprietor to enforce repairs thereof by order of the District Collector on application made to him in that behalf, empowering them to deduct the cost of the same and from any rent due by them to the proprietor.

By sections 113 to 120, all ryots, occupancy or non-occupancy, but not under-

tenants are secured in the right to
make improvements and to be com-
pensated for the same on ejectment by
the occupying tyot's right in this respect is
practically unrestricted as long as he causes
thereby no substantial diminution of the
value of his landlord's property. The
non-occupying tyot, except with the proprietor's
permission or on the proprietor's refusal to
make the improvement himself, is not
entitled to make and be compensated
for any improvements except a well for
the irrigation of his holding, a suitable
dwelling for himself and his family, and
the cultivation of trees and useful plants;
substantially
the rules as to compensation are the
same as in the Bengal Tenancy Act
by section 121, every landlord is secured
in the right to acquire a tenant's
holding or part thereof for any
reasonable and sufficient purpose, includ-
ing building purposes, religious, education-
al or charitable purposes or for
the opening and working of
mines or factories; but in view of
the importance of the matter, the
jurisdiction to dispose of applications
for such acquisition is limited to

the principal Civil Court.

The provisions relating to surrender and abandonment of ~~tenants~~ holdings (sections 122 to 124) are substantially the same as those of the Bengal Tenancy Act except that they are made applicable to all tenants, and not limited to ryots as in that Act.

In connection with the sub-division and transfer of tenancies, section 125 makes it incompetent to a landlord to refuse to consent to the division of a holding and to the proportionate distribution of the rent payable in respect thereof, except in the case of such minute division as that of a revenue field. This is in accord with the idea which has always obtained in this Presidency, and which it is ~~[illegible]~~ desired to foster, that the ryot possesses rights in his holding ~~[illegible]~~ which he can deal with as property.

While providing, by section 128, that no tenant shall be ejected from his holding except in execution of a decree of a Civil Court or order of a Collector passed in accordance with its provisions, the Bill, by sections 129 to 132, empo-

summary ejectment, under the Collector's warrant, of non-occupancy ryots or under-tenants who are in arrear at the end of a revenue year and on whose premises there is no sufficient distress to satisfy the arrear. It may fair to the landlord that, in the case of such hopeless tenants, he should be saved the tedious and expensive process of ejectment by regular suit.

10. Chapter IX provides for the making of a survey, record of rights and settlement of rents in estates, either by order of the Local Government where circumstances — such as the likelihood of agrarian disputes between the tenants and their landlord generally — call for such a step, or on the application of the proprietor himself. No procedure under the Bill is substantially the same as that of the Bengal Tenancy Act in this matter, with such modifications as experience of the working of that Act has shown to be advisable. The officer preparing the record of rights is by section 136, required to publish it for six months and must

for only one month as in Bengal) so as to give parties ample time to file objections; but ample time being given, all entries to which no objections are filed are made final and conclusive as to the facts which they record. In hearing objections to entries, the officer is, by section 137, bound to refer the objector to the Civil Court in all cases of bonâ fide dispute ~~as to the title to be recorded as landlord or the right~~ involving questions of title, status or the right to hold land rent-free, which are difficult questions calling for determination by regular Courts of law. In other cases, the officer's decisions are, by section 140, made appealable to a Special Judge. When all objections to the preliminary record have been disposed of, section 138 requires the officer to frame and publish the final record-of-rights, and the entries so published are declared to be final and conclusive as to the facts which they record. The great object of these provisions is to secure the framing of a record-of-rights which shall be really a complete and conclusive record of the rights of landlord and tenant existing at the time, which shall not be liable to be re-opened in the Civil Court after final publication, and

which will therefore give everybody concerned a definite unmistakeable starting-point for the future.

Where, in cases of general rack-renting and discontent likely to give rise to disturbances, the Local Government finds it necessary to order survey and record-of-rights in a particular estate, it is of importance that the means should be at hand of effecting a fair and equitable settlement of rents as part of the operation. Provision to this end is therefore made in section 139 of the Bill.

11. Chapter X provides for the record of proprietors' private lands.

By section 144 such lands are exempted from the operation of Chapter III for the acquisition of occupancy right, and from the operation of Chapter IV as to non-occupancy ryots; and by section 148 not only the pannai lands of the proprietor but also lands in which he has, by transfer, become possessed of the occupancy right, are to be recorded as the private lands. In this way

is at once secured in the right of absolute disposal of his private lands and enabled, by purchase of the occupancy right, if he so chooses, to convert the whole land in his estate into his private land.

12. Chapter XI deals with judicial procedure in suits and proceedings under the Act. While leaving suits before Civil Courts — which will only be suits of an important nature, such as suits in ejectment — to be tried under the provisions of the Civil Procedure Code, a simplified procedure in the trial of suits before collectors — which will be of a simpler and more summary nature — is prescribed by section 154. And to prevent hardship in the case of standing crops and the like, it is enacted by section 159 that, except where otherwise expressly provided by the Bill (as in the case of non-occupancy ryots ejected under section 36 for refusal to agree to an equitable enhancement of rent), a decree for ejectment, if passed in the first eight months of a revenue year, is not to take effect until the commencement of the revenue year next following, and, if passed in the last four months of a revenue year, is not to take effect until the commencement of the revenue year next but one following.

13. Chapter XII deals with contract and custom.

Zemindari

Experience having proved the ^ kyot, in a large area of the Presidency, to be too unequally matched with the Zemindar to protect himself, under so-called freedom of contract, against the reluctance to the obvious prejudice of his rights, every tenant is, by section 162, prevented from contracting himself out of his statutory rights in respect of occupancy, ejectment, improvements, use of land, surrender, commutation and reduction of rent. Section 164 saves customs and usage not inconsistent with, or not modified or abolished by the provisions of, this Bill; and by section 163, the tenancy of home-stead held otherwise than as part of a tenant's agricultural holding is governed by local custom or usage.

Chapter XIII reproduces the pro-

14. visions of the Bengal Tenancy Act as to limitation.

Chapter XIV, completing the

15. Bill, deals with supplemental matters, most important

to prevent ~~[illegible]~~ tenan[illegible]
being induced to agree to improper
of their rents for the purpose of
forestalling the provisions of the Bill
against enhancement, section 171 provides
that no enhancement of rent made
agreed to between the date of publi[illegible]
of the Bill and the date of comm[illegible]
ment of the ~~[illegible]~~ shall be valid
binding on any tenant.

16. The foregoing statement show[illegible]
in its main provisions, the Bill is [illegible]
upon the Bengal Tenancy Act VIII of 1885
modified, to suit local conditions, chief[illegible]
by embodying in the Bill those pro-
visions of the existing law, namely, ~~[illegible]~~ [illegible]
Act VIII of 1865, which it is considere[illegible]
desirable to retain. The Bengal Act ha[illegible]
been taken as a model because it w[illegible]
the product of very full discussion a[illegible]
deliberation, was applied to a state [illegible]
facts in the main the same as th[illegible]
obtaining in this Presidency, and has b[illegible]
proved by experience to ~~[illegible]~~ be practical an[illegible]
ficial ~~[illegible]~~ in its working.

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[illegible]

C.F. 67-A. (DEPARTMENT).

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