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Legislative (1899) Department.

ORDINARY PRINTED.

V.E

G.O., No. 121

DATED 28—11—99.

[Despatch Abstract.]

Bill to amend the Madras Irrigation Cess. act. VII of 1865

Directing the publication in the Fort St George Gazette of a ——— in English & in the Vernaculars; & requesting the Hon'ble Mr. Winterbotham to take charge of it.

29/11

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government {1899} of Madras.

LEGISLATIVE.

Recd. }
1899.
Regd. }

Enclosures

Spare copies

G.O., No. 121, 29th November 1899.

NOVEMBER.

Bill to amend the Madras Irrigation Cess Act VII of 1865.

Directing the publication in the *Fort St. George Gazette* of a — in English and in the Vernaculars; and requesting the Hon'ble Mr. Winterbotham to take charge of it.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper :—

G.O., No. 750, Revenue, dated 7th November 1899.

ABSTRACT.—Transferring to the Legislative Department a draft Bill to amend the Madras Irrigation Cess Act VII of 1865.

ORDER—No. 121, Legislative, dated 29th November 1899.

Under Rule 33 of the Rules for the conduct of business at meetings of the Council of the Governor of Fort St. George for making Laws and Regulations, His Excellency the Governor directs the publication in the *Fort St. George Gazette* of a Bill to amend Madras Act VII of 1865 together with the Statement of Objects and Reasons in English and in the Vernaculars.

2. The Hon'ble Mr. Winterbotham will be requested to take charge of the Bill.

(True Extract.)

H. TREMENHEERE,
Secretary to Government.

To the Revenue Department.
„ the Hon'ble Mr. H. M. Winterbotham.
„ the Superintendent, Government Press.
„ the Translators to Government.

Exd. Shaik Karim.

APPENDIX.

A

BILL

TO

Amend Madras Act VII of 1865.

WHEREAS it is necessary to amend Madras Act VII of 1865; It is hereby enacted as follows :—

1. (1) Section 1 of Madras Act VII of 1865 is hereby repealed and the following section is substituted therefor and shall be deemed to have been so substituted at the time when the said Act came into force :—

"Whenever water is supplied or used "for purposes of irrigation from any river, "stream, channel, tank or work belonging "to, or constructed by, Government, and "also whenever water, by direct or indirect "flow, or by percolation or drainage, from "any such river, stream, channel, tank or "work, from or through adjoining lands, "or otherwise, irrigates any land under "cultivation and such irrigation is, in the "opinion of the Collector, beneficial to and "sufficient for the requirements of the crop "on such land, it shall be lawful for the "Government to levy at pleasure on the "irrigated land a separate cess for such "water: and the Government may pre-"scribe the rules under which, and the "rates at which such water-cess as afore-"said shall be levied, and alter or amend "the same from time to time."

(2) Provided that no water-cess which would not have been leviable if this Act had not passed shall be leviable for any period prior to the 1st of July 1898.

(3) Provided also that, where a zamindar, or inamdar, by virtue of engagements with the Government, is entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more.

2. Section 4 of Madras Act VII of 1865 is hereby repealed, and the following section is substituted therefor :—

"No suit shall lie in any Civil Court to set aside or modify any assessment of water-cess made by a Collector under this Act."

Income Tax Act II of 1886, section 39.
Madras Act II of 1864, section 58.
Madras Act III of 1896, section 16.

STATEMENT OF OBJECTS AND REASONS.

1. In wide expanses of wet cultivation under the great irrigation systems of this Presidency, it becomes impossible for each individual cultivator to exercise an option as to whether he will or will not admit the Government water on to his lands. To secure drainage, the water must be passed from the higher fields to the lower, and where a field is in the midst of wet cultivation any attempt to exclude the water is frustrated by percolation. It is thus necessary that individual cultivators should not be able to claim exemption from water-rate (when the supply is beneficial and sufficient) on the plea that the water is forced upon them.

2. Until 1889 there was a general acquiescence in the uniform revenue custom of this Presidency under which water-rate was charged for water used, without regard to the volition of the cultivator on land irrigated with Government water. In that year, however, a case (XII. I.L.R., Madras, 407—411) went on appeal before the High Court at Madras, in which the learned Judges held that Madras Act VII of 1865 "presupposed a freedom either to take or refuse the water." This decision was based partly on the preamble which was held to "disclose only an intention that those who obtain a supply, or use the water, in view to deriving increased profits should be under an obligation to pay the water-cess" and partly on the "reasonable construction" of the term "use," which, it was said, ordinarily implies freedom to use or to abstain from using.

3. In 1895, another suit contesting the plaintiff's liability to pay water-rate (XIX. I.L.R., Madras, 24—29) came before the High Court. The case was referred back to the lower Court which found that the plaintiff could not have prevented the water from coming on to his land, and that no increased benefit had been derived from it. On these findings the High Court allowed the appeal following the decision in XII. I.L.R., Madras, 407—411, but leaving still unsettled the question as to whether the cess was leviable on proof that the water was beneficial to the cultivator.

4. In second appeals 973—977 of 1895 decided in November 1896, it has been held by two Judges of the High Court that "as pointed out by Shephard, J., in XIX. I.L.R., Madras, 24, the mere fact that the plaintiff derives a benefit from the water does not render him liable if he had no option in the matter." The judgment continues: "The facts found in this case show that the plaintiffs had no option, and the finding of the District Court that they may have derived some benefit from the water is not sufficient to justify the judgment in favour of the defendant."

5. The construction thus put on the Act places in jeopardy a large portion of the public revenue from irrigation. Any cultivator holding fields not assessed with a consolidated wet rate in the midst of an expanse of wet cultivation from which, in the interests of the majority, water cannot be excluded, has merely to allege that he does not want the water and it thereupon becomes illegal to charge him for it.

6. It is therefore necessary to amend Madras Act VII of 1865. First, it is necessary to provide for the levy of water-cess in cases where Government water reaches a cultivated field with beneficial effect otherwise than after application by the cultivator. Clause 1, sub-clause (1) of the Bill is intended to effect this object. As it is proposed to give this amendment retrospective effect, sub-clause (2) of clause 1 of the Bill provides a period of limitation for claims for arrears. Secondly, the substantive part of section 4 of Madras Act VII of 1865 seems superfluous. Clause 2 of the Bill therefore repeals this section, and sub-clause (3) of clause 1 re-enacts the existing proviso in the section. In the last place, it is deemed expedient to bar the jurisdiction of the Civil Courts to entertain suits brought to set aside or modify assessments of water-cess made by the Collector under this Act. Clause 2 of the Bill therefore introduces a provision to this effect.

Leg CURRENT NO. 442

Government {1899} of Madras.

REVENUE.

104 109 38 his

Abstract

Recd. 20 11 } 1899.
Regd. 21 11 }

Enclosures nil

Spare copies 4

G.O., No. 750, 7th November 1899.

NOVEMBER.

Transferring to the legislative Department a draft Bill to ~~Regarding the~~ amendment of the Madras Irrigation Cess Act VII of 1865.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again G.O., No. 587, Revenue, dated 1st September 1899, and letter to the Government of India, Revenue and Agricultural Department, No. 588 of the same date.

READ—again G.O., No. 678, Revenue, dated 6th October 1899, and letter to the Government of India, Revenue and Agricultural Department, No. 679 of the same date.

READ—also telegram from the Government of India, dated 27th October 1899, No. 2443.

ABSTRACT.—According sanction to the proposed amendment of Act VII of 1865, and the transmission of the draft Bill to the Secretary of State.

ORDER—No. 750, Revenue, dated 7th November 1899.

Irrigation No. 20.

The draft Bill to amend Madras Act VII of 1865 will now be transferred to the Legislative Department.

2. The following letters will be addressed to the Right Honourable the Secretary of State and to the Government of India, respectively.

(True Extract.)

H Trencham.
Ag. Secretary to Government.

To the Legislative Department.
Copy to the Board of Revenue (Land Revenue).
" " (Revenue Settlement, Land Records and Agriculture).

Exd. Shaik Karim.

50 Copies.

[E. & L. 1 500—19-11-98.]

C 23/11/99 Hm. 24/11/99
Rd 24/11/99 Leg DEPARTMENT.

Papers to be read in Proceedings :—

Again G.O., No. , dated 189 .
Again G.O , No. , dated 189 .
Current No. 442 of 1899, dated 7-11-99, from the Revenue Dept.
" " " 189 , " , "
" " " 189 , " , "

ORDER. No. 121 d/29.11.99
PS

Under Rule 33 of the Rules for the conduct of business at meetings of the Council of the Governor of Fort St George for making Laws and Regulations, His Excellency the Governor directs the publication in the Fort St George Gazette of a Bill to amend Madras Act VII of 1865 together with the Statement of Objects & Reasons in English & in the vernaculars.

2. The Hon'ble Mr Winterbotham will be requested to take charge of the Bill

Hr Secy.

Hon. Mr Winterbotham.
R.J. 24-11-99.

R.S.L. 23.11.99

?

U.S.
Before publication, this is to be shown to the Hon'ble Mr Winterbotham for perusal of His Excy's orders.
for
The Revenue Dept.
" Hon'ble Mr Winterbotham
" Secret Branches.
" Translation Office.

The name of the Hon'ble in charge shd appear at the bottom of the G.O. of Rs.

S.R. 28/11/99

Calling after

R.J. 22-11-99 Published in Fort St. Gazette dated 27-11-99.

Rd 22/11/99

22/11/99 Rev

28/11/99 27/11/99 to Rev.

First copy sent to Press.

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Despatched in print.

READ AGAIN G.O., No. 189 , DATED

NUMBER OF COPIES REQUIRED. { Order complete. 35
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CURRENT No. 442 — A

29/11/99

ENCLOSURES TO C. No. — Print Bill + statt as appendix to order

ORDER OF GOVERNMENT .. .. .. A.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

N.B.—

A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.

Sub-section (5)—*Explanation.*—In the interests of speedy collection, it will not be prejudicial to the interests of either the landlord or tenant to include the payments by farmers of land-revenue under the term "land-revenue". In many permanently-settled estates there are permanent under-tenants of full villages, inamdars of full villages, minor inamdars and mokhasadars who own certain number of villages for maintenance as being relations of zamindars. None of these come under the category of a ryot. Nor does the term "land-revenue", as defined in the Bill, include payments made to the zamindar by these classes of people. It is quite impossible for zamindars to go to Civil Courts to recover dues from them. To avoid this difficulty the explanation to this sub-section may be amended as follows :—"The payments to be made by a farmer of land-revenue, inamdars of full villages or minor inams, held on any tenure, mokhasadars and lessees of permanent under-tenure villages to a landholder are land-revenue." For opinions of High Courts in this respect, *vide* I.L.R., 16 M. 40, 7 M. 262 & 580 and 10 M. 229.

Sub-section (11).—The words "a definite amount in kind or in money" are vague. The amount may not be definite if a land is held under waram tenure; so it will not be reasonable to exclude lands that are held under waram tenure from this definition, for they are still revenue fields.

Section 4, *sub-section* (3).—Substitute "occupancy right for agricultural purposes only" for "proprietary right," and also omit the word "only" after the word "subject" and before the word "to." Because this provision is in conflict with section 2 of Regulation XXV of 1802 by which the proprietary right in all lands situated in estates was vested in proprietors. If it is intended by this Bill to improve the condition and legal status of the tenant under the existing state of things, and if it is intended to confer on the tenant the transferability of his agricultural rights, it would be superfluous and highly objectionable to extend the right of the ryots beyond this. The object of the Government is to confer on the tenants occupancy right for agricultural purposes only in places where it is not recognised. This transfer of the proprietary right from the landholders to the tenants would be an infringement of the proprietary right of the zamindars expressly conferred on them by the terms of the permanent settlement and have been exercised by them since then. Chapter II.

Sub-section (4).—The provision under this would interfere with the right of the gre[a]dars enjoyed by immemorial custom and usage to levy assessment according to high rate of crops. Crops like tobacco, plantain, chilly though raised under wells

It [w]d by the ryots, on account of the high market value of the produce, used to difficulty [r] revenue than the cultivation of other crops. The ryots have never found landlord a[r]dship. This revenue in such cases is equitable and self-adjusting. By will only fo[r] improvement absolute in the ryot, it is sought to deprive the landholder

[t]o the higher rate of rent chargeable for crops of higher value as hitherto

"And [a]rding to custom and usage. Even in the absence of wells in a holding, been imposed, th[e] crops were raised with the water from the wells in other ryots' holdings,

Sub-section [(]g to the nature of crops was paid by custom and usage. The payment *were excluded fro*[m] ng to the high value of crops did not depend upon the possession of If the communal [i]n his holding or by any other improvement. It depended upon the fair that the contro[l] rops irrespective of other considerations. such rights by easer

Sub-section (10)—Under "improvement" the present Bill makes a material [a]visions in sections 114 and 115 of the Tenancy Bill No. 3 of Government may[b]mended in the present form. The alteration is prejudicial to by considering its ow[n] rights of the landholder. By bringing the provisions for imp[r]result is—as inter[a]eneral rights in respect of land" without any limitation, the proprietor [w]be able to re[j]of his right even to the extent of vetoing in case the improvement injures or [c]au[s]s deterioration to the property of the proprietor himself or of third persons and diminishes the letting value of the land. The Tenancy Bill provides in sub-section 3 of section 114 lest the plea of improvement should be taken advantage of to the injury of the proprietor's property in the following words :—

"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."

[D]
[se]

Chapter II.

The Tenancy Bill provides further, though in a vague way,

"That 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."

A provision is necessary by which "*the proprietor may be given the power of vetoing the construction of anything on a holding which would diminish its productiveness and letting value. If the tenant persists in its construction, he should be made liable to damages.*"

Sub-section (5), *clause* (*a*).—The construction of tanks, water-channels and other works for the supply, storage or distribution of water for the purpose of agriculture, &c., by the ryot without the consent or permission of the proprietor will lead to great injury and loss to the property, to the diminution of its letting value and productiveness. In ryotwari tracts the Revenue officers have the power of vetoing such works to prevent the evils which would otherwise arise. By unlimited freedom in the construction of tanks and channels, it would interfere with the drainage and supply of the existing works, and the lands and fields in the waterspread of the irrigation works would be injured. This freedom is liable to abuse to the injury of the proprietor in three ways:—

Clause (*c*).—(1) The ryot may obstruct the water-supply to the existing irrigation works and convert the punjah lands higher up the waterspread into nunjah by levelling and ridging up the land, and would thus evade the payment of enhanced revenue.

(2) The ryot, with the help of moisture and dampness of the adjacency of wet lands, may, with a little extra supply of water stored by constructing a tank over his punjah lands, under the provision of the Bill, and may thus be enabled to convert punjah lands into nunjah lands and to evade the payment of wet assessment.

(3) The ryot may construct his own tank on his punjah by which he might dispense with the supply from the proprietor's irrigation works constructed at great cost, and thus claim exemption from nunjah revenue for the lands, which have all along been under nunjah ayacut.

The distribution of water for purposes of irrigation should vest with the proprietor only. Otherwise it would result in diversion to the injury of other irrigated lands. By this provision a ryot whose holding is higher up and nearer to an irrigation channel will be enabled to construct the supply-channel in such a way as to interfere with the supply of the fields lower down which are equally entitled to the supply of wat[illegible] the same channel. In times of scarcity of water this provision would ena[illegible] to deepen the channel within his holding in such a way as to cause percolation injury of other nunjah lands and thus divert the legitimate supply to other hold[illegible] entitled to equal distribution.

Clause (*d*).—When improvements are made by reclamation, &c., and when the landholder remits land-revenue either wholly or partly to compensate the expenses incurred by the ryot, it will not be equitable to make such improvements absolute in the ryot and to deprive the landholder of his just revenue.

Clause (*f*).—In the Rent Act VIII of 1865 no reference is made to dwelling-houses and out-offices at all. The reference to it in this Bill is a new departure. The dwelling-houses of agricultural classes may be divided all the world over into two classes, viz., dwelling-houses within the village-site and dwelling-houses on the agricultural holding itself. In the Madras Presidency dwelling-houses on the holding are peculiar only to such provinces as Malabar and Wynaad. In other parts of the Presidency dwelling-houses on the village-sites are the rule, and the exceptions are very few, if any. In the case of these exceptions the dwelling-houses on the holding is erected under a special contract or arrangement or understanding with the landlord with special provision for indemnifying him (the landlord) against any loss that might incidentally or eventually accrue from it. But if it should be contended that there is a necessity for it, the necessity must be recognized to this extent and legislated for, viz., "where a tenant wishes to erect a dwelling-house on any portion of the area in the holding he shall not do so except with the consent of his landlord in writing."

Further, if a tenant erects a dwelling-house and out-offices and vacates the same owing to his inability to continue agricultural operations, the land on which the

dwelling-houses and out-offices are erected will not be taken up by another for cultivation unless it is cleared. The clearing of this po[illegible]on would cost money which the landlord may have to lay out almost always, and [illegible]ch will exceed the value of the land on which this is built. Thus the landlord w[illegible] be unnecessarily prejudiced. The practice obtaining heretofore has been for the landlord and tenant to come to a special understanding prior to the erection of the dwelling-houses or any other structure habitable or otherwise on the land, providing against the contingencies contemplated above. Any departure from this will prejudice the landlord to a great extent, and overweigh any advantage that the tenant may derive from the same. Chapter II.

Clause (*g*).—Insert in (*g*) after the word "plantation of" "taxable, fruit yielding, waram-paying trees and plants." The word "useful" is vague. The clause as it stands will give room for the plantation of unproductive trees and trees which would take a great number of years before they yield produce. If this is considered as a restriction on the discretion of the ryot to raise any crop he pleases, it will be seen that such a restriction is necessary in the interests of land-revenue to protect against the falling off of which the Government itself had to issue an order prohibiting their ryots from raising second crop unless with the consent of the Revenue authorities.

Sub-section (7).—In the case of waste lands which have not been assessed according to their quality and description the landlords must be given every right to fix their own rate of land-revenue. Enough if the landlord and tenant agree with each other as to rates. It may not be possible to fix a permanent assessment on waste lands at the beginning as it may end in a loss to the landlord or to the tenant eventually. The landlord might be willing to give out such lands free of land-revenue for a certain number of years, at favourable land-revenue for a certain number of years, at a progressive land-revenue for another number of years and at a fixed rate thereafter. Again a landlord contracted his own rate for lands newly assigned. It is not known why he should now be compelled to deviate from the existing practice. In most cases no rent is fixed for waste since the rent is fixed when the land is let and not before. In fixing the rent, the landlord is generally guided by the demand for the land to be assigned, the rate becoming high or low as the demands for the land is great or small. Some of the lands adjoining to the waste to be assigned will bear a high rate, while similar others a low rate.

It will be difficult to ascertain in such cases what customary rate of rent is. The difficulty in determining the same will lead to unnecessary litigation between the landlord and the ryot. Such sections which disturb the present peaceful arrangement will only foster litigation. The following addition to the sub-section may be made:—

"And in the case of waste lands whereon no fixed or customary rate of land-revenue has been imposed, the landlord shall have power to enter his own rate of land-revenue."

Sub-section (8).—Add after the words "District Collector" "*provided such lands were excluded from the assets of the zamindari at the time of the permanent settlement.*" If the communal lands were included in the assets of the zamindari, it is just and fair that the control should vest with the landholder only, subject to the settlement of such rights by easement and usage under Civil Courts.

Sub-section (10).—Omit su[illegible]ction 10 (*a*).

Government may, perhaps, rea[illegible]e difficulties of the position of the zamindar, by considering its own case. If zamindari tenants are armed with this power and the result is—as intended—that all zamindari tanks are put in repair, Government will not be able to resist the appeals of its own tenants to put Government tanks in repair. It is not too much to predict that the staff of the Public Works Department would have to be doubled or trebled, to enable the work to be carried out promptly and effectively.

Sub-sections (11) *and* (12).—Omit sub-sections (11) and (12).

By the permanent settlement all the waste lands and porambokes, including forests, vest with the landholder. There is no reason or right for the interference of Legislature in this. Forest Act V of 1882 is not applicable to the permanently-settled estates.

Supposing the ryots of certain village in an estate were for a certain number of years grazing their cattle in, and bringing wood from, a forest near their village, this sub-section deprives the landholder of the right of reserving such forest for any purpose, even though he may be willing to set apart any other portion for the above purposes for the ryots. This is a very hard rule. The forest which was being used for a certain number of years may be best suited for the growth of particular class of trees or might contain minerals, and the landholder may be willing to reserve that forest for the growth of such trees or use it for the working of mines. His rights are restricted by this sub-section.

Government itself does not recognise such a right in their ryots in respect to their own forests. This will only foster unnecessary litigation between landlord and tenant. It is not known how a tenant can acquire any right in any land or in the produce on such lands for which he does not pay rent. In mirasi districts, the mirasidars once exercised right over all waste in their respective villages, and their rights have become almost obsolete in the zamindari and ryotwari villages of the district. Will it not be unfair that it should compel the zamindars to respect a supposed right to the tenants in the zamindari forests and porambokes when the Government itself is not prepared to recognise such rights to the ryots in its own forests and porambokes and levies royalty for any produce such as stone, green leaves, sand, fire-wood, &c., that any ryot may require, some for his own domestic and agricultural purposes.

Sub-section (13).—*Omit* this section.

There is hardly anything to prove that a cultivator of land possesses mineral rights in his holding unless they have been explicitly given him. The explicit and implicit contract with a ryot in respect of cultivable lands is that he should continue on the land and carry on cultivation paying a certain rate of land-revenue. A right which he was not definitely given and which he never thought was given to him, a right which he never up to date exercised and never even dreamt of exercising, is intended to be given him by this legislation.

Mining is at best only a speculation. It may either be a success or a failure. To compel a landlord to exchange his certain rent under agriculture to a doubtful rent under mining is one of great hardship. Further, the land if excavated for mining can never again be made fit for agriculture except at a prohibitive cost. Government can afford to lose a portion of its land-revenue for the sake of an experiment in mining by a ryot. To force the same procedure on a landlord whose only source of income is his land-revenue is extremely hard. If extensive mining is thought necessary for developing the resources of the country, the landlord who is the chief loser in the concern may be allowed the privilege of acquiring lands from the tenants for mining purposes.

Mr. Ross, the original framer of the Bill, reserved such rights to landholders, and it is quite unreasonable to deprive them of the rights.

So this clause may be removed and section 122 of the original Bill must be placed here reserving mineral rights to landholders and given them right of acquiring lands from ryots for exercising such rights.

"A principal Civil Court of Original Jurisdiction may, on the application of the landholder 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, or for the purpose of quarrying or to excavate gravel or clay and on being satisfied that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landholder upon such conditions as the court may think fit, and require the ryot to sell his interest in the whole or such part of the holding to the landholder upon such terms as may be approved by the court, including full compensation to the ryot."

Chapter III.

Section 8.—In most of the sea coast villages from the time a ryot plants tree, land-revenue ceases and tree-tax commences. There are innumerable instances where the ryots grow fruit trees and topes on their patta lands. The terms on which the ryots are allowed to plant trees are liberal in consideration of the tree-tax to be imposed. From the time the ryot plants trees on his patta lands the land-revenue ceases and he

is allowed to enjoy the land free of any assessment till the trees begin to yield produce. When the trees yield produce, then only he begins to pay the tree-tax. The land-revenue which he used to pay according to the crops raised is converted into tree-tax. The ryot gets kudivaram right in all the trees planted and reared by him as well as the occupancy right in the lands under them, except in the trees like palmyra to whose growth he has not contributed in any way. These belong exclusively to the zamindar and the ryot has no manner of right in them. This practice has also been recognised by Law Courts. This section contemplates one only case when the trees standing on a ryot's land have been assigned to somebody else, but not a case where to certain kinds of trees whether assigned to another or not, and even if it is grown after the ryot has entered upon the land, the ryot has no right whatever; the principle applicable in such cases being are— Chapter III.

(1) that the tax paid is tree-tax and not land-tax,

(2) that the tax or rent whether in kind or waram is collected on every tree to whose growth the attention of the ryot is necessary,

(3) that to such of the trees such as palmyra, &c., which does not require the care and attention of the ryot, the ryot can claim no right and the landlord has the exclusive right as he would have in trees of spontaneous growth on non-rent paying poramboke land. (*N.B.*—This land too pays no rent, but the trees pay.)

There are three cases: (1) When the land-revenue was changed into tree-tax, the land being exempted from taxation; (2) Where both the lands as well as the trees on them are taxed; (3) Where land alone is taxed, tree-tax being exempted. In the first two cases the ryot cannot with justice be given the right of cutting trees without the permission of the landholder. In the third case only the ryot may be given the right to cut down trees as he likes.

In districts like Tinnevelly, in ryotwari tracts the Government levies both palmyra tree-tax and the land-revenue for the lands on which the trees stand. Neither the tree pattadar nor the land pattadar is allowed to cut the tree, unless the tree-tax is compounded with the land-tax when the tree pattadars and the land pattadars are one and the same person. When the taxes are not compounded the Government prohibits the cutting of trees on pain of penal assessment of the maximum rate of tax for thirty years with further liability for damages, if any. Even with permission twenty years' assessment is levied before cutting. In such cases full land assessment is levied at the same rate as for lands without the trees interfering with the cultivation by the contraction of space and by shade, and the trees absorbing manure.

Section 12.—*Omit* sub-section (1) and (2) of section 12—

(*a*) A landlord may purchase lands in a revenue sale just in the same way as Government purchases lands in such sales, and make the same his own property with an absolute right of sale, &c.

(*b*) He may, to add to his farm lands, purchase adjacent lands within the block selected for home farming at an enormous cost.

(*c*) He may acquire very valuable lands either by succession or gift.

It is impossible to see the justice of prohibiting a landlord's right to purchase or acquire lands in the legal way just as any other man will do. By this section, a landlord will lose even the just rent due on the land when he has not got the right to sell the same, if he purchases such lands for want of bidders in auction. This section is extremely prejudicial without any corresponding benefit. Should this unreasonable section stand, it would only lead the landlords to resort to subterfuges by purchasing the lands in the names of those in whom they have confidence.

When a money-lender or tenant purchases the interest of a tenant, and sublets it to another, he is allowed to reserve the occupancy right to himself and treat his sub-tenant as a mere tenant-at-will. There is no consistency in depriving a landlord-purchaser of the proprietary right of a land for which he pays as dearly as the other purchaser pays for the land he buys. But, after all, the ultimate effect of this will be disastrous to the tenants themselves, for the lands will hereafter freely pass to the hands of pitiless money-lenders in whose hands the ryots cannot expect such a kind and sympathetic treatment as they would expect from a landlord-purchaser.

Chapter III. *Sub-section* (4)—*Explanation.*—It is inexplicable that so much restriction should be imposed on the accrual of occupancy right, even when the right has been purchased by the zamindar for proper price, while a person with occupancy right does not lose it by becoming jointly interested with the landholder. In both cases there is combination of occupancy right and proprietary right of the zamindar, the difference is only in the order of precedence. In other words, occupancy right if accrued subsequent to the zamindari right, it becomes null, and not so when it precedes the right. There is neither consistency nor justice in this.

If the object of the Government is to circumscribe the limits of landlord's private lands, so that the area of communal lands available for the wants of the increasing agrarian population may not be materially diminished, it will be only reasonable to circumscribe the accrual of occupancy right on such lands as have been abandoned or relinquished, and not to extend it to lands acquired by purchase, sale, succession, gift and reclamation at landholder's expense, for the simple reason that in one case the acquisition is without consideration, and in the other for valuable consideration.

Chapter IV. *Section* 14, *clause* (*b*).—There are two cases where temporary leases for zamindar's private lands are given otherwise than by written agreement.

There are two kinds of written agreement (1) Leases terminable at a definite period specified in the written contract, but allowed by the same contract to continue till the pleasure of the landlord by mutual agreement or by sufference. Beyond the limited period specified in the written contract, the tenant becomes a tenant-at-will.

(2) Leases by oral agreement for a definite period or continued by sufference. The lessee becomes a tenant-at will or tenant from year to year.

2. For both kinds of these leases the tenant is in a better position than the lessees on a written contract at the expense of the landholder. He is allowed to occupy the land for an additional revenue year beyond the year in which he receives a notice to quit. This is unfair and illegal. If it be the object of the Legislature to protect the tenant's right over the crops that might be standing at the expiry of the revenue year, he may be allowed to continue till he reaps the crops and not till the end of the whole next revenue year.

Chapter V. *Section* 16, *clause* (ii) (*b*).—Before "District" insert "same village, taluk or."

Clause (iii).—The Government itself does not recognise such special rights in its own ryots in dealing with wastes in ryotwari lands. If there be such special rights they have become defunct long ago in zamindari as in ryotwari lands. By the permanent settlement the zamindars were given unrestricted right on waste lands as much as what the Government exercises over wastes in ryotwari lands.

Seeing that this Land Bill is framed to suit the present state of affairs there seems to be no useful purpose served in enacting the latter portion of sub-section (iv) of section (ii) of Act VIII of 1865, especially when it is clearly known that no ryot is at the present day allowed to exercise any manner of right in the waste lands, whatever might have been the state of things long ago. Since such re-enactment will only tend to promote litigation between landlords and tenants, it will only be just at least to avoid this unpleasantness and recognize the existing condition of things by omitting the latter portion of this sub-section commencing from "and that nothing in this rule shall be held to affect any special rights, &c.," up to "land."

Clause (v).—It is certain that periodical settlement must have been made by the zamindars as occasions arose, since and before 1871, with their tenants for payment of rent for the lands in their possession; and the rate now prevailing has been subjected to arbitration before the summary court, and eventually the District and High Courts too on appeal. Here the tenants and the zamindars must have been given ample opportunities to say their say regarding the rate of rent; and a definite conclusion arrived at about the present rate. Such being the case, it is not clear why the existing state of affairs, which has been brought about after a protracted litigation, be disturbed now, and the landlords and the tenants be asked to take up their old sores and go to litigation again on a once settled question, which would involve them in hopeless ruin. It is not charitable that they should be asked to go

for evidence both oral and recorded that existed prior to May 1871, *i.e.*, 28 years from this date, seeing that it is very likely that these records might have all been destroyed no longer required after a decision of the case by competent court. Chapter V.

The legislature seems to be under the impression that since the well-known decision in the Chokalingam Pillay's case in 1871, there has been undue enhancement of land-revenue by zamindars. There are two reasons against this wrong assumption. In the first place there are sufficient safe guards provided in clause (iv) of section (ii) of Act VIII of 1865 against unauthorized enhancement of land-revenue except in due course of law. Secondly, the rates of rent and the paying capacity of the tenant adjust themselves. There have been instances of deduction of the usual rate of land-revenue to meet the capacity of the tenant.

Section 19.—*Omit* sub-sections (2) to (5).

An act of grace and more so a conditional one ought not to find a place in a statute. Even in ordinary years under the so-called summary process the landlord is not able to realize his rent within the official year. It takes a long time, such as six months and more, after the close of the fasli to realise his rent. It will not be right for Government, who are solicitous about the collection of their own arrears within the fasli year or within the quarter next succeeding to the infinitesimal portion of the demand that may be still due from the utter homeless paupers, to throw all sorts of obstacles in the way of collecting their just rent from their (zamindars) ryots within the year. When the Government begins to collect its peishkash rigorously within the year succeeding the one of famine, it is not known how a landlord who is powerless even to collect his just rent within the year be able to collect the arrears with the current demand in time to pay the Government kist. The landlords will have no objection if the Government is prepared to grant them loans at a cheap rate of interest, since it is in a position to command any amount in the market, in times of distress, if it really intends to enforce this beneficial rule to the zamindari tracts. If the distress continues for a number of years, and if the Government should make its demand as soon as the distress is over, what then is to become of the landlord who will certainly not be able to meet the Government demand made all at once. Seeing this is only a matter of grace, it should properly be left to the good sense and discretion of the zamindars alone. A compulsory enactment such as this is unreasonable and contrary to the solemn promises made by Government at the time of permanent settlement.

Sub-section (5).—It is not known if the same thing is allowed in Government villages. If there is any justice in the provision, Government would have introduced the same with regard to their own ryots. This provision will work immense hardships on the landlords. The proof by ryots is not difficult, for they are all in the same boat and are sure to combine to the advantage of themselves and to the great prejudice of the landlord. The proof to the contrary by the zamindar is difficult.

Section 20.—It is inconceivable why fractions of a month and of a rupee should be disregarded in the calculation. Is As. 15–11 to be omitted altogether, or 29 days of a month to be disregarded? Old 12 per cent. per annum may be made to remain without difficulties and losses. If the arrear is not paid, the zamindar has to borrow at his usurious rate; the sowcar does not show the same concession to the zamindar who only borrows owing to the negligence or indifference of the ryots. By way of illustration, suppose in a zamindari there are 20,000 ryots in each of whose case there is a fraction of a rupee amounting to 0–15–11, the loss in interest to the zamindar will be nearly Rs. 20,000. By this section the zamindars will be compelled to forego the interest on Rs. 20,000 legally entitled to him, while the sowcar will relentlessly demand the interest from the zamindar. A sowcar never omits fractions of a month and of a rupee. This does not seem to be holding the balance evenly.

When the Government, which is able to raise loan at 3 per cent, recovers interest from its defaulting tenants at 6¼ per cent. per annum, it will be hard on the zamindars if they are compelled to levy the same 6¼ per cent. while they cannot raise a loan even at 12 per cent. to meet the deficiency caused by the irregular and protracted payment of the tenants.

Chapter V.

Section 21, *sub-section* (1).—It is objectionable that the specification of the items, to which the payment is to be credited, should be according to the wish of the tenant. There may be cases where the payment shall have to be credited for the arrears of land-revenue. An amendment is desirable after the word 'credited' "*provided there is no arrear of land-revenue in which case the payment will be credited to the arrears of previous revenue year or instalment.*" This method of crediting obtains in ryotwari tracts.

Sub-section (2).—Substitute '*copy*' for 'counterfoil.'

In Government villages the தண்டல் and the கைச்சாத்து form the aggregate record of payment and receipt of rent. This has been the practice by way of imitation in many zamindaris. If by a counterfoil is meant a counterpart from which the receipt has to be separated before issue, the number of such receipts and counterfoils will be as many in the case of each tenant as the number of times he takes to pay the rent due from him in instalments. Thus the work will be multifarious. It will be unnecessary in many cases. It may lead to mistakes of many kinds which may again engender fraud. If the கைச்சாத்து system is continued and a copy of the same called தண்டல் ஆவர்ஜா is kept by the agent of the landlord every time payment is made, it will be entered consecutively in the same கைச்சாத்து and its copy: and as many entries as the whims of the tenant may create will all find a place in one sheet of paper and its copy with the agent of thelandlord. Further the கைச்சாத்து system will minimise the inconveniences and difficulties accruing from the omission contemplated in sub-section 4 of this section. Because every entry, if an intermediate one, will show all previous and subsequent entries and remove all room for doubt as to its actual character, negativing further all possibility of the tenant fraudulently withholding receipt actually granted, with the object of taking advantage of the presumption referred to in the said sub-section or subjecting the landlord to the process contemplated in section 22 *infra*.

Section 27, *sub-section* (2).—Omit and substitute the following:—"The payment shall be made free of charge to the landholder."

There must be a section for the receipt by the proprietor of the amount deposited by the ryots with the Collector under sections 24 and 135 without any additional cost either in the way of stamp or carriage. Such payment with the Collector by the ryots may be adjusted in the peshkash amount due by the proprietor, if any, or the amount may be directed to be paid out of the collections of the neighbouring ryotwari village or from any nearest Government treasury.

Section 30.—*Omit sub-section* (3) *and substitute the following*:—"*In either case the tenant must give a written registered notice to the landlord direct or through the Collector appointing the time for harvesting so as to reach the landlord not less than* 10 *days before the commencement of harvesting. And when the landlord or his agent does not attend at the fixed time, the tenant may apply to the Collector to take steps under section* 28 *for the division or produce.*" Or in the same clause (3) omit the words from "without" to the end and substitute "*Subject to such supervision and order according to local usage as may be necessary for the safeguarding of the interest of the landlord in the produce.*"

With the commencement of the harvest commences the difficulties of the landlord in safeguarding his share, especially in those cases where there has been misunderstanding between the landlord and tenant. If the tenant is left to himself and fortified by such provision as is contemplated in the words "without any interference on the part of the landholder" his ways and means of circumventing the landlord or his agent would be many. These need not be described in detail here. Landlords and the officers of the Revenue Department to whom they have often complained in the matter know them well throughout the Presidency wherever the waram tenure has prevailed.

Sub-section (4).—At the end of this clause insert the proviso contained in the second paragraph of section 83 of Act VIII of 1865.

This Bill in section 55 makes any fraudulent conveyance of property by the tenant to prevent distress *penal* so that the landlord may not be cheated out of his legitimate dues. On the same principle it will be right to make the tenant's removal

of grain before division with an object to prevent landlord from getting his full dues *penal*. Since there are some tenants who are peculiarly watchful and industrious and as such the produce from their fields are more than that of the next best field in the village, it will be a handle to such of them to surreptitiously remove all that he had over and above the crop of the next best field in the village in the absence of any *penal* provision as at present exists. Chapter V.

This section 30 gives exclusive possession of the produce to the ryot and disallows all interference on the part of the landholders. If the land revenue is taken by appraisement of the produce, it is but right that the ryot must not be interfered with, since the landlord is entitled to his share of the appraised total. Where there arises difference between the ryot and the landlord with regard to the appraisement, division of produce becomes necessary. When the tenant is interested in showing that the outturn is less than the estimate and the landlord's men in proving, on penalty from their masters that their appraisement is correct and even more than what they estimated, is it not fair and equitable that both the ryot and the landlord must exercise proper supervision to avoid fraudulent subtraction or addition on the part of the ryot and the landlord's men respectively? Where is then the equity of allowing exclusive possession of the produce in such cases to the ryot alone? The present practice in such cases is that some time before harvesting the appraisement of the crop is sent to the landlord by the village servant and these are checked by other officers. After due notice from the tenant of the date of harvesting and the field to be harvested on that date, men are appointed to supervise the harvesting and the seal of the zamindar is placed on the produce harvested for the day. This is guarded in the night both by the respective ryot owners of the property and the taliari of the village. The diary of the village officers with the individualwar accounts of the various process of reaping, bundling and threshing, &c., is sent the very day to the zamin office to prevent tampering by the village officers and others. These necessary precautions continue to be exercised until the final division is made and the landlord's share is set apart. There is no necessity for this one-sided change.

The remedy of granting the proportion of the fullest crop of the neighbouring land contained in sub-section 4 of section 30 will be of no avail since it assumes the possibility of proving that there was a clandestine removal of the crop from the land and that each tenant is capable of and in the habit of maintaining accounts to show the yield of his holding or at least the tenants in general are so very honest that they can speak the honest truth to the prejudice of their self-interest.

Section 31, *Sub-section* (1).—The compulsory exchange of puttah and muchalka every year has been found to cause unnecessary hardship and expense to the landlords without any corresponding advantage to the tenants; it has been the source of innumerable vexatious suits causing enormous trouble and expense to the parties and waste of time of courts; under the Bengal Tenancy Act neither the previous exchange of puttahs and muchalkas nor the previous tender of puttah is a condition precedent for the recovery of rent; even the Madras Government has practically dispensed with them with regard to their own ryots. Chapter VI.

The sooner the inordinate importance attached to the exchange of puttah and muchalka is done away with the better. Puttahs proper and muchalkas are not deeds of contract nor do they create any legal obligation. They are only documents incidental to the pre-existing contract, whose conditions remain intact, and they are documents with annually repeating terms concerning a tenancy. There have been a number of estates in the Presidency where the system of exchange of puttah and muchalka was introduced quite recently. In such places for generations the collection had been going on without the formality of the exchange. The present Rent Recovery Act VIII of 1865 contains a provision in section 7 by which the exchange might be dispensed with with the consent of both. When a contract is complete, and when the occupancy of the tenant is in consequence of a pre-existing contract, and its terms are admitted, to make the right of the levy of rent and civil action depend compulsorily upon the exchange is superfluous. Puttahs will vary but little from year to year, and a provision that a puttah once accepted should hold good between the same parties till there is a change in the terms of the contract would save much trouble and annoyance.

Chapter VI.

Sub-section (2).—The term "substantially correct" gives room for misunderstanding. It is possible for the presiding officer to treat every unimportant item as a material one, and thus reject the puttah that it is not substantially correct. The interest of the landlord suffers. In such cases, either party shall have to go as far as the High Court to declare what a substantially correct puttah would be.

It is admitted on all hands that great vexation and loss have been occasioned in the past, and the proprietor frequently defeated in the recovery of his just dues, by reason of some unimportant and unintentional defeat in the stipulations of the puttah tendered. It is proposed to correct this by the stipulation contained in sub-section 2 of section 31, viz., "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." This is extremely vague, and will, it is submitted, in no way diminish litigation based on alleged defect or irregularity in the puttah. It is hoped that this clause will be so altered as to express in definite and unmistakable terms the intentions of the framers of the Bill. It may be altered as follows:—"*A puttah which is not entirely but partially correct shall be held to be valid to the extent that it may be found to be correct.*"

Now that the kurnams and other village servants have been made independent of the zamindars, their masters, and have been placed under the Revenue officers, it is fair and equitable that the non-tender of puttahs or tender of incorrect puttahs, which irregularities are likely to take place more frequently and with greater facility and impunity than hitherto, should not deprive the zamindar of his right to recover the rent, as long as the occupancy and terms of the tenancy are admitted.

Sub-section (3).—Omit "in restraint—harvesting or." This provision is superfluous as no landholder would restrain cultivation absolutely. There may be occasions where it would be necessary to restrain particular kind of cultivation or cultivation on particular occasions for particular reasons. The Government restrains the rearing of second crop under a tank, when they are prejudicial to the first crop without the permission of the Revenue officers.

Section 32.—It is stated in this section that the puttahs may be tendered, if the Collector shall so permit in respect of any estate or portion of an estate by filing of the same in the office of the Collector or such other officer as the Local Government may direct, and if so filed the Collector or such other officer shall cause the puttah to be served on the ryot at the cost of the landholder. This provision will cause a good deal of loss and inconvenience to the landlord. It is not stated how the costs of such tender are to be realized from the landholder. If the object of the Bill be that the landholder should bear the costs of such tender there is no reason why he should be subjected to such a loss. In the case of those ryots only who do not appear to receive puttahs before the landholder or his authorized agent within the time mentioned in the general notice given to the villagers for receiving puttahs after the preparation of those records, the tender of puttahs becomes necessary. The fault of not receiving puttahs after executing muchalkas lies on the ryot and not on the landholder. Therefore it seems reasonable that the ryot should bear the cost of such tender. The costs of the same will be enormous. The ryots taking advantage of this provision, which is less costly to them, will try to cause great loss to the landlord. It is not clear why such a provision has been introduced. It is stated in the Objects and Reasons given for the Bill 3 of 1898 that this provision is introduced for the advantage of the proprietor to protect them against the plea of non-tender. But it will cause rather great inconvenience, loss and good deal of expenditure to the landholder than benefiting him. The latter part of the provisions regarding the service by the Revenue officers is not necessary. There should be another provision that the cost of the tender of puttahs through the Revenue officer should be realized from the ryot along with the Land Revenue according to the provisions of this Bill, even if he is made to pay the cost of tender in the first instance. Moreover it is not stated what should be done in case the Collector does not permit the filing of the puttahs. Section 122 shows that the order of the Collector on this application is final, so the object of this provision will be frustrated.

Chapter VI.

Section 35.—Insert after 'relates,' "The same puttah and muchalka may continue to be valid during the subsequent years also, provided there is no change or variation in the terms."

When once the terms of tenancy is settled between the landlord and the tenant by a decree of a competent court, it is extremely undesirable to compel the exchange of puttahs and muchalkas year after year although there might be no variation in the terms. What is subsequently wanted in the interests of both the tenant and the landlord is the Bill for rent, which will exactly be a copy of the chittah, which will clearly show the extent and the class of, and the rate for, all the lands in his holding and showing him also the total amount payable with all the additions and subtractions to his holdings together with all other taxes, such as road-cess. &c., he may have to pay. This will be more than ample to protect the interest of the tenant. While the object of the present Bill is to protect the tenants from unnecessary litigation, and since it is a practice that the tenant and the landlord that are litigiously disposed fight over the terms once decided upon as often as opportunities permit, it will be just to minimise the chances of such unnecessary and ruinous litigation by making the terms once decided acceptable during the subsequent years also unless there is a change in the terms of tenancy.

Insert, at the end of this section, "*Provided that nothing herein shall invalidate a puttah containing conditions relating to periods of more than one year in cases where they are necessary, considering the character of the crop or produce and the local usages regulating the realisation of the landlord's share in it.*"

The necessity for this will be obvious from cases of which the following may be cited by way of illustration. In the Chingleput district there are extensive cocoa plantations; from time to time tenants plant cocoa trees on their dry lands on condition of paying the landlord a portion of the produce when the trees begin to yield. The landlord foregoes his rent till the period. Heretofore it has been the practice to keep up an understanding to this effect, and the landlord and tenant have abided by it. Now under this Act, the tenant may say that he will not pay anything more than the rent for the dry land payable according to his puttah. But this contention would be absurd, because the profits derived by him would be quite disproportionate to the original understanding with respect to which the land was granted to him for annual dry crop cultivation. The local usage has recognized the expediency of proving against this exclusive advantage to the tenant and has provided for agreements from time to time according to which the landlord gets his advantage also in the concern by sharing in the produce according to certain ratios that are regulated by custom. Heretofore agreements on this score between landlord and tenant have been enforced in Civil Courts under the Common Law provisions of the Contract Act. The constructions of this section would give room to the tenant to contend that the landlord cannot recover this produce also without puttah or muchalka. In the case contemplated it is not possible to tender a puttah with a stipulation to cover this case also; for no puttah can be granted with conditions covering more than one year. Cases of this kind have therefore to be provided for and liberty should be given to the landlord to put in clauses in puttah that in the event of cocoa and other plantations being organised, the landlord should be given certain share of the produce from the time the trees begin to yield according to local usage.

Section 36.—*Vide* remarks under section 38.

Section 38.—The provision at the end of sections 36 and 38, viz., "that the decree shall be of the same force and effect as if a puttah and muchalka had been exchanged," should apply to decrees in suits of the same nature passed in Munsifs' or District Courts. This will greatly shorten and simplify the procedure. At present, after having obtained a decree before the Munsif, the parties have to come to the court of the Collector to enforce acceptance of the puttah by the tenant, and the sa cumbrous method of procedure will be rendered necessary under the provisions of t new Bill. If then the decree of the Civil Court has the same practical effect as t.e decree of the Revenue Court, there will be great economy not only of time and money both to landlord and tenant, but of the labour of executive officials.

Chapter VI. *Section* 39.—Omit from the words "until" to "decreed" and substitute the words "till there is a change in the terms of the contract between the same parties" for reasons given under section 35 since annual exchange of putta, muchalka is unnecessary.

Section 40.—Civil Courts must have concurrent jurisdiction with Revenue Courts. It will give universal satisfaction if stationary Civil Courts are allowed to take the place of the itinerant Revenue Courts.

Chapter VII. *Section* 41.—At the end of section after the words "in his holding" insert the words "either himself or through the Civil Courts."

Section 19, sub-section (1) of the Land Bill defines what an arrear of land revenue is. The present Rent Recovery (Act VIII of 1865) authorises a landholder to distrain moveable property of a defaulter at any time after the arrears fall due whether it be within the revenue year for which the arrear is due or after the year as the case may be. While the Government is very solicitous about collecting its instalment to the last pie long before the payment of next instalment falls due, the equity of requiring the landholder alone to await till the expiry of the revenue year for which the revenue is due for the purposes of collection is inexplicable. Therefore this section must be modified as follows:—"A landholder may *at any time after the arrear became due*, and if no security has been accepted therefor in addition to any other remedy * * * for the discharge of such arrear."

There is no provision for the distraint of articles if the defaulting ryot lives outside the estate wherein the land is situated. When the defaulting ryot or tenant is absent or cannot be found or resides outside the estate where the land lies, his property in the district, whatever it may be, must be liable to distraint through the Collector of the district where the land is situated.

Section 42.—While fully realizing the value of the right of private distraint accorded in the Bill, it is desirable that the landlords may be accorded also the right of distraint through the Civil Court. This procedure is adopted in Bengal (Bengal Tenancy Act, section 121) and there seems no valid reason why the same privilege should not be accorded to proprietors in this Presidency. There are many cases in which the right of private distraint will be useless or its exercise dangerous. When a whole village has combined to be obstructive or when the police are unfriendly to the landlord, he will shrink from using the weapon which the law has placed in his hands. He will then be compelled to have recourse to the Civil Court, by bringing a civil suit, and attaining the same end by attachment and sale in execution of the decree. This alternative will on the one hand press heavily on the landlord by involving him in great delay, keeping him out of his money, and burdening him with an infructuous tenant; while on the other hand it will press heavily on the tenant by enormously increasing the costs and accumulation of interest.

Section 43.—In this section insert the words "*office at the head-quarters of the*" between the words "the" and "Collector" in the sub-section.

Insert the words "*or his camp. The Collector providing for some officer always remaining at the head-quarters to receive such copies*" between the words "Collector" and "by the landholder."

Omit "48 hours" and substitute "3 *weeks*."

Madras Act VIII of 1865 in section 16 provides 10 days after distraint for forwarding copy of it to the Collector. This period has in many cases been found to be too short, especially where the estates are large, and situated some distance from the head-quarters of the Collector. If we should go into detail, we must concede that the existence of a regularly-constituted Postal service and the railways cannot help the landlords much in the matter of expediting this business. It is not one distraint that is generally made in any given locality in a zamindari; a number of distraints is generally made. The forms requisite with respect to each have to be complied with; generally three copies of each have to be made and a great many other things more or less important in their nature—*e.g.*, the appraisement of property distrained—have to be duly attended to. All this take much time, and in large

estates much longer time, than in similar ones. It would be impracticable and useless, even if practicable to create a difference with respect to this among the various estates of the Presidency according to the extent of area and capacity for work manifested in each. Therefore three weeks fixed once for all would secure the purpose excellently. It goes without saying that in the light of the observations made above 48 hours is too small to be thought of. Again we may rest assured that the landlord gains nothing by delaying the matter. On the contrary it is to his interest to see that the copy of distraint goes to the Collector as early as practicable in view to the proceedings being brought to a conclusion at an early date. Chapter VII.

Section 45.—It is stated in section 45 "that the distress 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" and in section 64 it is stated that "if the distress was excessive, the Collector may direct the restoration of the distrained property to the owner; and the distrainer shall not proceed further under this Act and the ryot may sue the distrainer for any loss or damage which he has sustained." This provision may bring a good deal of vexatious and frivolous litigations by the ryot against the landlord: and the landlord will be subjected to a great amount of loss and expenditure. The reason is that the ryots will object that the distress was excessive. The value of every property could not be known exactly. In such cases the estimate value of such properties will vary according to the opinions of the persons estimating the same. The distrainer may estimate the value of the property as being equal to the arrear of revenue and the Collector or other Revenue officer in enquiry regarding the same, may estimate the value differently and think the distress was excessive and may order the restoration of the distrained property to the owner. In almost all cases of distress the above-mentioned difficulty will certainly occur. If the ryots lay before the Revenue officer any complaint regarding the same or the Revenue officer conducting the sale reports that the distress was excessive in his opinion the Collector may order the restoration of the property and the landholder cannot proceed to recover under the provisions of this Bill and is liable to pay damages to the ryots. For instance, it is possible that a ryot possesses no other property than a bullock worth Rs. 100. His arrears amount to Rs. 20 only. In this case there is no other go than to distrain the bullock. According to this section such a distress would be excessive. The distress is sure to be withdrawn by the Collector's orders. The landholder is not only debarred from proceeding further to recover the arrears but will also have to pay compensation on the ground that the distress was excessive. As this sort of thing may happen in each and every case the land revenue cannot be collected, but the Government will compel the landholder to pay the peishcush. Thus the power given to the landholder to distrain the ryot's property will in most cases be practically useless. So if this section be not removed there is no use of giving the landholder the power to distrain. Further the section says that "the distress shall be proportionate to the arrear due." The distrained property should be proportionate to the arrear including the expenditure of attachment and of sale. The cost of attachment cannot be known at the time of making the distress, so the distress in all cases should be excessive so as to cover those expenses which may be less or greater according to circumstances. As the section provides that the distress should be only proportionate to the revenue, there is no means of recovering the cost of such attachment and sale from the proceeds of sale.

Section 50.—Omit and substitute section 21 of the Rent Recovery Act VIII of 1865, which is quite sufficient to meet the necessity.

While the responsibility of the distrainer makes him liable to any damage or loss during his charge of the distrained property under section 53 it would be hard on the landholder or his distraining officer if the defaulting ryot should be allowed to interfere with the distrained crops.

Evidently the first clause of section 72 of the Madras Tenancy Bill is omitted inadvertently in section 50 of the Land Bill. For this reason the first clause of section 50 of the Land Bill is inexplicable with this omission.

Chapter VII.

Section 51.—The ryots having withheld the payments of their land revenue for a long time after it became due their moveable properties are distrained with great difficulty and expenditure; and afterwards they are brought to sale. In all such cases if the ryot gives security to the satisfaction of the distrainer the distress is to be withdrawn. The efforts, difficulty and expenditure incurred by the landholder for distraining become useless as the object (the arrears due) is not realized. The payment is delayed. Under these circumstances, certainly, the taking of the security delays the recovery of the land revenue, and causes, expenses and loss, to the landholder. So the security cannot be accepted in every case of distraint, unless a special reason is alleged by the ryots and is accepted by the landholder. Hence the taking of security should be left entirely to the discretion of the landholder. The deposit with the Collector is unnecessary, since it will interfere with the speedy collection of land revenue and since landlord's property is a sufficient security for the amount to be realized by distress or paid by the ryot under protest or in case the distress was adjudged to be illegal.

Section 53.—Insert at the end of this section.

"Provided, that the defaulting ryot did not interfere with the distrained property without the consent of the distrainer."

Section 57.—With regard to distraint the legislation could be much simplified. In the French Government at Pondicherry the landholder has to send the list of defaulters to the Revenue officers. The rest of the work in attaching and selling the property of the defaulting tenant is done by the Government. In the Government of Mysore, the proprietors, as a better measure, are invested with the powers of Deputy Commissioners, subject to appeal in the recovery of the rent of the defaulters. There is no reason why large and respectable proprietors should not be invested with similar powers. The present system of dual powers in the attachment being in the hands of the zamindar, and the sale being in the hands of the Government Revenue officers, who are no better than Revenue Inspectors or Amins, in most instances work considerable hardship and injury both to landlords and tenants. Ruinous delays with perishable articles distrained cause irreparable injury. The English system of conducting the sale of the distrained property by licensed bailiffs, under the direction of the landlord, might with advantage be adopted in this country. The zamindar may appoint the Amin and the Government may give him a license to sell properties attached. The zamindar as master will be responsible for his conduct in this capacity. The Amin, in addition to his responsibility to his master, will be answerable to the Government for any irregularity in excess of his authority by virtue of the license he holds from the Government. This would immensely improve the working of the rent laws with well-defined responsibilities.

Section 59, *sub-section* (2).—Insert "and removing" after the word "gathering" in this sub-section.

Section 64.—There is no provision in section 41 for an application to the Collector for an order.

Substitute the words "*in a Civil Court*" between the words "distrainer" and "for" in the second part of the section for the words "*before the Collector*".

The provisions of section 64 coupled with section 71 of the Bill is highly objectionable. They refer specially to the provision that the Collector may decide that the distress was excessive and may direct the restoration of the distrained property to the owners. Now the definition of excessive distraint, given in section 45, is extremely indefinite, and can admit of as many views on the subject as there are Collectors. Further there is no margin allowed to cover the expenses of distraint and sale, which should form a charge against the tenant and can only be roughly estimated. This, however, is the least objection. The Collector who decrees the excessive distraint is himself the Judge before whom the suit for damages may be brought by the aggrieved person, and in each case his decision is without appeal. It is, therefore, submitted that there should be an appeal from the order of the Collector declaring the distress excessive, and that the suit for damages should like any other action for tort, lie in the Civil Court. The ryot will naturally bring his suit before the Collector who has

already given a decision in his favour. The best and most simple course will be to amplify section 71 into an enactment similar to that contained in section 78 of the Rent Recovery Act and section 59 of the Revenue Recovery Act, saving generally the rights of all parties to bring actions for damages for tortuous proceedings under the Act; and thus put private landlords and their tenants on the same footing as Government and its tenants in the future, as they have been in the past. Chapter VII.

Section 71.—*Vide* remarks under section 64.

Section 72.—There is no provision as to the procedure for the sale of distrained property after notice of distress was communicated to the Collector. There should be limit of time for sale of distrained articles within a month after the receipt of notice of distraint. The tenant is a loser more than the landholder. When bullocks are attached for arrears, the cost and labour of tending them are very heavy and the tenant loses by the deterioration of the animal, by the owner himself not taking care of it.

Section 76.—Omit "subject to any claims of Government." While priority over incumbrance created by a Court decree is allowed there is no reason that the claims of the Government should have priority over the landholder's claim for rent. This defeats the very object of the Bill in making the rent the first charge on land. Chapter VIII.

In the Statement of Objects and Reasons, *paragraph* 24, of the original Tenancy Bill it is stated that "for the further security of the proprietor in the recovery of his just dues, rent is, by section 76, corresponding to section 99 of the Tenancy Bill, made a first charge on occupancy right, indefeasible by any other encumbrance." This Bill does not carry out this intention for section 76, is cut down by section 77; whereby a sale of occupancy right for arrears due in respect thereof, is "subject to any encumbrances in favour of Government and subject also to any other encumbrances created before the 22nd March 1898." In any case, the point of time should be "the date of publication of the Bill," so as to prevent fraudulent encumbrances being created just prior to the passing of the Bill into an Act. But this is not sufficient; the landlord's claim should be an absolute first charge, free of all encumbrances, just as is that of the Government; and sections 76 and 77 should be replaced by a section similar in terms to section 42 of the Revenue Recovery Act (II of 1864).

Section 77.—There should be a provision for the recovery of rent in case of arrears of land revenue though subject to encumbrance prior to the passing of the Act, by sale of land under such encumbrance subject to the claim for rent as first charge. Otherwise the encumbrance would be protracted for an indefinite period. It would be difficult or impossible to find purchasers for properties which are mortgaged with possession. Notice of attachment shall be given both to the mortgagor and mortgagee. A provision may be inserted to this effect. The mortgagee may be given an opportunity to bid the property himself.

Section 80 (*b*).—Omit the words "subject to any claims of Government"—*vide* remarks under section 76.

Section 83.—Omit this section.

Sub-section (1).—There is no such provision extending a month's grace to the defaulting tenant either in the Rent Recovery Act VIII of 1865 or in the Revenue Recovery Act II of 1864. By making the sale outright and absolute on its completion, except for material irregularity, the property would find ready purchasers, and the arrears would be speedily realised. Otherwise, there would be vexatious delays in the purchase to the loss and detriment of the landholder.

Section 84.—Substitute "*landlord*" for "District Collector," and insert after "praying for" the words, "*its repair within a reasonable period. If the landlord do not attend to it, the tenants may apply to the District Collector praying for.*" Chapter IX.

Section 86, *Sub-section* (2) *proviso*.—Aftert he word "channels" add "and the damming of the calingulas, closing of the small breaches, preventing the widening of the breaches during rainy weather."

Chapter IX. Insert at the end of the section the following proviso "*and provided where the tenant is authorized to conduct the repairs the landlord is given every opportunity by the tenants or other agents carrying on the work to exercise such supervision over it in his own behalf as may be necessary for the safeguarding of his interests in the matter.*"

Section 88.—The landholders' consent should have been previously obtained before the Government undertakes the repair. In case of default on the part of the landholder and in case of disputes in the adjudication of accounts, the Government should submit the case to an arbitration or to a Civil Court; otherwise, the Government would occupy the anamolous position of being judge of its own claims.

Section 92.—Under the old Rent law—Madras Act VIII of 1865—the only authorities recognized were the Collectors as a Revenue Court and the District and High Courts as Courts of appeal. This policy may be adopted throughout this Act also. The Collector mostly acts as a Judge or arbitrator between landlord and tenant. An appeal from him must lie to a judicial tribunal, not to a purely administrative body like the Board of Revenue, on whose special competency in such matters some may base the necessity to carry appeals to them concerning the same. This is a misapprehension. The mere facts that the Members of the Board of Revenue had been Collectors and other high functionaries before they were appointed to the Board does not give them a priority over District Judges and the Judges of the High Court in dealing with questions relating to irrigation repairs and improvements. In fact it is purely Revenue matters alone that go before the Board for disposal in the summary departmental way contemplated by its constitution. But Revenue matters are one of the departments of administrative work of which Civil Courts take cognizance in the many suits that are filed before them.

Innumerable are the other subjects bearing directly or indirectly on Revenue matters and which go before the Civil Courts enabling them to take an exhaustive view of all the aspects in which Revenue matters may be considered. Before decisions are arrived for or against suitors, in fact, from special rules of custom that govern a cobra-charmer's emoluments in an out-of-the-way Wynaad village to the distribution of water from the Gódávari anicut, all matters go before the Civil Courts and eventually turn up before the High Court. The superiority of the High Court to the Board of Revenue as an appellate authority need not further be illustrated. Further, in matters like those contemplated in this Chapter, large interests may be at stake. Counsel may be heard on both sides. Questions of law and procedure may have to be discussed; and a decision arrived at after due deliberation. None of these advantages can be had before the Board of Revenue. The case may be more pointedly put thus:—A landlord tenders a patta for 14 annas; a summary suit arises thereon before the Collector and the proceedings close finally before the High Court by the delivery of judgment in a second appeal generally by a Bench of two Judges. If any knotty question of law should exercise the minds of the two Judges, the matter goes before a Full Bench and decided. But under the present Bill if a landlord is subject to an expenditure of ten thousand rupees in connection with a tank repair, the Collector disposes of the matter, the landlord appeals to the Board of Revenue in the shape of a petition. No counsel. No argument. After a long period of delay he gets a stereotyped order containing the memorable words "the Board decline to interfere," and there is an end of the matter. This certainly cannot satisfy the landlord, because in the first place he is utterly in the dark as to the grounds on which the Board came to that conclusion if conclusion it could be called. No doubt the present Chapter deals with a matter that was not thought of in the old Rent Act. It must also be conceded in all fairness that it contains provisions which will benefit landlord as well as tenant. In other words, it is a decided improvement on the old Act. All the more is it necessary, that such machinery as will guarantee the right working of it should be provided, and such a machinery the proprietors are unanimously of opinion is the Civil Court.

Section 93.—Omit this section.

There is no necessity for it. This would set the tenants against the landlord to the annoyance and injury of the latter.

General Remarks on Chapter IX.

Chapter IX. The provisions as to repairs in sections 84 to 92 of the Bill are highly prejudicial to the landlord. The tenant may make his application direct to the Collector and need not previously apply, or even give notice, to the landlord. The slightest want of repair would apparently justify the tenant's application; and it is not even necessary to prove that the necessary supply of water is not forthcoming. It is not stated whether the supply is to be for the first crop only, or whether it is necessary that a supply should be provided for the second crop also. It is not even considered necessary that there should be a personal inspection by the Collector. During the rainy season the bund of every tank is more or less damaged; and small quantities of sand or mud are brought into its bed by the supply channels. The tenants under every tank will be therefore in a position to apply for the Collector's order for repair and the landlord's net income may prove insufficient for the repair of all the tanks in his estate. The tenant should be called on to show that his usual cultivation has been prevented or impeded by the landlord's neglect, before being armed with compulsory powers. Government may, perhaps, realize the difficulties of the position of the Zamindar by considering its own case. If zamindari tenants are armed with this power and the result is—as intended—that all zamindari tanks are put in repair, Government will not be able to resist the appeals of its own tenants to put Government tanks in repair. It is not too much to predict that the staff of the Public Works Department would have to be doubled or trebled to enable the work to be carried out promptly and effectively.

Chapter X. *Section* 94, *sub-section* (1).—Omit "ten times" and substitute "*twice*" as enacted in section 5 of Madras Act VIII of 1865. There is no reason why there should be any alteration of former law on the subject.

Cesses authorized by long usage and custom and continued for religious and charitable purposes like temple merahs are legally due. There must be a provision for levy of these merahs in the Bill lest the collection should become a penal offence according to section 94. Till recently merahs and russums like tank merah, pagoda merah, &c., were included in the assets and it is only legal that such Merahs should continue to be collected.

Sub-section (2), *Explanation.*—Omit the explanation since it is most indefinite and highly objectionable. It is impossible to prove that the trees taxed were included in the assets of zamindaris at the time of the permanent settlement and also to find accounts as to which tree-tax were included in the assets of permanent peishcush. It is customary to levy mere tree-tax without any reference to ownership of land under them. Cocoanut trees, palmyra trees and fruit trees like mango and tamarind and oil-seed trees like இலுப்பை are taxed in the zamindaris, in the same way as they are taxed in ryotwari tracts also. The terms of the permanent settlement only excludes certain items of revenue like abkári, sayer, salt, &c. All other incomes the Zamindars are at liberty to raise just like the Government. This explanation is in conflict with the provision in section 3, clause 5 of the Bill. The incomes from trees are regarded as land-revenue. The Zamindars have every right to enjoy incomes from trees like the Government. The Bill must clearly define the landlord's ownership of trees on all poramboke lands. Since the landlords are now compelled to give the right of occupancy in the land *in toto* to the ryot, it is equitable that the ryots who are now made the owners of trees should pay to the landlord the value of trees. Unlike in Government villages when the lands are darkhasted for cultivation the value of the trees are not demanded or recovered from the darkhasting ryots, nor the ryots propose to give the landlord the value of the trees. The practice generally obtaining is, that the trees are taken either for the tenant's own use or for the use of somebody else and whosoever takes the tree pays the value of trees whenever they apply for them. Till the removal of these trees either by the tenant or others, the tenant or any other to whom it is let pay rent in kind or money to the Zamindars for the produce enjoyed, and the ryot who did not pay for the value of the tree when he took the land acquiesces in it by usage. Even when the trees are taken by persons other than the owners of the land there is no objection for so doing on the part of the ryot. This clearly shows there is no heart-burning on the part of the tenant for

Chapter X. paying either the value of the tree when it is cut or when taken for his use or for allowing others to pay for it and take the same. Wherever this practice exists, special clause to the above effect exist in the pattas and muchilikas for a long time. So it is not just that tree-tax should be made illegal on any account.

From the time a ryot plants tree land-revenue ceases and tree-tax commences. There are innumerable instances where the ryots grow fruit trees or topes on their patta lands. The terms on which the ryots are allowed to plant trees are liberal in consideration of the tree tax to be imposed. From the time the ryot plants trees on his patta land, the land-revenue ceases and he is allowed to enjoy the land free of any assessment till the trees begin to yield produce. When the trees yield produce, then only he begins to pay tree-tax. The land-revenue which he used to pay according to the crops raised is converted into tree-tax. The ryot gets kudivaram right in all the trees planted and reared by him as well as the occupancy right in the lands under them except the trees like palmyra, to whose growth he has not contributed in any way. These belong exclusively to the Zamindar, and the ryot has no manner of right in them. This practice has been recognised by Law Courts. No provision seems to have been made for the recognition of this practice in the Bill, while on the contrary every tree-tax is made generally illegal.

The following conditions of the sale of estates in the Chingleput district formed at the time of the permanent settlement in 1802 would prove and illustrate the legal right assigned to the Zamindars by the Government as regards the rates, the levy and the usage in the collection of rents from lands and trees:—

"All purchasers of land succeed to the seignioral right which the Government exercised in their capacity of general landlord; but in order to prevent the exercise of the right, Government will frame regulations for the protection of the rights, prescriptions, immunities, and customary advantages of lower class of people. In order, however, to prevent litigations on the part of the inhabitants, it is declared to all purchasers of land that the inhabitants of the jaghire are not considered entitled to a higher rate of waram than that inserted in the dowle of fasli 1210, nor is the purchaser entitled to a higher division of produce as succeeding to the rights of Government than the rate therein specified as the Government share.

"It is hereby declared to all purchasers of land that their rights in regard to punja, teerwah and to backyards are defined in the dowle of fasli 1210, and that they are entitled to collect the revenue of Government as the substituted possessors of the land at the rates inserted in that dowle.

"All purchasers of land are entitled to collect the rockadayem or ready-money collections at the rate inserted in the dowle of fasli 1210, with the exception of the ready money payment fixed at the rate of 1 pagoda per cawny on topes of fruit trees. This rate the Government has been pleased to abolish, and to recur to the usual mode of a division of the produce. It is therefore hereby declared to all purchasers of land that they are entitled to divide with the inhabitants the produce of all fruit trees heretofore paying a revenue to Government equally, or share and share alike. From this general rate of equal division, however, the fruit of tamarind trees is excepted. The purchasers of land shall be entitled to receive, as the constituted proprietor of the land, three-quarters of the produce of all tamarind trees heretofore paying a revenue to Government, and shall be at liberty to make such agreement or commutation with the inhabitants as may best suit their mutual interests."

Chapter XI. *Section* 95, *sub-section* (1)—Omit "approved by the District Collector" as it is unnecessary. Insert, after the word "purpose" the words "or for the opening and working of mines or factories." Provision for acquiring lands for mining and factory purposes was made in the Madras Tenancy Bill 3 of 1898, section 122. This provision is found necessary in the interest of the estate in the development of its resources. The landlord alone is given proprietary right under Regulation XXV of 1802.

Chapter XIII *Section* 100.—Insert after the word "arrear" the words "or in case of default of the tenant to vacate and deliver possession of the premises under the provisions of sections 14 and 15 of Chapter V." Insert after the word "premises" the words "and also a declaration that the tenant has not vacated and delivered possession of the premises in due time."

Section 101.—Insert after "fifteen days" the words "or unless he has not shown sufficient cause for not vacating and delivering possession of the premises in due time." Chapter XIII.

Section 103.—Substitute "Rs. 50" for "Rs. 500."

Section 108, *sub-section* (1)—Omit the word "two" and substitute "six." Chapter XIV.

Section 109, *Proviso*.—Omit "thirty days" and substitute "two months."

Section 111.—Omit this section.

No settlement of land-revenue is required. The existing rights and rates of rent ought to be ascertained and recorded against each land or holding. If the rights and rates of rent are not ascertainable with regard to any piece of land or holding, the officer preparing the record must so state against such holding and leave the question to be decided either peacefully between the parties or by adjudication by Courts which is sure to follow the exchange of pattas and muchilikas between them. There seems to be no necessity for hurried interference of special officers in the matter of settlement of land-revenue which is to continue for almost all future.

The Original Bill contained a chapter relating to alteration of land-revenue with area. This Bill has removed this chapter and the only section that relates to this question is section 111, sub-section (1), wherein it is stated thus:—"When it appears that a ryot is holding land in excess of or less than that for which he is paying land-revenue * * * the officer shall settle a fair and equitable land-revenue * * *." This is too vague and leaves everything to the arbitrary will of the officer. No definite rules are laid down by which such officer is to be guided, and it is submitted that a chapter containing the following sections may be introduced with benefit: Sections 28, 29, 30 of the Original Bill (*vide* Standing Order No. 2 of the Board of Revenue, which relates to the alteration of land-revenue with area).

The sections of the Original Tenancy Bill are as follows:—

Every 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.

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.

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.

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 of area; and

Chapter XIV. (*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.

Section 114.—Omit section 114. If the Collector is prohibited from entertaining any suit or application for the alteration of land-revenue until the publication of final record, how is the landholder to meet the demand that may be made by the Government under section 16, clause (iv).

Section 115.—If the survey can be made and completed either under the provisions of the recent Survey Act or under the provisions of this chapter and the expenses be borne by the landholder and the ryots, the record of the existing rates and rights may be left to be compiled by the taluk officers under the guidance and supervision of the divisional and district revenue officers without any additional cost either to Government or to the landholder and ryots. And more so when the appointment of special officers for ascertaining the rates and rights and for hearing disputes incidental thereto are found unnecessary for reasons contained in observations under section 114.

Chapter XV. *Section* 117.—While provision is made in Chapter XIV, section 105, for the survey of an estate, it is inexplicable why should they further and a more particular provision be made for the survey and record of landlords' private land alone inasmuch as the survey and record of rights prepared for an estate or village is sure to contain all the particulars concerning the private lands along with those of other lands comprised in the said estate or village.

Section 120.—The rules laid down by the Bill for the record and protection of private lands are not sufficiently clear and protective.

The description of lands like kambattam, khas, seri or pannai are defined to be those lands cultivated by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the date of the commencement of this Act; and in the next clause (*o*) it is said "cultivated land which is recognised by village usage as proprietor's kambattam, khas, seri or pannai." The latter description is vague. Because in cases where the proprietor is unable to cultivate his land with his own stock, &c., he will be under the necessity of letting them to cultivators under temporary lease. It is impossible not only with zemindars but with ryotwari landholders and non-cultivating ryots to cultivate all their lands with their own stock, &c. The object of the private lands being for the maintenance of the members of the zemindari families and their dependents, and also in several instances for the maintenance of charities, where the zemindars used their full discretion in dealing with such lands. While the legislation wants to protect the occupancy lands in favour of the ryots, it is just to protect equally the private lands of landlords.

After "pannai" insert "izara eedava or nagiri eedava leased out for cultivation for any length of time."

Kambattam, khas, seri, pannai, izara eedava or nagiri eedava as is appropriately known in the Telugu country, refer to lands cultivated by the landlord himself with his own stock or by his own servants, or by hired labour or by letting it on condition of tenancy-at-will. Such lands may come into existence from time to time in various ways; notably the instance of the landlord converting to his own use in the manner indicated above, land of defaulting tenants which he purchases in auction sales and converts to his own use may be cited. Further the landlord without cultivation might keep an area for pasture or other purposes as it may suit him. All the lands in the estate belong to the landlord subject to the restraint of occupancy right in the tenants and providing any limitation with respect to the landlord and his own land would be irrelevant and positively disadvantageous.

Under sub-section 2 of this section one of the criterions for distinguishing landlord's private lands is laid down to be that it must have been let as such before the first day of May 1871. It is not known why this date should be adopted. It is the date of the commencement of Madras Act II of 1871 amending Madras Act VIII of 1865; but there does not appear to be any connection between that amending Act and the

and the determination of the proprietor's private lands. The corresponding date in the Bengal Act of 1885, is 2nd March 1883; so that Bengal landlords had to go back only two years for evidence of letting, while Madras landlords will have to go back for twenty-seven years. In this matter, again, a very serious burden is thrown upon the landlord by the presumption to be set up that the land is not proprietor's private land until the contrary is shown. In a very large number of cases it would be practically impossible at this late date to produce direct evidence that the land was specifically let as private land, or indeed was let at all, prior to the first day of May 1871, and it will be equally onerous to prove that lands are private by custom, when, as will frequently happen, the whole village combines to resist the claim. Chapter XV.

Add clause (*c*) to section 120, "Lands in which the proprietor has by transfer become possessed of the right of occupancy."

Zemindars are in the habit of purchasing lands for their use as pannai, and a provision is necessary for registering, from time to time, every such new acquisition, so that it may be included in the register of landlord's private lands, kept in the Collector's office. Presumption that the land is not a landlord's private land until the contrary is shown, is prejudicial to the landlord's interest and should be omitted, and the general principle of evidence as to burden of proof should be made to govern. It is a hardship that the landlord should be made to suffer the disability of becoming an occupancy-tenant even over the land he acquired by sale or gift like other people. To place restriction on the free purchase by zemindar would be opposed to free trade principle, which will work prejudicially not only to the landlord but also against the tenant, who might be compelled to undersell his property for want of free competition by the exclusion of generally the richest local purchaser, *i.e.*, zemindar, and by the existence of combination among other tenants of the village actuated by the natural desire to get the property for the cheapest value possible. As the inevitable consequence of such restriction the money-lender is sure to monopolise the purchase of the land and become a far worse landlord than the zemindar himself. If it is thought that cultivable land of the community in the village will be minimised by allowing such freedom of sale to zemindar and not to money-lender or others, provision may be made for the sale of lands to such tenants as are desirous of starting an independent agricultural avocation on the payment by such tenants the full market value of lands and improvements thereon *plus* 15 per cent. for compulsory surrender as provided in clause 2, section 95, for compulsory acquisition. For it would be unreasonable to allow any man without paying anything to acquire a right in the property which another has paid for.

Even the above do not include all classes of landlord's private lands.

In several zemindaries large extent of land is given either free of rent, or on favourable tenure, to perform certain services to landlords and in temples. This is all let, on condition of delivering the lands to landlord when the holders die issueless, or when they are unable, or unwilling to perform the service, as well as when the landlords suspend or dismiss them from service for misconduct. The landlords also give lands free of rent, for rendering village services in those cases in which the Government grants are found insufficient for the due performance of their duties. As over Government inam lands no one could acquire occupancy right the same principle should apply to these private service land also. A clear provision for including all such lands, in the register of landlord's private lands, is indispensable, since, in the absence of such provision, a landlord will be deprived of his right of resumption.

Therefore add clause (d) to section 120 "all lands given to others for service to be rendered to the proprietor or temples or other institutions under his management."

The most remarkable point in connection with this section is that it absolutely excludes the proprietor's private right in all waste or uncultivated land. Section 11, sub-section 4 of the existing Rent Act VIII of 1865 clearly gives power to the landlord to arrange his own terms of rent for waste lands and recognizes the landlord's absolute right of disposal in those lands. If all such waste lands were not landlord's private lands, how could the Government the landlord in the ryotwari village equitably make money by the sale of waste lands, under the Periyár project, Kistna anicut, &c. It

Chapter XV.

may be said that such a practice is only resorted to in special cases and as a general rule lands are given over on darkhast to those that may apply for the same. This only goes to confirm that it is at the landlord's option either to receive money for or give for nothing all the waste lands to whomsover he may be pleased to give. It is expected that the Government which wishes to place the zemindars on the same footing as their own in revenue matters, would treat them with all fairness and not as is done in this section exclude waste lands from the list of landlord's private lands, contrary to the existing law and practice in the zemindaries as well as in their own ryotwari villages. Therefore it is but right to retain the clause "*lands waste at the time of the passing of the Act*" contained in Bill drafted by the late lamented Mr. Ross in 1896 and number the same important addition as clause (*e*), section 120.

General Remarks on Chapter XV.

The restrictions on occupancy lands in the hands of the zemindar are quite uncalled for. Nothing is gained by registering the pannai, kambattam or khas lands. If it is intended to restrict the rights of the zemindar, it is not equitable and just. Private lands are acquired by zemindar by reclaiming the waste lands at the expense of the zemindar and by purchase. When lands are acquired at the labour and money of the zemindar, no law could with justice deprive him of his kudivaram right. The distinction between occupancy and non-occupancy lands is, in the former the zemindar is entitled to melvaram right only, and in the latter both melvaram and kudivaram right, and the tenant, of such lands if any, becomes a temporary lease-holder removable at his will. Non-occupancy lands under cultivation have been recognised institutions in zemindaries from the Hindu and Muhammadan periods for the maintenance of the zemindar's families and their dependents. Such non-occupancy lands were called zemindari moniems or nankar lands and were exempted from State revenue until the permanent settlement. It is with this object of providing for the members of the zemindar's family and their dependents and for the maintenance of religious and charitable institutions, the zemindar is compelled to hold pannai lands and develop them or replenish in proportion to the demand under the above mentioned various heads. They sell pannai land for the clearance of debts and make gifts of portions of them for meritorious service and for religious purpose. By the provisions of the Bill under this chapter, the proprietors will be debarred from acquiring pannai lands even to make up and replenish the loss or diminution of private lands owing to above causes. The object of not extending occupancy right to such lands is to prevent the alienation of the lands from the objects for which they were intended. If the temporary holders of the lands be given permanent occupancy right over such lands it would be giving the occupants the right to transfer them by sale and mortgage which right is necessarily incidental to occupancy right. The provisions of the Bill perpetrate unjustifiable confiscation and spoliation.

When the permanent settlement was made, the calculation of the rate of peishcush was two-thirds of the gross income. Such a high rate was fixed in consideration of the increase of the income by the extension of cultivation of waste lands in the future. After the lapse of a century the rate of the income has not much increased as it might be expected. According to the calculation of the Court of Wards out of the income of the estates under its management, which are in varying proportions, the average rate of the peishcush to the gross income is about 32 per cent. The local cess would raise it to more than 40 per cent. With the imposition of the proposed village service cess and assessment on service moniem lands, the rate would rise higher still to more than 50 per cent. of the income. With this state of things, and with the increase of the private expenses of the zemindars with the growth of enlightenment and civilisation, it would be harsh and unjust to prevent the zemindar from acquiring occupancy lands in a fair and just way. There is not a single occupancy tenant in all Britain and Ireland. There is no comparison between the condition of the tenants, who are deprived of all rights in British Isles and the enormous incomes made by the landholders by leaps and bounds at the expense of the tenants, and the condition of the landlord and tenant in India, where the latter is decidedly a gainer on the whole.

Chapter XVI.

It is highly objectionable that the Collector's decision should be given finally. They must be subject to revision either by Civil Court in judicial matters or to the Board of Revenue in executive matters. The cases which are of purely executive character may be given to revenue officers. Questions of judicial nature involving settlement of claims and rights may be given to judicial officers concurrently with the revenue officers. The principle being that two Judges and two Commissioners always sit to consider final appeals and finality should not be given to the decision arrived at by one single individual. In all cases where concurrent jurisdiction is given to Revenue and Civil Courts, the final appeal shall be to the High Court through the District Courts and in case where the Revenue Courts have exclusive jurisdiction the final appeal shall lie to the Board of Revenue through the District Collector.

Consistent with the above general remarks on this chapter, the following alterations to these sections are submitted to be made.

Omit *section* 121, *sub-section* (1).

Concurrent jurisdiction both for Civil and Revenue Courts may be given under clauses (*a*), (*b*), (*c*), (*f*), (*g*), (*l*) and (*m*).

Omit clause (*d*). *Vide* observations under section 16, clause (v).

Revenue Courts may be assigned jurisdiction in cases under clauses (*e*), (*h*), (*j*) and (*k*).

Jurisdiction in cases under clauses (*i*) and (*n*) may be given to Civil Courts.

Sub-section (2).—Omit.

Sub-section (3).—Omit.

Section 122 (1).—Omit.

Clause (*a*).—Omit (*a*) for reasons under section 4, sub-section 13.

Clause (*b*).—Civil and Revenue Courts can have concurrent jurisdiction in (*b*).

Clauses (*c*) *to* (*m*).—Suits in (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*) may be given to Revenue Courts subject to appeal to Civil Courts when necessary.

Sub-section (2).—Omit. The Collector's decision cannot be made final.

Sub-section (3).—Omit.

Clause (*b*).—Suits in (*b*) may be given concurrent jurisdiction.

Clause (*c*), *&c.*—Suits in (*c*), (*d*) and (*e*) may be given to Revenue Courts.

Sub-section (4).—Suits in sub-section 4 shall be decided by District and High Courts.

Sub-section (5).—Substitute "Civil Court" for "Board of Revenue".

Section 123, *clause* (*a*).—Insert after the words "District Collector" the words "or Civil Court".

Clause (*b*).—Insert after the words "Board of Revenue" the words "or High Court".

Section 124.—Omit sub-sections (1) and (2). Because their decisions are subject to correction both by the District and High Courts and the Board of Revenue.

Section 125, *sub-section* (1).—Insert after the word "control" the words "and authorized by this Act to dispose of on appeal."

Sub-section (2).—Insert after the word "control" the words "and authorized by this Act to dispose of on appeal."

Section 126, *sub-section* (1).—Insert after the word "case" the words "in which an appeal lies to them under this Act."

Sub-section (2).—Insert after the word "control" the words "and in which an appeal lies to them under this Act."

Section 127.— Omit. This is superfluous.

Chapter XVI.

Section 130.—Insert after the word "relative" the word "or". Insert in the same section after the word "servant" the words "with written order".

Insert in the same section after the word "agent" the words "with Vakalath from the proprietor or from the managing proprietor if there is more than one proprietor".

Section 132 (i).—Omit from the words "and the summons to the end." Because in the adjudication of suits concerning terms of tenancy, rights of rent and waram and local custom and usage, the evidence both oral and documentary cannot be selected and produced before the issues are framed. There should be ample time given for both parties for the filing of records and list of witnesses after the issues are framed. The first summons should be for filing the written statement and for settlement of issues alone.

Section 132 (v).—Omit the word "full" before "power" and substitute after "power" the words "subject to appeal".

Section 133, *sub-section* (1).—At the commencement after the words "in any suit" insert "*by a registered proprietor in possession no plea of* jus tertii *ought to be entertained. But in any suit for rent by a landlord other than the registered proprietor in possession*" and insert "*other*" before "proceeding".

Section 135.—Omit the words "such reasonable portion" and substitute the word "whole". The equity of allowing the ryot to pay only a portion of what is due by him instead of the whole is inexplicable. This will only give room to ryots to withhold payments justly due to landholders in time and to postpone them indefinitely.

Section 137.—Insert after the word "trespasser". "*The court shall pass a decree ejecting him and directing the payment of compensation in the shape of prohibitory assessment which shall be not less than twice the amount of rent that may be due for the land*" and omit the rest of the section.

The moment the landlord makes up his mind to allow a trespasser to continue to remain on the land, a compact arises between him and the trespasser, the terms of which have to be mutually settled between themselves. As a matter of practice the landlord requires the trespasser to put in a darkhast which after the necessary enquiries and notice to the villagers, if required, he grants. From that time forward the trespasser becomes a tenant. Thus the landlord having the power to dispose of the alternative question contemplated in section 137 of this Bill, there is no necessity for legislative interference here. Because a principle already recognised by law need not be re-enacted.

Trespass on land may be by—

(1) Taking possession of land without having previously put in a darkhast.
(2) Taking possession of land without waiting for the acceptance of a darkhast put in.
(3) Taking possession of the landlord's private lands.
(4) Encroachment on zemindar forest reserves and other porambokes.

In all these cases if the law imposes no higher penalty for unauthorised occupation than an obligation on the part of the trespasser on detection to quit the land at the instance of the landlord and to pay such fair and equitable rent as the court thinks proper, the inducement to trespass would be very great and in large estates even a strict vigilance would fail to control the tendency in the tenant to bring in more lands under his cultivation than those specified in his patta.

As the Bill does not contemplate the imposition of any penalty on unauthorized occupation of land and as it further gives to the tenants the possibility of cheating the landlord out of his legitimate income till such time as the unauthorized cultivation should remain undetected, the tenants in combination with the village karnam on whom the landlord has to depend for all cultivation and rent returns would be making serious inroads on the landlord's rights in many cases with the prospect of acquiring more than a fleeting interest in the lands in respect of which the trespass is made. It is a known fact that ryots usually try to encroach upon lands set aside

for general and public purposes, *e.g.*, waterspread of a tank used either for irrigation or drinking purposes, village-site, pasture land, cattle-stand, burial-ground, landlord's reserved forests and the like. Chapter XVI.

General Remarks on Chapter XVI.

It would be frequently most advantageous to be able to bring a suit in a Civil Court in which all the questions in dispute between landlord and tenant could be raised and disposed of once for all. The objections, theoretical and practical, to trying rent and tenancy suits before the Collector are many and well known. It is admitted by all parties, including the Secretary of State and the Government of India, that the placing of judicial and executive functions in the same hand is wrong in principle. The cost, inconvenience and delay are incalculable, for Revenue officers can hear such suits only, so to speak, in their leisure moments. Parties, counsel and witnesses have to be dragged about the district for weeks and months at a time. If this is so now, what will be the position in zamindari districts when the rush of litigation, certain to follow the passing of this Bill into an Act, takes place? Again, there is no uniformity in decisions. Officers are changed so rapidly and irregularly that they have no time to become acquainted with their districts; the conditions of each district vary; and there is neither precedent nor authority, as in the Civil Courts, to control the idiosyncracies of individual Collectors. Where there is an alternative remedy, suits will be instituted before the Collector or before the Civil Court, just as the party that brings the action thinks the Collector is or is not on his side. All parties have perfect confidence in the efficiency and promptitude of the Civil Courts, and it is therefore desirable that all suits and proceeding under this Bill should take place under the ægise of the Civil Court, and not before the Government Revenue officer, and that all Courts when sitting for the decision of matters under this Bill may have the power to associate with themselves experts as assessors, thus following the procedure adopted under the Irish Land Acts.

Section 138.—With the Registration Department after registering a document the burden of proving that the executant had full knowledge of the terms and consequences should not fall upon the claimant landlords. It is simply unjust that such hardship should be introduced into the Bill as against the landlord presuming all the while that all landlords are miscreants and all tenants are innocent men. It will only be reasonable not to allow such presumptions in the Bill, but to make the ordinary law and practice govern such transactions. There can be no objection to the Registration Department being directed to explain to tenants and ryots the terms of the document and drawing their attention to the consequences. If it be allowed to the tenant and ryot to dispute a contract duly executed and registered at a distant subsequent date on the plea of undue influence and fraud, it will be impossible for the landlord to rebut the interested statement of the tenant, while the presumption as the tenor of the Bill indicates is against him. If once registered, there must be no question with regard to the genuineness of the executions or the *bonâ-fide* of the contract except on the ground of false person. ion. Chapter XVII.

The whole of Chapter XVII must be omitted. It is not clear why this Chapter XVII has been framed at all. Every special law is subordinate to the principles of Common Law and Equity as embodied in the general Legislative Codes of the country. The Land Bill, when it becomes law, will simply deal with special forms of proprietary right subject to the general provisions of the Contract Act and the Transfer of Property Act. Of these two Acts again, the Contract Act is the more important. Contract is all-powerful. It creates decrees of courts, and it annuls them; in fact, it is highest power and privilege of humanity. Innumerable are the provisions in special enactments which begins with the preamble "unless there is a contract to the contrary." The very Contract Act itself honours this principle by way of preamble in many a section of its own framing. The subject-matter of the present Bill is not of yesterday's creation in the British Raj. Tenancy existed in the ancient Hindu Raj. It existed throughout the Muhammadan rule. During both these periods a careful examination of the history of the system, however meagre it may be in some respects, discloses the paramount fact that every instance of tenancy was the result of a contract freely entered

into and kept up by landlord and tenant; subject only to such supervision, if any, as the Sovereign Power or its accredited agents chose to exercise over it. About the year 1800 the first substantial recognition of the administrative character of landlord in this Presidency was formally made. Since that date, the British Government, with that solicitude which it has evinced for the welfare of the tenant in the British Isles, has taken up the subject of tenancy from time to time, and its labours in this direction reached maturity for the time being when Madras Act VIII of 1865 was enacted. The very name of that Act is indicative of its scope. It did not trouble itself with the internal relations subsisting between landlord and tenant on abstract principles. It simply took it for granted that there was a class of landlords, which it subdivided into a number of subordinate sections each bearing a name by itself. It took the most sensible view of the tenant class as a body. On the principle of eschewing the chaff and taking the grain alone as the most substantial part of the subject-matter for consideration, it gave prominence for special protection in the matter of the collection of rent to that body of tenants who had a saleable interest in the lands they held. That this enactment was quite enough is borne out amply by the only reliable history of its working that we have, viz., the decisions reported in the Law Reports of the High Court of this Presidency. From these decisions one cannot come to the conclusion that either the Judges or the litigants who figured before them have indicated a desire for such an extraordinary enactment as appears to have been proposed in Chapter XVII of this Bill to over-ride all contract and custom. Then what is the origin of this is a question of some interest. The Revenue officers of Government may be roughly classified under three heads :—(1) Those who incline towards landlords, (2) those who incline towards tenants, and (3) those who hold the balance even between both without any prejudices towards either side. This last class has always considered the existing legislation quite enough except a few defects for which ample amends might be made by putting a few amendments or addenda to the Rent Act of 1865, and by getting landlord and tenant to understand the provisions of the Rent Law and conform to them with that good will and cordiality which is essential in every system in which two or more persons have to coalesce. The first class had not many gentlemen of the service in it, and the few that figured in it had not taken any attitude of opposition to the tenants. It is the second class that needs special reference. These officers, especially in the course of many summary suits that come before them, have had opportunities of forming strong opinions against landlords in their relation to tenants; and the conclusion that they arrive in many instances rightly or wrongly is that unless occupancy right *at any cost* be given to the tenants, he cannot hold his own against the landlord in proprietary estates. It is easy to conceive that this chapter will find special favour with this class of officers, because no other would for one moment think of subordinating contract and custom to a special piece of legislation like the one contemplated in this Bill. Contract and custom must prevail, and the provisions of this Bill must be subordinated to them like every other special enactment. There are instances in which tenants must be let in on the express condition that they shall be tenants-at-will, *e.g.*, a landlord thinks that the area granted to certain ryots contains coal or other mines of value which he may work at any time that may suit his convenience. There are many kinds of service inams granted by proprietors from time to time to suit their own convenience, on the express condition that the inam land shall revert to the landlord the moment the service ceases. In such cases, the landlord must have his discretion unfettered. But this contract also would be overridden by the provisions of this chapter. It is hardly possible to state a harder case than this in which the ordinary Laws of Contract with all its safeguards is rendered utterly useless by a special piece of legislation which is not wanted in the interests of the tenants and which is calculated to do immense harm in the matter of the landlord's interests.

Chapter XVIII. *Section* 143.—The provision of this section as it stands are good enough if the generality of cases is taken into consideration. But there are exceptional cases in which the section would seem to leave no room for retrieving loss where owing to such reasons as the minority of a landlord and appurtenant circumstances that leave him without a guardian at the proper time irregularities happen which are not remedied forthwith. The minor might lose heavily for no fault of his. It is for such

exceptional cases that sections 7, 8 and 9 of the Indian Limitation Act of 1887 have been provided. Wherever these exceptional cases occur, the above sections have to come in. This having been the distinct meaning of the legislation, there is no reason why effect should not be given to the same in this Bill. Chapter XVIII.

Section 145.—*Omit* sub-sections (2) and (3) and *substitute* "Civil Court" *for* "Collector" in sub-section (1). Chapter XIX.

Both the landholders and the tenants will only prefer Stationary Civil Courts to Itinerant Revenue Courts in almost all proceedings under this Act since these Revenue Courts are on the whole very costly, inconsistent and more protracted, although they are nominally summary and apparently less costly.

Section 146, *Sub-section* (1).—It is not quite plain if these authorizations are to be stamped or not. In all cases between landlords and tenants, it will be well in the interest of the tenant to exempt the suits and incidental proceedings from stamp duty.

Order—No. 123, Legislative, dated 4th December 1899.

Communicated to the Select Committee on the Madras Tenancy Bill.

(True Extract.)

H. TREMENHEERE,
Secretary to Government.

To the Select Committee on the Madras Tenancy Bill.

Exd. C. M. Thumbusawmy.

Government {1899} of Madras.

LEGISLATIVE.

Read.	1899.	*Enclosures*
Regd.		*Spare copies*

G.O., No. 123, 4th December 1899.

DECEMBER.

Madras Tenancy Bill.

Communicating to the Select Committee on the — memorandum of criticisms and observations of the Madras Landholders' Association on the Bill as provisionally amended by the Select Committee.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—the following paper:—

From the President, Madras Landholders' Association, to the Secretary to Government, Legislative Department, dated Venkatagiri Town, 29th November 1899.

Herewith I forward the memorandum of the criticisms and observations of the Madras Landholders' Association on the Madras Land Bill, and I request you will kindly submit them to the Honourable Members of the Select Committee when the Bill comes for their consideration.

Enclosure.

Memorandum.

Section 1.—The association comprises of members of both the zamindari class as well as the rich ryotwari mirasi class, owning vast extent of lands to whose benefit Chapter IV of the revised Bill is intended. So the term "landholder" was adopted as being general enough to include both the classes. This can form no argument for changing the name of the Bill There are two sorts of tenancy with which the Bill deals, viz., the ryots tenancy under a zamindar and the non-occupancy ryot or tenant-at-will's tenancy under a zamindar or mirasidar or a ryot. Since it was these relations that was sought to be determined by this Bill, there is no reason why the name of the Bill should be so altered as to convey no meaning whatever, while the sister Bengal Presidency and the Punjab have adopted the name of "Tenancy Act." At least for the sake of uniformity, if not for anything else, it will be desirable to restore the original name of Tenancy Bill in place of the non-meaning "Land Bill."

Section 3.—In sub-section (4) insert "*or in both*" after the words "in money," because such cases where they exist have to be provided for.

The definition of "ryot" is not clear. Suppose a man holds a plot of land outside Nattamjari, or village-site, excluded from the assets of the permanent settlement, builds there a pleasure house and either lives there or resorts to it occasionally without using it for cultivating purposes; is the landlord then to lose his rent on such lands, since such holder of the land is no *ryot* under the Proviso?

Sub-section (5).—The term "land-revenue" refers to the payment of money alone. It should include payment in kind also both for trees and lands and this term land-revenue should further include quit-rent, jodi and customary merah, because these were included in the assets of zamindaries at the time of the permanent settlement as land-revenue. These are, therefore, recoverable under the Bill. They have been collected till recently under the Rent Recovery Act. Recent decisions declare that they should be collected through Civil Courts. Evidently the decisions did not consider the terms and arrangement of the permanent settlement.

Again, in this definition the water-tax recoverable for second crops on minor inams, where the inams are classed as single crop inams, should be included, because the inamdar to the extent of the second crops becomes the tenant of the zamindar, although he does not hold land under him, and he should be classed as "*ryot*" to this extent.

Sub-section (5)—*Explanation.*—In the interests of speedy collection, it will not be prejudicial to the interests of either the landlord or tenant to include the payments by farmers of land-revenue under the term "land-revenue". In many permanently-settled estates there are permanent under-tenants of full villages, inamdars of full villages, minor inamdars and mokhasadars who own certain number of villages for maintenance as being relations of zamindars. None of these come under the category of a ryot. Nor does the term "land-revenue", as defined in the Bill, include payments made to the zamindar by these classes of people. It is quite impossible for zamindars to go to Civil Courts to recover dues from them. To avoid this difficulty the explanation to this sub-section may be amended as follows:—"The payments to be made by a farmer of land-revenue, inamdars of full villages or minor inams, held on any tenure, mokhasadars and lessees of permanent under-tenure villages to a landholder are land-revenue." For opinions of High Courts in this respect, *vide* I.L.R., 16 M. 40, 7 M. 262 & 580 and 10 M. 229.

Sub-section (11).—The words "a definite amount in kind or in money" are vague. The amount may not be definite if a land is held under waram tenure; so it will not be reasonable to exclude lands that are held under waram tenure from this definition, for they are still revenue fields.

Section 4, *sub-section* (3).—Substitute "occupancy right for agricultural purposes only" for "proprietary right," and also omit the word "only" after the word "subject" and before the word "to." Because this provision is in conflict with section 2 of Regulation XXV of 1802 by which the proprietary right in all lands situated in estates was vested in proprietors. If it is intended by this Bill to improve the condition and legal status of the tenant under the existing state of things, and if it is intended to confer on the tenant the transferability of his agricultural rights, it would be superfluous and highly objectionable to extend the right of the ryots beyond this. The object of the Government is to confer on the tenants occupancy right for agricultural purposes only in places where it is not recognised. This transfer of the proprietary right from the landholders to the tenants would be an infringement of the proprietary right of the zamindars expressly conferred on them by the terms of the permanent settlement and have been exercised by them since then. Chapter II.

Sub-section (4).—The provision under this would interfere with the right of the zamindars enjoyed by immemorial custom and usage to levy assessment according to the nature of crops. Crops like tobacco, plantain, chilly though raised under wells constructed by the ryots, on account of the high market value of the produce, used to yield larger revenue than the cultivation of other crops. The ryots have never found it to be a hardship. This revenue in such cases is equitable and self-adjusting. By making the improvement absolute in the ryot, it is sought to deprive the landholder of his right to the higher rate of rent chargeable for crops of higher value as hitherto obtaining according to custom and usage. Even in the absence of wells in a holding, and even when crops were raised with the water from the wells in other ryots' holdings, revenue according to the nature of crops was paid by custom and usage. The payment of revenue according to the high value of crops did not depend upon the possession of wells by the ryot on his holding or by any other improvement. It depended upon the raising of valuable crops irrespective of other considerations.

Sub-section (5).—Under "improvement" the present Bill makes a material alteration from the provisions in sections 114 and 115 of the Tenancy Bill No. 3 of 1898 which has been amended in the present form. The alteration is prejudicial to the interests and the rights of the landholder. By bringing the provisions for improvement under "general rights in respect of land" without any limitation, the proprietor is deprived of his right even to the extent of vetoing in case the improvement injures or causes deterioration to the property of the proprietor himself or of third persons and diminishes the letting value of the land. The Tenancy Bill provides in sub-section 3 of section 114 lest the plea of improvement should be taken advantage of to the injury of the proprietor's property in the following words:—

"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."

Chapter II.

The Tenancy Bill provides further, though in a vague way,

"That 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."

A provision is necessary by which "*the proprietor may be given the power of vetoing the construction of anything on a holding which would diminish its productiveness and letting value. If the tenant persists in its construction, he should be made liable to damages.*"

Sub-section (5), *clause* (*a*).—The construction of tanks, water-channels and other works for the supply, storage or distribution of water for the purpose of agriculture, &c., by the ryot without the consent or permission of the proprietor will lead to great injury and loss to the property, to the diminution of its letting value and productiveness. In ryotwari tracts the Revenue officers have the power of vetoing such works to prevent the evils which would otherwise arise. By unlimited freedom in the construction of tanks and channels, it would interfere with the drainage and supply of the existing works, and the lands and fields in the waterspread of the irrigation works would be injured. This freedom is liable to abuse to the injury of the proprietor in three ways:—

Clause (*c*).—(1) The ryot may obstruct the water-supply to the existing irrigation works and convert the punjah lands higher up the waterspread into nunjah by levelling and ridging up the land, and would thus evade the payment of enhanced revenue.

(2) The ryot, with the help of moisture and dampness of the adjacency of wet lands, may, with a little extra supply of water stored by constructing a tank over his punjah lands, under the provision of the Bill, and may thus be enabled to convert punjah lands into nunjah lands and to evade the payment of wet assessment.

(3) The ryot may construct his own tank on his punjah by which he might dispense with the supply from the proprietor's irrigation works constructed at great cost, and thus claim exemption from nunjah revenue for the lands, which have all along been under nunjah ayacut.

The distribution of water for purposes of irrigation should vest with the proprietor only. Otherwise it would result in diversion to the injury of other irrigated lands. By this provision a ryot whose holding is higher up and nearer to an irrigation channel will be enabled to construct the supply-channel in such a way as to interfere with the supply of the fields lower down which are equally entitled to the supply of water from the same channel. In times of scarcity of water this provision would enable a ryot to deepen the channel within his holding in such a way as to cause percolation to the injury of other nunjah lands and thus divert the legitimate supply to other holdings entitled to equal distribution.

Clause (*d*).—When improvements are made by reclamation, &c., and when the landholder remits land-revenue either wholly or partly to compensate the expenses incurred by the ryot, it will not be equitable to make such improvements absolute in the ryot and to deprive the landholder of his just revenue.

Clause (*f*).—In the Rent Act VIII of 1865 no reference is made to dwelling-houses and out-offices at all. The reference to it in this Bill is a new departure. The dwelling-houses of agricultural classes may be divided all the world over into two classes, viz., dwelling-houses within the village-site and dwelling-houses on the agricultural holding itself. In the Madras Presidency dwelling-houses on the holding are peculiar only to such provinces as Malabar and Wynaad. In other parts of the Presidency dwelling-houses on the village-sites are the rule, and the exceptions are very few, if any. In the case of these exceptions the dwelling-houses on the holding is erected under a special contract or arrangement or understanding with the landlord with special provision for indemnifying him (the landlord) against any loss that might incidentally or eventually accrue from it. But if it should be contended that there is a necessity for it, the necessity must be recognized to this extent and legislated for, viz., "where a tenant wishes to erect a dwelling-house on any portion of the area in the holding he shall not do so except with the consent of his landlord in writing."

Further, if a tenant erects a dwelling-house and out-offices and vacates the same owing to his inability to continue agricultural operations, the land on which the

Chapter II.

dwelling-houses and out-offices are erected will not be taken up by another for cultivation unless it is cleared. The clearing of this portion would cost money which the landlord may have to lay out almost always, and which will exceed the value of the land on which this is built. Thus the landlord will be unnecessarily prejudiced. The practice obtaining heretofore has been for the landlord and tenant to come to a special understanding prior to the erection of the dwelling-houses or any other structure habitable or otherwise on the land, providing against the contingencies contemplated above. Any departure from this will prejudice the landlord to a great extent, and overweigh any advantage that the tenant may derive from the same.

Clause (*g*).—Insert in (*g*) after the word "plantation of" "taxable, fruit yielding, waram-paying trees and plants." The word "useful" is vague. The clause as it stands will give room for the plantation of unproductive trees and trees which would take a great number of years before they yield produce. If this is considered as a restriction on the discretion of the ryot to raise any crop he pleases, it will be seen that such a restriction is necessary in the interests of land-revenue to protect against the falling off of which the Government itself had to issue an order prohibiting their ryots from raising second crop unless with the consent of the Revenue authorities.

Sub-section (7).—In the case of waste lands which have not been assessed according to their quality and description the landlords must be given every right to fix their own rate of land-revenue. Enough if the landlord and tenant agree with each other as to rates. It may not be possible to fix a permanent assessment on waste lands at the beginning as it may end in a loss to the landlord or to the tenant eventually. The landlord might be willing to give out such lands free of land-revenue for a certain number of years, at favourable land-revenue for a certain number of years, at a progressive land-revenue for another number of years and at a fixed rate thereafter. Again a landlord contracted his own rate for lands newly assigned. It is not known why he should now be compelled to deviate from the existing practice. In most cases no rent is fixed for waste since the rent is fixed when the land is let and not before. In fixing the rent, the landlord is generally guided by the demand for the land to be assigned, the rate becoming high or low as the demands for the land is great or small. Some of the lands adjoining to the waste to be assigned will bear a high rate, while similar others a low rate.

It will be difficult to ascertain in such cases what customary rate of rent is. The difficulty in determining the same will lead to unnecessary litigation between the landlord and the ryot. Such sections which disturb the present peaceful arrangement will only foster litigation. The following addition to the sub-section may be made:—

"And in the case of waste lands whereon no fixed or customary rate of land-revenue has been imposed, the landlord shall have power to enter his own rate of land-revenue."

Sub-section (8).—Add after the words "District Collector" "*provided such lands were excluded from the assets of the zamindari at the time of the permanent settlement.*" If the communal lands were included in the assets of the zamindari, it is just and fair that the control should vest with the landholder only, subject to the settlement of such rights by easement and usage under Civil Courts.

Sub-section (10).—Omit sub-section 10 (*a*).

Government may, perhaps, realize the difficulties of the position of the zamindar, by considering its own case. If zamindari tenants are armed with this power and the result is—as intended—that all zamindari tanks are put in repair, Government will not be able to resist the appeals of its own tenants to put Government tanks in repair. It is not too much to predict that the staff of the Public Works Department would have to be doubled or trebled, to enable the work to be carried out promptly and effectively.

Sub-sections (11) *and* (12).—Omit sub-sections (11) and (12).

By the permanent settlement all the waste lands and porambokes, including forests, vest with the landholder. There is no reason or right for the interference of Legislature in this. Forest Act V of 1882 is not applicable to the permanently-settled estates.

Supposing the ryots of certain village in an estate were for a certain number of years grazing their cattle in, and bringing wood from, a forest near their village, this sub-section deprives the landholder of the right of reserving such forest for any purpose, even though he may be willing to set apart any other portion for the above purposes for the ryots. This is a very hard rule. The forest which was being used for a certain number of years may be best suited for the growth of particular class of trees or might contain minerals, and the landholder may be willing to reserve that forest for the growth of such trees or use it for the working of mines. His rights are restricted by this sub-section.

Government itself does not recognise such a right in their ryots in respect to their own forests. This will only foster unnecessary litigation between landlord and tenant. It is not known how a tenant can acquire any right in any land or in the produce on such lands for which he does not pay rent. In mirasi districts, the mirasidars once exercised right over all waste in their respective villages, and their rights have become almost obsolete in the zamindari and ryotwari villages of the district. Will it not be unfair that it should compel the zamindars to respect a supposed right to the tenants in the zamindari forests and porambokes when the Government itself is not prepared to recognise such rights to the ryots in its own forests and porambokes and levies royalty for any produce such as stone, green leaves, sand, fire-wood, &c., that any ryot may require, some for his own domestic and agricultural purposes.

Sub-section (13).—*Omit* this section.

There is hardly anything to prove that a cultivator of land possesses mineral rights in his holding unless they have been explicitly given him. The explicit and implicit contract with a ryot in respect of cultivable lands is that he should continue on the land and carry on cultivation paying a certain rate of land-revenue. A right which he was not definitely given and which he never thought was given to him, a right which he never up to date exercised and never even dreamt of exercising, is intended to be given him by this legislation.

Mining is at best only a speculation. It may either be a success or a failure. To compel a landlord to exchange his certain rent under agriculture to a doubtful rent under mining is one of great hardship. Further, the land if excavated for mining can never again be made fit for agriculture except at a prohibitive cost. Government can afford to lose a portion of its land-revenue for the sake of an experiment in mining by a ryot. To force the same procedure on a landlord whose only source of income is his land-revenue is extremely hard. If extensive mining is thought necessary for developing the resources of the country, the landlord who is the chief loser in the concern may be allowed the privilege of acquiring lands from the tenants for mining purposes.

Mr. Ross, the original framer of the Bill, reserved such rights to landholders, and it is quite unreasonable to deprive them of the rights.

So this clause may be removed and section 122 of the original Bill must be placed here reserving mineral rights to landholders and given them right of acquiring lands from ryots for exercising such rights.

"A principal Civil Court of Original Jurisdiction may, on the application of the landholder 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, or for the purpose of quarrying or to excavate gravel or clay and on being satisfied that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landholder upon such conditions as the court may think fit, and require the ryot to sell his interest in the whole or such part of the holding to the landholder upon such terms as may be approved by the court, including full compensation to the ryot."

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Section 8.—In most of the sea coast villages from the time a ryot plants tree, land-revenue ceases and tree-tax commences. There are innumerable instances where the ryots grow fruit trees and topes on their patta lands. The terms on which the ryots are allowed to plant trees are liberal in consideration of the tree-tax to be imposed. From the time the ryot plants trees on his patta lands the land-revenue ceases and he

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is allowed to enjoy the land free of any assessment till the trees begin to yield produce. When the trees yield produce, then only he begins to pay the tree-tax. The land-revenue which he used to pay according to the crops raised is converted into tree-tax. The ryot gets kudivaram right in all the trees planted and reared by him as well as the occupancy right in the lands under them, except in the trees like palmyra to whose growth he has not contributed in any way. These belong exclusively to the zamindar and the ryot has no manner of right in them. This practice has also been recognised by Law Courts. This section contemplates one only case when the trees standing on a ryot's land have been assigned to somebody else, but not a case where to certain kinds of trees whether assigned to another or not, and even if it is grown after the ryot has entered upon the land, the ryot has no right whatever; the principle applicable in such cases being are—

(1) that the tax paid is tree-tax and not land-tax,

(2) that the tax or rent whether in kind or waram is collected on every tree to whose growth the attention of the ryot is necessary,

(3) that to such of the trees such as palmyra, &c., which does not require the care and attention of the ryot, the ryot can claim no right and the landlord has the exclusive right as he would have in trees of spontaneous growth on non-rent paying poramboke land. (*N.B.*—This land too pays no rent, but the trees pay.)

There are three cases: (1) When the land-revenue was changed into tree-tax, the land being exempted from taxation; (2) Where both the lands as well as the trees on them are taxed; (3) Where land alone is taxed, tree-tax being exempted. In the first two cases the ryot cannot with justice be given the right of cutting trees without the permission of the landholder. In the third case only the ryot may be given the right to cut down trees as he likes.

In districts like Tinnevelly, in ryotwari tracts the Government levies both palmyra tree-tax and the land-revenue for the lands on which the trees stand. Neither the tree pattadar nor the land pattadar is allowed to cut the tree, unless the tree-tax is compounded with the land-tax when the tree pattadars and the land pattadars are one and the same person. When the taxes are not compounded the Government prohibits the cutting of trees on pain of penal assessment of the maximum rate of tax for thirty years with further liability for damages, if any. Even with permission twenty years' assessment is levied before cutting. In such cases full land assessment is levied at the same rate as for lands without the trees interfering with the cultivation by the contraction of space and by shade, and the trees absorbing manure.

Section 12.—*Omit* sub-section (1) and (2) of section 12—

(*a*) A landlord may purchase lands in a revenue sale just in the same way as Government purchases lands in such sales, and make the same his own property with an absolute right of sale, &c.

(*b*) He may, to add to his farm lands, purchase adjacent lands within the block selected for home farming at an enormous cost.

(*c*) He may acquire very valuable lands either by succession or gift.

It is impossible to see the justice of prohibiting a landlord's right to purchase or acquire lands in the legal way just as any other man will do. By this section, a landlord will lose even the just rent due on the land when he has not got the right to sell the same, if he purchases such lands for want of bidders in auction. This section is extremely prejudicial without any corresponding benefit. Should this unreasonable section stand, it would only lead the landlords to resort to subterfuges by purchasing the lands in the names of those in whom they have confidence.

When a money-lender or tenant purchases the interest of a tenant, and sublets it to another, he is allowed to reserve the occupancy right to himself and treat his sub-tenant as a mere tenant-at-will. There is no consistency in depriving a landlord-purchaser of the proprietary right of a land for which he pays as dearly as the other purchaser pays for the land he buys. But, after all, the ultimate effect of this will be disastrous to the tenants themselves, for the lands will hereafter freely pass to the hands of pitiless money-lenders in whose hands the ryots cannot expect such a kind and sympathetic treatment as they would expect from a landlord-purchaser.

Chapter III. *Sub-section* (4)—*Explanation.*—It is inexplicable that so much restriction should be imposed on the accrual of occupancy right, even when the right has been purchased by the zamindar for proper price, while a person with occupancy right does not lose it by becoming jointly interested with the landholder. In both cases there is combination of occupancy right and proprietary right of the zamindar, the difference is only in the order of precedence. In other words, occupancy right if accrued subsequent to the zamindari right, it becomes null, and not so when it precedes the right. There is neither consistency nor justice in this.

If the object of the Government is to circumscribe the limits of landlord's private lands, so that the area of communal lands available for the wants of the increasing agrarian population may not be materially diminished, it will be only reasonable to circumscribe the accrual of occupancy right on such lands as have been abandoned or relinquished, and not to extend it to lands acquired by purchase, sale, succession, gift and reclamation at landholder's expense, for the simple reason that in one case the acquisition is without consideration, and in the other for valuable consideration.

Chapter IV. *Section* 14, *clause* (*b*).—There are two cases where temporary leases for zamindar's private lands are given otherwise than by written agreement.

There are two kinds of written agreement (1) Leases terminable at a definite period specified in the written contract, but allowed by the same contract to continue till the pleasure of the landlord by mutual agreement or by sufference. Beyond the limited period specified in the written contract, the tenant becomes a tenant-at-will.

(2) Leases by oral agreement for a definite period or continued by sufference. The lessee becomes a tenant-at will or tenant from year to year.

2. For both kinds of these leases the tenant is in a better position than the lessees on a written contract at the expense of the landholder. He is allowed to occupy the land for an additional revenue year beyond the year in which he receives a notice to quit. This is unfair and illegal. If it be the object of the Legislature to protect the tenant's right over the crops that might be standing at the expiry of the revenue year, he may be allowed to continue till he reaps the crops and not till the end of the whole next revenue year.

Chapter V. *Section* 16, *clause* (ii) (*b*).—Before "District" insert "same village, taluk or."

Clause (iii).—The Government itself does not recognise such special rights in its own ryots in dealing with wastes in ryotwari lands. If there be such special rights they have become defunct long ago in zamindari as in ryotwari lands. By the permanent settlement the zamindars were given unrestricted right on waste lands as much as what the Government exercises over wastes in ryotwari lands.

Seeing that this Land Bill is framed to suit the present state of affairs there seems to be no useful purpose served in enacting the latter portion of sub-section (iv) of section (ii) of Act VIII of 1865, especially when it is clearly known that no ryot is at the present day allowed to exercise any manner of right in the waste lands, whatever might have been the state of things long ago. Since such re-enactment will only tend to promote litigation between landlords and tenants, it will only be just at least to avoid this unpleasantness and recognize the existing condition of things by omitting the latter portion of this sub-section commencing from "and that nothing in this rule shall be held to affect any special rights, &c.," up to "land."

Clause (v).—It is certain that periodical settlement must have been made by the zamindars as occasions arose, since and before 1871, with their tenants for payment of rent for the lands in their possession; and the rate now prevailing has been subjected to arbitration before the summary court, and eventually the District and High Courts too on appeal. Here the tenants and the zamindars must have been given ample opportunities to say their say regarding the rate of rent; and a definite conclusion arrived at about the present rate. Such being the case, it is not clear why the existing state of affairs, which has been brought about after a protracted litigation, be disturbed now, and the landlords and the tenants be asked to take up their old sores and go to litigation again on a once settled question, which would involve them in hopeless ruin. It is not charitable that they should be asked to go

for evidence, both oral and recorded that existed prior to May 1871, *i.e.*, 28 years from this date, seeing that it is very likely that these records might have all been destroyed as no longer required after a decision of the case by competent court. Chapter V.

The legislature seems to be under the impression that since the well-known decision in the Chokalingam Pillay's case in 1871, there has been undue enhancement of land-revenue by zamindars. There are two reasons against this wrong assumption. In the first place there are sufficient safe guards provided in clause (iv) of section (ii) of Act VIII of 1865 against unauthorized enhancement of land-revenue except in due course of law. Secondly, the rates of rent and the paying capacity of the tenant adjust themselves. There have been instances of deduction of the usual rate of land-revenue to meet the capacity of the tenant.

Section 19.—*Omit* sub-sections (2) to (5).

An act of grace and more so a conditional one ought not to find a place in a statute. Even in ordinary years under the so-called summary process the landlord is not able to realize his rent within the official year. It takes a long time, such as six months and more, after the close of the fasli to realise his rent. It will not be right for Government, who are solicitous about the collection of their own arrears within the fasli year or within the quarter next succeeding to the infinitesimal portion of the demand that may be still due from the utter homeless paupers, to throw all sorts of obstacles in the way of collecting their just rent from their (zamindars) ryots within the year. When the Government begins to collect its peishkash rigorously within the year succeeding the one of famine, it is not known how a landlord who is powerless even to collect his just rent within the year be able to collect the arrears with the current demand in time to pay the Government kist. The landlords will have no objection if the Government is prepared to grant them loans at a cheap rate of interest, since it is in a position to command any amount in the market, in times of distress, if it really intends to enforce this beneficial rule to the zamindari tracts. If the distress continues for a number of years, and if the Government should make its demand as soon as the distress is over, what then is to become of the landlord who will certainly not be able to meet the Government demand made all at once. Seeing this is only a matter of grace, it should properly be left to the good sense and discretion of the zamindars alone. A compulsory enactment such as this is unreasonable and contrary to the solemn promises made by Government at the time of permanent settlement.

Sub-section (5).—It is not known if the same thing is allowed in Government villages. If there is any justice in the provision, Government would have introduced the same with regard to their own ryots. This provision will work immense hardships on the landlords. The proof by ryots is not difficult, for they are all in the same boat and are sure to combine to the advantage of themselves and to the great prejudice of the landlord. The proof to the contrary by the zamindar is difficult.

Section 20.—It is inconceivable why fractions of a month and of a rupee should be disregarded in the calculation. Is As. 15–11 to be omitted altogether, or 29 days of a month to be disregarded? Old 12 per cent. per annum may be made to remain without difficulties and losses. If the arrear is not paid, the zamindar has to borrow at his usurious rate; the sowcar does not show the same concession to the zamindar who only borrows owing to the negligence or indifference of the ryots. By way of illustration, suppose in a zamindari there are 20,000 ryots in each of whose case there is a fraction of a rupee amounting to 0–15–11, the loss in interest to the zamindar will be nearly Rs. 20,000. By this section the zamindars will be compelled to forego the interest on Rs. 20,000 legally entitled to him, while the sowcar will relentlessly demand the interest from the zamindar. A sowcar never omits fractions of a month and of a rupee. This does not seem to be holding the balance evenly.

When the Government, which is able to raise loan at 3 per cent, recovers interest from its defaulting tenants at $6\frac{1}{4}$ per cent. per annum, it will be hard on the zamindars if they are compelled to levy the same $6\frac{1}{4}$ per cent. while they cannot raise a loan even at 12 per cent. to meet the deficiency caused by the irregular and protracted payment of the tenants.

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Section 21, *sub-section* (1).—It is objectionable that the specification of the items, to which the payment is to be credited, should be according to the wish of the tenant. There may be cases where the payment shall have to be credited for the arrears of land-revenue. An amendment is desirable after the word 'credited' "*provided there is no arrear of land-revenue in which case the payment will be credited to the arrears of previous revenue year or instalment.*" This method of crediting obtains in ryotwari tracts.

Sub-section (2).—Substitute '*copy*' for 'counterfoil.'

In Government villages the தண்டல் and the கைச்சாத்து form the aggregate record of payment and receipt of rent. This has been the practice by way of imitation in many zamindaris. If by a counterfoil is meant a counterpart from which the receipt has to be separated before issue, the number of such receipts and counterfoils will be as many in the case of each tenant as the number of times he takes to pay the rent due from him in instalments. Thus the work will be multifarious. It will be unnecessary in many cases. It may lead to mistakes of many kinds which may again engender fraud. If the கைச்சாத்து system is continued and a copy of the same called தண்டல் ஆவர்ஜா is kept by the agent of the landlord every time payment is made, it will be entered consecutively in the same கைச்சாத்து and its copy: and as many entries as the whims of the tenant may create will all find a place in one sheet of paper and its copy with the agent of thelandlord. Further the கைச்சாத்து system will minimise the inconveniences and difficulties accruing from the omission contemplated in sub-section 4 of this section. Because every entry, if an intermediate one, will show all previous and subsequent entries and remove all room for doubt as to its actual character, negativing further all possibility of the tenant fraudulently withholding receipt actually granted, with the object of taking advantage of the presumption referred to in the said sub-section or subjecting the landlord to the process contemplated in section 22 *infra*.

Section 27, *sub-section* (2).—Omit and substitute the following:—"The payment shall be made free of charge to the landholder."

There must be a section for the receipt by the proprietor of the amount deposited by the ryots with the Collector under sections 24 and 135 without any additional cost either in the way of stamp or carriage. Such payment with the Collector by the ryots may be adjusted in the peshkash amount due by the proprietor, if any, or the amount may be directed to be paid out of the collections of the neighbouring ryotwari village or from any nearest Government treasury.

Section 30.—*Omit sub-section* (3) *and substitute the following*:—"*In either case the tenant must give a written registered notice to the landlord direct or through the Collector appointing the time for harvesting so as to reach the landlord not less than* 10 *days before the commencement of harvesting. And when the landlord or his agent does not attend at the fixed time, the tenant may apply to the Collector to take steps under section* 28 *for the division or produce.*" Or in the same clause (3) omit the words from "without" to the end and substitute "*Subject to such supervision and order according to local usage as may be necessary for the safeguarding of the interest of the landlord in the produce.*"

With the commencement of the harvest commences the difficulties of the landlord in safeguarding his share, especially in those cases where there has been misunderstanding between the landlord and tenant. If the tenant is left to himself and fortified by such provision as is contemplated in the words "without any interference on the part of the landholder" his ways and means of circumventing the landlord or his agent would be many. These need not be described in detail here. Landlords and the officers of the Revenue Department to whom they have often complained in the matter know them well throughout the Presidency wherever the waram tenure has prevailed.

Sub-section (4).—At the end of this clause insert the proviso contained in the second paragraph of section 83 of Act VIII of 1865.

This Bill in section 55 makes any fraudulent conveyance of property by the tenant to prevent distress *penal* so that the landlord may not be cheated out of his legitimate dues. On the same principle it will be right to make the tenant's removal

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of grain before division with an object to prevent landlord from getting his full dues *penal*. Since there are some tenants who are peculiarly watchful and industrious and as such the produce from their fields are more than that of the next best field in the village, it will be a handle to such of them to surreptitiously remove all that he had over and above the crop of the next best field in the village in the absence of any *penal* provision as at present exists.

This section 30 gives exclusive possession of the produce to the ryot and disallows all interference on the part of the landholders. If the land revenue is taken by appraisement of the produce, it is but right that the ryot must not be interfered with, since the landlord is entitled to his share of the appraised total. Where there arises difference between the ryot and the landlord with regard to the appraisement, division of produce becomes necessary. When the tenant is interested in showing that the outturn is less than the estimate and the landlord's men in proving, on penalty from their masters that their appraisement is correct and even more than what they estimated, is it not fair and equitable that both the ryot and the landlord must exercise proper supervision to avoid fraudulent subtraction or addition on the part of the ryot and the landlord's men respectively? Where is then the equity of allowing exclusive possession of the produce in such cases to the ryot alone? The present practice in such cases is that some time before harvesting the appraisement of the crop is sent to the landlord by the village servant and these are checked by other officers. After due notice from the tenant of the date of harvesting and the field to be harvested on that date, men are appointed to supervise the harvesting and the seal of the zamindar is placed on the produce harvested for the day. This is guarded in the night both by the respective ryot owners of the property and the taliari of the village. The diary of the village officers with the individualwar accounts of the various process of reaping, bundling and threshing, &c., is sent the very day to the zamin office to prevent tampering by the village officers and others. These necessary precautions continue to be exercised until the final division is made and the landlord's share is set apart. There is no necessity for this one-sided change.

The remedy of granting the proportion of the fullest crop of the neighbouring land contained in sub-section 4 of section 30 will be of no avail since it assumes the possibility of proving that there was a clandestine removal of the crop from the land and that each tenant is capable of and in the habit of maintaining accounts to show the yield of his holding or at least the tenants in general are so very honest that they can speak the honest truth to the prejudice of their self-interest.

Chapter VI.

Section 31, *Sub-section* (1).—The compulsory exchange of puttah and muchalka every year has been found to cause unnecessary hardship and expense to the landlords without any corresponding advantage to the tenants; it has been the source of innumerable vexatious suits causing enormous trouble and expense to the parties and waste of time of courts; under the Bengal Tenancy Act neither the previous exchange of puttahs and muchalkas nor the previous tender of puttah is a condition precedent for the recovery of rent; even the Madras Government has practically dispensed with them with regard to their own ryots.

The sooner the inordinate importance attached to the exchange of puttah and muchalka is done away with the better. Puttahs proper and muchalkas are not deeds of contract nor do they create any legal obligation. They are only documents incidental to the pre-existing contract, whose conditions remain intact, and they are documents with annually repeating terms concerning a tenancy. There have been a number of estates in the Presidency where the system of exchange of puttah and muchalka was introduced quite recently. In such places for generations the collection had been going on without the formality of the exchange. The present Rent Recovery Act VIII of 1865 contains a provision in section 7 by which the exchange might be dispensed with with the consent of both. When a contract is complete, and when the occupancy of the tenant is in consequence of a pre-existing contract, and its terms are admitted, to make the right of the levy of rent and civil action depend compulsorily upon the exchange is superfluous. Puttahs will vary but little from year to year, and a provision that a puttah once accepted should hold good between the same parties till there is a change in the terms of the contract would save much trouble and annoyance.

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Sub-section (2).—The term "substantially correct" gives room for misunderstanding. It is possible for the presiding officer to treat every unimportant item as a material one, and thus reject the puttah that it is not substantially correct. The interest of the landlord suffers. In such cases, either party shall have to go as far as the High Court to declare what a substantially correct puttah would be.

It is admitted on all hands that great vexation and loss have been occasioned in the past, and the proprietor frequently defeated in the recovery of his just dues, by reason of some unimportant and unintentional defeat in the stipulations of the puttah tendered. It is proposed to correct this by the stipulation contained in sub-section 2 of section 31, viz., "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." This is extremely vague, and will, it is submitted, in no way diminish litigation based on alleged defect or irregularity in the puttah. It is hoped that this clause will be so altered as to express in definite and unmistakable terms the intentions of the framers of the Bill. It may be altered as follows:—"*A puttah which is not entirely but partially correct shall be held to be valid to the extent that it may be found to be correct.*"

Now that the kurnams and other village servants have been made independent of the zamindars, their masters, and have been placed under the Revenue officers, it is fair and equitable that the non-tender of puttahs or tender of incorrect puttahs, which irregularities are likely to take place more frequently and with greater facility and impunity than hitherto, should not deprive the zamindar of his right to recover the rent, as long as the occupancy and terms of the tenancy are admitted.

Sub-section (3).—Omit "in restraint—harvesting or." This provision is superfluous as no landholder would restrain cultivation absolutely. There may be occasions where it would be necessary to restrain particular kind of cultivation or cultivation on particular occasions for particular reasons. The Government restrains the rearing of second crop under a tank, when they are prejudicial to the first crop without the permission of the Revenue officers.

Section 32.—It is stated in this section that the puttahs may be tendered, if the Collector shall so permit in respect of any estate or portion of an estate by filing of the same in the office of the Collector or such other officer as the Local Government may direct, and if so filed the Collector or such other officer shall cause the puttah to be served on the ryot at the cost of the landholder. This provision will cause a good deal of loss and inconvenience to the landlord. It is not stated how the costs of such tender are to be realized from the landholder. If the object of the Bill be that the landholder should bear the costs of such tender there is no reason why he should be subjected to such a loss. In the case of those ryots only who do not appear to receive puttahs before the landholder or his authorized agent within the time mentioned in the general notice given to the villagers for receiving puttahs after the preparation of those records, the tender of puttahs becomes necessary. The fault of not receiving puttahs after executing muchalkas lies on the ryot and not on the landholder. Therefore it seems reasonable that the ryot should bear the cost of such tender. The costs of the same will be enormous. The ryots taking advantage of this provision, which is less costly to them, will try to cause great loss to the landlord. It is not clear why such a provision has been introduced. It is stated in the Objects and Reasons given for the Bill 3 of 1898 that this provision is introduced for the advantage of the proprietor to protect them against the plea of non-tender. But it will cause rather great inconvenience, loss and good deal of expenditure to the landholder than benefiting him. The latter part of the provisions regarding the service by the Revenue officers is not necessary. There should be another provision that the cost of the tender of puttahs through the Revenue officer should be realized from the ryot along with the Land Revenue according to the provisions of this Bill, even if he is made to pay the cost of tender in the first instance. Moreover it is not stated what should be done in case the Collector does not permit the filing of the puttahs. Section 122 shows that the order of the Collector on this application is final, so the object of this provision will be frustrated.

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Section 35.—Insert after 'relates,' "The same puttah and muchalka may continue to be valid during the subsequent years also, provided there is no change or variation in the terms."

When once the terms of tenancy is settled between the landlord and the tenant by a decree of a competent court, it is extremely undesirable to compel the exchange of puttahs and muchalkas year after year although there might be no variation in the terms. What is subsequently wanted in the interests of both the tenant and the landlord is the Bill for rent, which will exactly be a copy of the chittah, which will clearly show the extent and the class of, and the rate for, all the lands in his holding and showing him also the total amount payable with all the additions and subtractions to his holdings together with all other taxes, such as road-cess, &c., he may have to pay. This will be more than ample to protect the interest of the tenant. While the object of the present Bill is to protect the tenants from unnecessary litigation, and since it is a practice that the tenant and the landlord that are litigiously disposed fight over the terms once decided upon as often as opportunities permit, it will be just to minimise the chances of such unnecessary and ruinous litigation by making the terms once decided acceptable during the subsequent years also unless there is a change in the terms of tenancy.

Insert, at the end of this section, "*Provided that nothing herein shall invalidate a puttah containing conditions relating to periods of more than one year in cases where they are necessary, considering the character of the crop or produce and the local usages regulating the realisation of the landlord's share in it.*"

The necessity for this will be obvious from cases of which the following may be cited by way of illustration. In the Chingleput district there are extensive cocoa plantations; from time to time tenants plant cocoa trees on their dry lands on condition of paying the landlord a portion of the produce when the trees begin to yield. The landlord foregoes his rent till the period. Heretofore it has been the practice to keep up an understanding to this effect, and the landlord and tenant have abided by it. Now under this Act, the tenant may say that he will not pay anything more than the rent for the dry land payable according to his puttah. But this contention would be absurd, because the profits derived by him would be quite disproportionate to the original understanding with respect to which the land was granted to him for annual dry crop cultivation. The local usage has recognized the expediency of proving against this exclusive advantage to the tenant and has provided for agreements from time to time according to which the landlord gets his advantage also in the concern by sharing in the produce according to certain ratios that are regulated by custom. Heretofore agreements on this score between landlord and tenant have been enforced in Civil Courts under the Common Law provisions of the Contract Act. The constructions of this section would give room to the tenant to contend that the landlord cannot recover this produce also without puttah or muchalka. In the case contemplated it is not possible to tender a puttah with a stipulation to cover this case also; for no puttah can be granted with conditions covering more than one year. Cases of this kind have therefore to be provided for and liberty should be given to the landlord to put in clauses in puttah that in the event of cocoa and other plantations being organised, the landlord should be given certain share of the produce from the time the trees begin to yield according to local usage.

Section 36.—*Vide* remarks under section 38.

Section 38.—The provision at the end of sections 36 and 38, viz., "that the decree shall be of the same force and effect as if a puttah and muchalka had been exchanged," should apply to decrees in suits of the same nature passed in Munsifs' or District Courts. This will greatly shorten and simplify the procedure. At present, after having obtained a decree before the Munsif, the parties have to come to the court of the Collector to enforce acceptance of the puttah by the tenant, and the same cumbrous method of procedure will be rendered necessary under the provisions of the new Bill. If then the decree of the Civil Court has the same practical effect as the decree of the Revenue Court, there will be great economy not only of time and money both to landlord and tenant, but of the labour of executive officials.

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Section 39.—Omit from the words "until" to "decreed" and substitute the words "till there is a change in the terms of the contract between the same parties" for reasons given under section 35 since annual exchange of putta, muchalka is unnecessary.

Section 40.—Civil Courts must have concurrent jurisdiction with Revenue Courts. It will give universal satisfaction if stationary Civil Courts are allowed to take the place of the itinerant Revenue Courts.

Chapter VII.

Section 41.—At the end of section after the words "in his holding" insert the words "either himself or through the Civil Courts."

Section 19, sub-section (1) of the Land Bill defines what an arrear of land revenue is. The present Rent Recovery (Act VIII of 1865) authorises a landholder to distrain moveable property of a defaulter at any time after the arrears fall due whether it be within the revenue year for which the arrear is due or after the year as the case may be. While the Government is very solicitous about collecting its instalment to the last pie long before the payment of next instalment falls due, the equity of requiring the landholder alone to await till the expiry of the revenue year for which the revenue is due for the purposes of collection is inexplicable. Therefore this section must be modified as follows:—"A landholder may *at any time after the arrear became due*, and if no security has been accepted therefor in addition to any other remedy * * * for the discharge of such arrear."

There is no provision for the distraint of articles if the defaulting ryot lives outside the estate wherein the land is situated. When the defaulting ryot or tenant is absent or cannot be found or resides outside the estate where the land lies, his property in the district, whatever it may be, must be liable to distraint through the Collector of the district where the land is situated.

Section 42.—While fully realizing the value of the right of private distraint accorded in the Bill, it is desirable that the landlords may be accorded also the right of distraint through the Civil Court. This procedure is adopted in Bengal (Bengal Tenancy Act, section 121) and there seems no valid reason why the same privilege should not be accorded to proprietors in this Presidency. There are many cases in which the right of private distraint will be useless or its exercise dangerous. When a whole village has combined to be obstructive or when the police are unfriendly to the landlord, he will shrink from using the weapon which the law has placed in his hands. He will then be compelled to have recourse to the Civil Court, by bringing a civil suit, and attaining the same end by attachment and sale in execution of the decree. This alternative will on the one hand press heavily on the landlord by involving him in great delay, keeping him out of his money, and burdening him with an infructuous tenant; while on the other hand it will press heavily on the tenant by enormously increasing the costs and accumulation of interest.

Section 43.—In this section insert the words "*office at the head-quarters of the*" between the words "the" and "Collector" in the sub-section.

Insert the words "*or his camp. The Collector providing for some officer always remaining at the head-quarters to receive such copies*" between the words "Collector" and "by the landholder."

Omit "48 hours" and substitute "3 *weeks*."

Madras Act VIII of 1865 in section 16 provides 10 days after distraint for forwarding copy of it to the Collector. This period has in many cases been found to be too short, especially where the estates are large, and situated some distance from the head-quarters of the Collector. If we should go into detail, we must concede that the existence of a regularly-constituted Postal service and the railways cannot help the landlords much in the matter of expediting this business. It is not one distraint that is generally made in any given locality in a zamindari; a number of distraints is generally made. The forms requisite with respect to each have to be complied with; generally three copies of each have to be made and a great many other things more or less important in their nature—*e.g.*, the appraisement of property distrained—have to be duly attended to. All this take much time, and in large

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estates much longer time, than in similar ones. It would be impracticable and useless, even if practicable to create a difference with respect to this among the various estates of the Presidency according to the extent of area and capacity for work manifested in each. Therefore three weeks fixed once for all would secure the purpose excellently. It goes without saying that in the light of the observations made above 48 hours is too small to be thought of. Again we may rest assured that the landlord gains nothing by delaying the matter. On the contrary it is to his interest to see that the copy of distraint goes to the Collector as early as practicable in view to the proceedings being brought to a conclusion at an early date.

Section 45.—It is stated in section 45 "that the distress 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" and in section 64 it is stated that "if the distress was excessive, the Collector may direct the restoration of the distrained property to the owner; and the distrainer shall not proceed further under this Act and the ryot may sue the distrainer for any loss or damage which he has sustained." This provision may bring a good deal of vexatious and frivolous litigations by the ryot against the landlord: and the landlord will be subjected to a great amount of loss and expenditure. The reason is that the ryots will object that the distress was excessive. The value of every property could not be known exactly. In such cases the estimate value of such properties will vary according to the opinions of the persons estimating the same. The distrainer may estimate the value of the property as being equal to the arrear of revenue and the Collector or other Revenue officer in enquiry regarding the same, may estimate the value differently and think the distress was excessive and may order the restoration of the distrained property to the owner. In almost all cases of distress the above-mentioned difficulty will certainly occur. If the ryots lay before the Revenue officer any complaint regarding the same or the Revenue officer conducting the sale reports that the distress was excessive in his opinion the Collector may order the restoration of the property and the landholder cannot proceed to recover under the provisions of this Bill and is liable to pay damages to the ryots. For instance, it is possible that a ryot possesses no other property than a bullock worth Rs. 100. His arrears amount to Rs. 20 only. In this case there is no other go than to distrain the bullock. According to this section such a distress would be excessive. The distress is sure to be withdrawn by the Collector's orders. The landholder is not only debarred from proceeding further to recover the arrears but will also have to pay compensation on the ground that the distress was excessive. As this sort of thing may happen in each and every case the land revenue cannot be collected, but the Government will compel the landholder to pay the peishcush. Thus the power given to the landholder to distrain the ryot's property will in most cases be practically useless. So if this section be not removed there is no use of giving the landholder the power to distrain. Further the section says that "the distress shall be proportionate to the arrear due." The distrained property should be proportionate to the arrear including the expenditure of attachment and of sale. The cost of attachment cannot be known at the time of making the distress, so the distress in all cases should be excessive so as to cover those expenses which may be less or greater according to circumstances. As the section provides that the distress should be only proportionate to the revenue, there is no means of recovering the cost of such attachment and sale from the proceeds of sale.

Section 50.—Omit and substitute section 21 of the Rent Recovery Act VIII of 1865, which is quite sufficient to meet the necessity.

While the responsibility of the distrainer makes him liable to any damage or loss during his charge of the distrained property under section 53 it would be hard on the landholder or his distraining officer if the defaulting ryot should be allowed to interfere with the distrained crops.

Evidently the first clause of section 72 of the Madras Tenancy Bill is omitted inadvertently in section 50 of the Land Bill. For this reason the first clause of section 50 of the Land Bill is inexplicable with this omission.

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Section 51.—The ryots having withheld the payments of their land revenue for a long time after it became due their moveable properties are distrained with great difficulty and expenditure; and afterwards they are brought to sale. In all such cases if the ryot gives security to the satisfaction of the distrainer the distress is to be withdrawn. The efforts, difficulty and expenditure incurred by the landholder for distraining become useless as the object (the arrears due) is not realized. The payment is delayed. Under these circumstances, certainly, the taking of the security delays the recovery of the land revenue, and causes, expenses and loss, to the landholder. So the security cannot be accepted in every case of distraint, unless a special reason is alleged by the ryots and is accepted by the landholder. Hence the taking of security should be left entirely to the discretion of the landholder. The deposit with the Collector is unnecessary, since it will interfere with the speedy collection of land revenue and since landlord's property is a sufficient security for the amount to be realized by distress or paid by the ryot under protest or in case the distress was adjudged to be illegal.

Section 53.—Insert at the end of this section.

"Provided, that the defaulting ryot did not interfere with the distrained property without the consent of the distrainer."

Section 57.—With regard to distraint the legislation could be much simplified. In the French Government at Pondicherry the landholder has to send the list of defaulters to the Revenue officers. The rest of the work in attaching and selling the property of the defaulting tenant is done by the Government. In the Government of Mysore, the proprietors, as a better measure, are invested with the powers of Deputy Commissioners, subject to appeal in the recovery of the rent of the defaulters. There is no reason why large and respectable proprietors should not be invested with similar powers. The present system of dual powers in the attachment being in the hands of the zamindar, and the sale being in the hands of the Government Revenue officers, who are no better than Revenue Inspectors or Amins, in most instances work considerable hardship and injury both to landlords and tenants. Ruinous delays with perishable articles distrained cause irreparable injury. The English system of conducting the sale of the distrained property by licensed bailiffs, under the direction of the landlord, might with advantage be adopted in this country. The zamindar may appoint the Amin and the Government may give him a license to sell properties attached. The zamindar as master will be responsible for his conduct in this capacity. The Amin, in addition to his responsibility to his master, will be answerable to the Government for any irregularity in excess of his authority by virtue of the license he holds from the Government. This would immensely improve the working of the rent laws with well-defined responsibilities.

Section 59, *sub-section* (2).—Insert "and removing" after the word "gathering" in this sub-section.

Section 64.—There is no provision in section 41 for an application to the Collector for an order.

Substitute the words "*in a Civil Court*" between the words "distrainer" and "for" in the second part of the section for the words "*before the Collector*".

The provisions of section 64 coupled with section 71 of the Bill is highly objectionable. They refer specially to the provision that the Collector may decide that the distress was excessive and may direct the restoration of the distrained property to the owners. Now the definition of excessive distraint, given in section 45, is extremely indefinite, and can admit of as many views on the subject as there are Collectors. Further there is no margin allowed to cover the expenses of distraint and sale, which should form a charge against the tenant and can only be roughly estimated. This, however, is the least objection. The Collector who decrees the excessive distraint is himself the Judge before whom the suit for damages may be brought by the aggrieved person, and in each case his decision is without appeal. It is, therefore, submitted that there should be an appeal from the order of the Collector declaring the distress excessive, and that the suit for damages should like any other action for tort, lie in the Civil Court. The ryot will naturally bring his suit before the Collector who has

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already given a decision in his favour. The best and most simple course will be to amplify section 71 into an enactment similar to that contained in section 78 of the Rent Recovery Act and section 59 of the Revenue Recovery Act, saving generally the rights of all parties to bring actions for damages for tortuous proceedings under the Act; and thus put private landlords and their tenants on the same footing as Government and its tenants in the future, as they have been in the past. Chapter VII.

Section 71.—*Vide* remarks under section 64.

Section 72.—There is no provision as to the procedure for the sale of distrained property after notice of distress was communicated to the Collector. There should be limit of time for sale of distrained articles within a month after the receipt of notice of distraint. The tenant is a loser more than the landholder. When bullocks are attached for arrears, the cost and labour of tending them are very heavy and the tenant loses by the deterioration of the animal, by the owner himself not taking care of it.

Section 76.—Omit "subject to any claims of Government." While priority over incumbrance created by a Court decree is allowed there is no reason that the claims of the Government should have priority over the landholder's claim for rent. This defeats the very object of the Bill in making the rent the first charge on land. Chapter VIII.

In the Statement of Objects and Reasons, *paragraph* 24, of the original Tenancy Bill it is stated that "for the further security of the proprietor in the recovery of his just dues, rent is, by section 76, corresponding to section 99 of the Tenancy Bill, made a first charge on occupancy right, indefeasible by any other encumbrance." This Bill does not carry out this intention for section 76, is cut down by section 77; whereby a sale of occupancy right for arrears due in respect thereof, is "subject to any encumbrances in favour of Government and subject also to any other encumbrances created before the 22nd March 1898." In any case, the point of time should be "the date of publication of the Bill," so as to prevent fraudulent encumbrances being created just prior to the passing of the Bill into an Act. But this is not sufficient; the landlord's claim should be an absolute first charge, free of all encumbrances, just as is that of the Government; and sections 76 and 77 should be replaced by a section similar in terms to section 42 of the Revenue Recovery Act (II of 1864).

Section 77.—There should be a provision for the recovery of rent in case of arrears of land revenue though subject to encumbrance prior to the passing of the Act, by sale of land under such encumbrance subject to the claim for rent as first charge. Otherwise the encumbrance would be protracted for an indefinite period. It would be difficult or impossible to find purchasers for properties which are mortgaged with possession. Notice of attachment shall be given both to the mortgagor and mortgagee. A provision may be inserted to this effect. The mortgagee may be given an opportunity to bid the property himself.

Section 80 (*b*).—Omit the words "subject to any claims of Government"—*vide* remarks under section 76.

Section 83.—Omit this section.

Sub-section (1).—There is no such provision extending a month's grace to the defaulting tenant either in the Rent Recovery Act VIII of 1865 or in the Revenue Recovery Act II of 1864. By making the sale outright and absolute on its completion, except for material irregularity, the property would find ready purchasers, and the arrears would be speedily realised. Otherwise, there would be vexatious delays in the purchase to the loss and detriment of the landholder.

Section 84.—Substitute "*landlord*" for "District Collector," and insert after "praying for" the words, "*its repair within a reasonable period. If the landlord do not attend to it, the tenants may apply to the District Collector praying for.*" Chapter IX.

Section 86, *Sub-section* (2) *proviso.*—Aftert he word "channels" add "and the damming of the calingulas, closing of the small breaches, preventing the widening of the breaches during rainy weather."

Chapter IX. Insert at the end of the section the following proviso "*and provided where the tenant is authorized to conduct the repairs the landlord is given every opportunity by the tenants or other agents carrying on the work to exercise such supervision over it in his own behalf as may be necessary for the safeguarding of his interests in the matter.*"

Section 88.—The landholders' consent should have been previously obtained before the Government undertakes the repair. In case of default on the part of the landholder and in case of disputes in the adjudication of accounts, the Government should submit the case to an arbitration or to a Civil Court; otherwise, the Government would occupy the anamolous position of being judge of its own claims.

Section 92.—Under the old Rent law—Madras Act VIII of 1865—the only authorities recognized were the Collectors as a Revenue Court and the District and High Courts as Courts of appeal. This policy may be adopted throughout this Act also. The Collector mostly acts as a Judge or arbitrator between landlord and tenant. An appeal from him must lie to a judicial tribunal, not to a purely administrative body like the Board of Revenue, on whose special competency in such matters some may base the necessity to carry appeals to them concerning the same. This is a misapprehension. The mere facts that the Members of the Board of Revenue had been Collectors and other high functionaries before they were appointed to the Board does not give them a priority over District Judges and the Judges of the High Court in dealing with questions relating to irrigation repairs and improvements. In fact it is purely Revenue matters alone that go before the Board for disposal in the summary departmental way contemplated by its constitution. But Revenue matters are one of the departments of administrative work of which Civil Courts take cognizance in the many suits that are filed before them.

Innumerable are the other subjects bearing directly or indirectly on Revenue matters and which go before the Civil Courts enabling them to take an exhaustive view of all the aspects in which Revenue matters may be considered. Before decisions are arrived for or against suitors, in fact, from special rules of custom that govern a cobra-charmer's emoluments in an out-of-the-way Wynaad village to the distribution of water from the Gódávari anicut, all matters go before the Civil Courts and eventually turn up before the High Court. The superiority of the High Court to the Board of Revenue as an appellate authority need not further be illustrated. Further, in matters like those contemplated in this Chapter, large interests may be at stake. Counsel may be heard on both sides. Questions of law and procedure may have to be discussed; and a decision arrived at after due deliberation. None of these advantages can be had before the Board of Revenue. The case may be more pointedly put thus:—A landlord tenders a patta for 14 annas; a summary suit arises thereon before the Collector and the proceedings close finally before the High Court by the delivery of judgment in a second appeal generally by a Bench of two Judges. If any knotty question of law should exercise the minds of the two Judges, the matter goes up before a Full Bench and decided. But under the present Bill if a landlord is subject to an expenditure of ten thousand rupees in connection with a tank repair, the Collector disposes of the matter, the landlord appeals to the Board of Revenue in the shape of a petition. No counsel. No argument. After a long period of delay he gets a stereotyped order containing the memorable words "the Board decline to interfere," and there is an end of the matter. This certainly cannot satisfy the landlord, because in the first place he is utterly in the dark as to the grounds on which the Board came to that conclusion if conclusion it could be called. No doubt the present Chapter deals with a matter that was not thought of in the old Rent Act. It must also be conceded in all fairness that it contains provisions which will benefit landlord as well as tenant. In other words, it is a decided improvement on the old Act. All the more is it necessary, that such machinery as will guarantee the right working of it should be provided, and such a machinery the proprietors are unanimously of opinion is the Civil Court.

Section 93.—Omit this section.

There is no necessity for it. This would set the tenants against the landlord to the annoyance and injury of the latter.

General Remarks on Chapter IX.

Chapter IX. The provisions as to repairs in sections 84 to 92 of the Bill are highly prejudicial to the landlord. The tenant may make his application direct to the Collector and need not previously apply, or even give notice, to the landlord. The slightest want of repair would apparently justify the tenant's application; and it is not even necessary to prove that the necessary supply of water is not forthcoming. It is not stated whether the supply is to be for the first crop only, or whether it is necessary that a supply should be provided for the second crop also. It is not even considered necessary that there should be a personal inspection by the Collector. During the rainy season the bund of every tank is more or less damaged; and small quantities of sand or mud are brought into its bed by the supply channels. The tenants under every tank will be therefore in a position to apply for the Collector's order for repair and the landlord's net income may prove insufficient for the repair of all the tanks in his estate. The tenant should be called on to show that his usual cultivation has been prevented or impeded by the landlord's neglect, before being armed with compulsory powers. Government may, perhaps, realize the difficulties of the position of the Zamindar by considering its own case. If zamindari tenants are armed with this power and the result is—as intended—that all zamindari tanks are put in repair, Government will not be able to resist the appeals of its own tenants to put Government tanks in repair. It is not too much to predict that the staff of the Public Works Department would have to be doubled or trebled to enable the work to be carried out promptly and effectively.

Chapter X. *Section* 94, *sub-section* (1).—Omit "ten times" and substitute "*twice*" as enacted in section 5 of Madras Act VIII of 1865. There is no reason why there should be any alteration of former law on the subject.

Cesses authorized by long usage and custom and continued for religious and charitable purposes like temple merahs are legally due. There must be a provision for levy of these merahs in the Bill lest the collection should become a penal offence according to section 94. Till recently merahs and russums like tank merah, pagoda merah, &c., were included in the assets and it is only legal that such Merahs should continue to be collected.

Sub-section (2), *Explanation.*—Omit the explanation since it is most indefinite and highly objectionable. It is impossible to prove that the trees taxed were included in the assets of zamindaris at the time of the permanent settlement and also to find accounts as to which tree-tax were included in the assets of permanent peishcush. It is customary to levy mere tree-tax without any reference to ownership of land under them. Cocoanut trees, palmyra trees and fruit trees like mango and tamarind and oil-seed trees like இலுப்பை are taxed in the zamindaris, in the same way as they are taxed in ryotwari tracts also. The terms of the permanent settlement only excludes certain items of revenue like abkári, sayer, salt, &c. All other incomes the Zamindars are at liberty to raise just like the Government. This explanation is in conflict with the provision in section 3, clause 5 of the Bill. The incomes from trees are regarded as land-revenue. The Zamindars have every right to enjoy incomes from trees like the Government. The Bill must clearly define the landlord's ownership of trees on all poramboke lands. Since the landlords are now compelled to give the right of occupancy in the land *in toto* to the ryot, it is equitable that the ryots who are now made the owners of trees should pay to the landlord the value of trees. Unlike in Government villages when the lands are darkhasted for cultivation the value of the trees are not demanded or recovered from the darkhasting ryots, nor the ryots propose to give the landlord the value of the trees. The practice generally obtaining is, that the trees are taken either for the tenant's own use or for the use of somebody else and whosoever takes the tree pays the value of trees whenever they apply for them. Till the removal of these trees either by the tenant or others, the tenant or any other to whom it is let pay rent in kind or money to the Zamindars for the produce enjoyed, and the ryot who did not pay for the value of the tree when he took the land acquiesces in it by usage. Even when the trees are taken by persons other than the owners of the land there is no objection for so doing on the part of the ryot. This clearly shows there is no heart-burning on the part of the tenant for

Chapter X. paying either the value of the tree when it is cut or when taken for his use or for allowing others to pay for it and take the same. Wherever this practice exists, special clause to the above effect exist in the pattas and muchilikas for a long time. So it is not just that tree-tax should be made illegal on any account.

From the time a ryot plants tree land-revenue ceases and tree-tax commences. There are innumerable instances where the ryots grow fruit trees or topes on their patta lands. The terms on which the ryots are allowed to plant trees are liberal in consideration of the tree-tax to be imposed. From the time the ryot plants trees on his patta land, the land-revenue ceases and he is allowed to enjoy the land free of any assessment till the trees begin to yield produce. When the trees yield produce, then only he begins to pay tree-tax. The land-revenue which he used to pay according to the crops raised is converted into tree-tax. The ryot gets kudivaram right in all the trees planted and reared by him as well as the occupancy right in the lands under them except the trees like palmyra, to whose growth he has not contributed in any way. These belong exclusively to the Zamindar, and the ryot has no manner of right in them. This practice has been recognised by Law Courts. No provision seems to have been made for the recognition of this practice in the Bill, while on the contrary every tree-tax is made generally illegal.

The following conditions of the sale of estates in the Chingleput district formed at the time of the permanent settlement in 1802 would prove and illustrate the legal right assigned to the Zamindars by the Government as regards the rates, the levy and the usage in the collection of rents from lands and trees:—

"All purchasers of land succeed to the seignioral right which the Government exercised in their capacity of general landlord; but in order to prevent the exercise of the right, Government will frame regulations for the protection of the rights, prescriptions, immunities, and customary advantages of lower class of people. In order, however, to prevent litigations on the part of the inhabitants, it is declared to all purchasers of land that the inhabitants of the jaghire are not considered entitled to a higher rate of waram than that inserted in the dowle of fasli 1210, nor is the purchaser entitled to a higher division of produce as succeeding to the rights of Government than the rate therein specified as the Government share.

"It is hereby declared to all purchasers of land that their rights in regard to punja, teerwah and to backyards are defined in the dowle of fasli 1210, and that they are entitled to collect the revenue of Government as the substituted possessors of the land at the rates inserted in that dowle.

"All purchasers of land are entitled to collect the rockadayem or ready-money collections at the rate inserted in the dowle of fasli 1210, with the exception of the ready money payment fixed at the rate of 1 pagoda per cawny on topes of fruit trees. This rate the Government has been pleased to abolish, and to recur to the usual mode of a division of the produce. It is therefore hereby declared to all purchasers of land that they are entitled to divide with the inhabitants the produce of all fruit trees heretofore paying a revenue to Government equally, or share and share alike. From this general rate of equal division, however, the fruit of tamarind trees is excepted. The purchasers of land shall be entitled to receive, as the constituted proprietor of the land, three-quarters of the produce of all tamarind trees heretofore paying a revenue to Government, and shall be at liberty to make such agreement or commutation with the inhabitants as may best suit their mutual interests."

Chapter XI. *Section* 95, *sub-section* (1)—Omit "approved by the District Collector" as it is unnecessary. Insert, after the word "purpose" the words "or for the opening and working of mines or factories." Provision for acquiring lands for mining and factory purposes was made in the Madras Tenancy Bill 3 of 1898, section 122. This provision is found necessary in the interest of the estate in the development of its resources. The landlord alone is given proprietary right under Regulation XXV of 1802.

Chapter XIII *Section* 100.—Insert after the word "arrear" the words "or in case of default of the tenant to vacate and deliver possession of the premises under the provisions of sections 14 and 15 of Chapter V." Insert after the word "premises" the words "and also a declaration that the tenant has not vacated and delivered possession of the premises in due time."

Section 101.—Insert after "fifteen days" the words "or unless he has not shown sufficient cause for not vacating and delivering possession of the premises in due time." Chapter XIII.

Section 103.—Substitute "Rs. 50" for "Rs. 500."

Section 108, *sub-section* (1)—Omit the word "two" and substitute "six." Chapter XIV.

Section 109, *Proviso*.—Omit "thirty days" and substitute "two months."

Section 111.—Omit this section.

No settlement of land-revenue is required. The existing rights and rates of rent ought to be ascertained and recorded against each land or holding. If the rights and rates of rent are not ascertainable with regard to any piece of land or holding, the officer preparing the record must so state against such holding and leave the question to be decided either peacefully between the parties or by adjudication by Courts which is sure to follow the exchange of pattas and muchilikas between them. There seems to be no necessity for hurried interference of special officers in the matter of settlement of land-revenue which is to continue for almost all future.

The Original Bill contained a chapter relating to alteration of land-revenue with area. This Bill has removed this chapter and the only section that relates to this question is section 111, sub-section (1), wherein it is stated thus:—"When it appears that a ryot is holding land in excess of or less than that for which he is paying land-revenue * * * the officer shall settle a fair and equitable land-revenue * * *." This is too vague and leaves everything to the arbitrary will of the officer. No definite rules are laid down by which such officer is to be guided, and it is submitted that a chapter containing the following sections may be introduced with benefit: Sections 28, 29, 30 of the Original Bill (*vide* Standing Order No. 2 of the Board of Revenue, which relates to the alteration of land-revenue with area).

The sections of the Original Tenancy Bill are as follows:—

Every 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.

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.

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.

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 of area; and

Chapter XIV. (*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.

Section 114.—Omit section 114. If the Collector is prohibited from entertaining any suit or application for the alteration of land-revenue until the publication of final record, how is the landholder to meet the demand that may be made by the Government under section 16, clause (iv).

Section 115.—If the survey can be made and completed either under the provisions of the recent Survey Act or under the provisions of this chapter and the expenses be borne by the landholder and the ryots, the record of the existing rates and rights may be left to be compiled by the taluk officers under the guidance and supervision of the divisional and district revenue officers without any additional cost either to Government or to the landholder and ryots. And more so when the appointment of special officers for ascertaining the rates and rights and for hearing disputes incidental thereto are found unnecessary for reasons contained in observations under section 114.

Chapter XV. *Section* 117.—While provision is made in Chapter XIV, section 105, for the survey of an estate, it is inexplicable why should they further and a more particular provision be made for the survey and record of landlords' private land alone inasmuch as the survey and record of rights prepared for an estate or village is sure to contain all the particulars concerning the private lands along with those of other lands comprised in the said estate or village.

Section 120.—The rules laid down by the Bill for the record and protection of private lands are not sufficiently clear and protective.

The description of lands like kambattam, khas, seri or pannai are defined to be those lands cultivated by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the date of the commencement of this Act; and in the next clause (*e*) it is said "cultivated land which is recognised by village usage as proprietor's kambattam, khas, seri or pannai." The latter description is vague. Because in cases where the proprietor is unable to cultivate his land with his own stock, &c., he will be under the necessity of letting them to cultivators under temporary lease. It is impossible not only with zemindars but with ryotwari landholders and non-cultivating ryots to cultivate all their lands with their own stock, &c. The object of the private lands being for the maintenance of the members of the zemindari families and their dependents, and also in several instances for the maintenance of charities, where the zemindars used their full discretion in dealing with such lands. While the legislation wants to protect the occupancy lands in favour of the ryots, it is just to protect equally the private lands of landlords.

After "pannai" insert "izara eedava or nagiri eedava leased out for cultivation for any length of time."

Kambattam, khas, seri, pannai, izara eedava or nagiri eedava as is appropriately known in the Telugu country, refer to lands cultivated by the landlord himself with his own stock or by his own servants, or by hired labour or by letting it on condition of tenancy-at-will. Such lands may come into existence from time to time in various ways; notably the instance of the landlord converting to his own use in the manner indicated above, land of defaulting tenants which he purchases in auction sales and converts to his own use may be cited. Further the landlord without cultivation might keep an area for pasture or other purposes as it may suit him. All the lands in the estate belong to the landlord subject to the restraint of occupancy right in the tenants and providing any limitation with respect to the landlord and his own land would be irrelevant and positively disadvantageous.

Under sub-section 2 of this section one of the criterions for distinguishing landlord's private lands is laid down to be that it must have been let as such before the first day of May 1871. It is not known why this date should be adopted. It is the date of the commencement of Madras Act II of 1871 amending Madras Act VIII of 1865; but there does not appear to be any connection between that amending Act

and the determination of the proprietor's private lands. The corresponding date in the Bengal Act of 1885, is 2nd March 1883; so that Bengal landlords had to go back only two years for evidence of letting, while Madras landlords will have to go back for twenty-seven years. In this matter, again, a very serious burden is thrown upon the landlord by the presumption to be set up that the land is not proprietor's private land until the contrary is shown. In a very large number of cases it would be practically impossible at this late date to produce direct evidence that the land was specifically let as private land, or indeed was let at all, prior to the first day of May 1871, and it will be equally onerous to prove that lands are private by custom, when, as will frequently happen, the whole village combines to resist the claim. Chapter XV.

Add clause (*c*) to section 120, "Lands in which the proprietor has by transfer become possessed of the right of occupancy."

Zemindars are in the habit of purchasing lands for their use as pannai, and a provision is necessary for registering, from time to time, every such new acquisition, so that it may be included in the register of landlord's private lands, kept in the Collector's office. Presumption that the land is not a landlord's private land until the contrary is shown, is prejudicial to the landlord's interest and should be omitted, and the general principle of evidence as to burden of proof should be made to govern. It is a hardship that the landlord should be made to suffer the disability of becoming an occupancy-tenant even over the land he acquired by sale or gift like other people. To place restriction on the free purchase by zemindar would be opposed to free trade principle, which will work prejudicially not only to the landlord but also against the tenant, who might be compelled to undersell his property for want of free competition by the exclusion of generally the richest local purchaser, *i.e.*, zemindar, and by the existence of combination among other tenants of the village actuated by the natural desire to get the property for the cheapest value possible. As the inevitable consequence of such restriction the money-lender is sure to monopolise the purchase of the land and become a far worse landlord than the zemindar himself. If it is thought that cultivable land of the community in the village will be minimised by allowing such freedom of sale to zemindar and not to money-lender or others, provision may be made for the sale of lands to such tenants as are desirous of starting an independent agricultural avocation on the payment by such tenants the full market value of lands and improvements thereon *plus* 15 per cent. for compulsory surrender as provided in clause 2, section 95, for compulsory acquisition. For it would be unreasonable to allow any man without paying anything to acquire a right in the property which another has paid for.

Even the above do not include all classes of landlord's private lands.

In several zemindaries large extent of land is given either free of rent, or on favourable tenure, to perform certain services to landlords and in temples. This is all let, on condition of delivering the lands to landlord when the holders die issueless, or when they are unable, or unwilling to perform the service, as well as when the landlords suspend or dismiss them from service for misconduct. The landlords also give lands free of rent, for rendering village services in those cases in which the Government grants are found insufficient for the due performance of their duties. As over Government inam lands no one could acquire occupancy right the same principle should apply to these private service land also. A clear provision for including all such lands, in the register of landlord's private lands, is indispensable, since, in the absence of such provision, a landlord will be deprived of his right of resumption.

Therefore add clause (d) to section 120 "all lands given to others for service to be rendered to the proprietor or temples or other institutions under his management."

The most remarkable point in connection with this section is that it absolutely excludes the proprietor's private right in all waste or uncultivated land. Section 11, sub-section 4 of the existing Rent Act VIII of 1865 clearly gives power to the landlord to arrange his own terms of rent for waste lands and recognizes the landlord's absolute right of disposal in those lands. If all such waste lands were not landlord's private lands, how could the Government the landlord in the ryotwari village equitably make money by the sale of waste lands, under the Periyár project, Kistna anicut, &c. It

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may be said that such a practice is only resorted to in special cases and as a general rule lands are given over on darkhast to those that may apply for the same. This only goes to confirm that it is at the landlord's option either to receive money for or give for nothing all the waste lands to whomsover he may be pleased to give. It is expected that the Government which wishes to place the zemindars on the same footing as their own in revenue matters, would treat them with all fairness and not as is done in this section exclude waste lands from the list of landlord's private lands, contrary to the existing law and practice in the zemindaries as well as in their own ryotwari villages. Therefore it is but right to retain the clause "*lands waste at the time of the passing of the Act*" contained in Bill drafted by the late lamented Mr. Ross in 1896 and number the same important addition as clause (*e*), section 120.

General Remarks on Chapter XV.

The restrictions on occupancy lands in the hands of the zemindar are quite uncalled for. Nothing is gained by registering the pannai, kambattam or khas lands. If it is intended to restrict the rights of the zemindar, it is not equitable and just. Private lands are acquired by zemindar by reclaiming the waste lands at the expense of the zemindar and by purchase. When lands are acquired at the labour and money of the zemindar, no law could with justice deprive him of his kudivaram right. The distinction between occupancy and non-occupancy lands is, in the former the zemindar is entitled to melvaram right only, and in the latter both melvaram and kudivaram right, and the tenant, of such lands if any, becomes a temporary lease-holder removable at his will. Non-occupancy lands under cultivation have been recognised institutions in zemindaries from the Hindu and Muhammadan periods for the maintenance of the zemindar's families and their dependents. Such non-occupancy lands were called zemindari moniems or nankar lands and were exempted from State revenue until the permanent settlement. It is with this object of providing for the members of the zemindar's family and their dependents and for the maintenance of religious and charitable institutions, the zemindar is compelled to hold pannai lands and develop them or replenish in proportion to the demand under the above mentioned various heads. They sell pannai land for the clearance of debts and make gifts of portions of them for meritorious service and for religious purpose. By the provisions of the Bill under this chapter, the proprietors will be debarred from acquiring pannai lands even to make up and replenish the loss or diminution of private lands owing to above causes. The object of not extending occupancy right to such lands is to prevent the alienation of the lands from the objects for which they were intended. If the temporary holders of the lands be given permanent occupancy right over such lands it would be giving the occupants the right to transfer them by sale and mortgage which right is necessarily incidental to occupancy right. The provisions of the Bill perpetrate unjustifiable confiscation and spoliation.

When the permanent settlement was made, the calculation of the rate of peishcush was two-thirds of the gross income. Such a high rate was fixed in consideration of the increase of the income by the extension of cultivation of waste lands in the future. After the lapse of a century the rate of the income has not much increased as it might be expected. According to the calculation of the Court of Wards out of the income of the estates under its management, which are in varying proportions, the average rate of the peishcush to the gross income is about 32 per cent. The local cess would raise it to more than 40 per cent. With the imposition of the proposed village service cess and assessment on service moniem lands, the rate would rise higher still to more than 50 per cent. of the income. With this state of things, and with the increase of the private expenses of the zemindars with the growth of enlightenment and civilisation, it would be harsh and unjust to prevent the zemindar from acquiring occupancy lands in a fair and just way. There is not a single occupancy tenant in all Britain and Ireland. There is no comparison between the condition of the tenants, who are deprived of all rights in British Isles and the enormous incomes made by the landholders by leaps and bounds at the expense of the tenants, and the condition of the landlord and tenant in India, where the latter is decidedly a gainer on the whole.

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It is highly objectionable that the Collector's decision should be given finally. They must be subject to revision either by Civil Court in judicial matters or to the Board of Revenue in executive matters. The cases which are of purely executive character may be given to revenue officers. Questions of judicial nature involving settlement of claims and rights may be given to judicial officers concurrently with the revenue officers. The principle being that two Judges and two Commissioners always sit to consider final appeals and finality should not be given to the decision arrived at by one single individual. In all cases where concurrent jurisdiction is given to Revenue and Civil Courts, the final appeal shall be to the High Court through the District Courts and in case where the Revenue Courts have exclusive jurisdiction the final appeal shall lie to the Board of Revenue through the District Collector.

Consistent with the above general remarks on this chapter, the following alterations to these sections are submitted to be made.

Omit *section* 121, *sub-section* (1).

Concurrent jurisdiction both for Civil and Revenue Courts may be given under clauses (*a*), (*b*), (*c*), (*f*), (*g*), (*l*) and (*m*).

Omit clause (*d*). *Vide* observations under section 16, clause (v).

Revenue Courts may be assigned jurisdiction in cases under clauses (*e*), (*h*), (*j*) and (*k*).

Jurisdiction in cases under clauses (*i*) and (*n*) may be given to Civil Courts.

Sub-section (2).—Omit.

Sub-section (3).—Omit.

Section 122 (1).—Omit.

Clause (*a*).—Omit (*a*) for reasons under section 4, sub-section 13.

Clause (*b*).—Civil and Revenue Courts can have concurrent jurisdiction in (*b*).

Clauses (*c*) *to* (*m*).—Suits in (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*) may be given to Revenue Courts subject to appeal to Civil Courts when necessary.

Sub-section (2).—Omit. The Collector's decision cannot be made final.

Sub-section (3).—Omit.

Clause (*b*).—Suits in (*b*) may be given concurrent jurisdiction.

Clause (*c*), *&c.*—Suits in (*c*), (*d*) and (*e*) may be given to Revenue Courts.

Sub-section (4).—Suits in sub-section 4 shall be decided by District and High Courts.

Sub-section (5).—Substitute "Civil Court" for "Board of Revenue".

Section 123, *clause* (*a*).—Insert after the words "District Collector" the words "or Civil Court".

Clause (*b*).—Insert after the words "Board of Revenue" the words "or High Court".

Section 124.—Omit sub-sections (1) and (2). Because their decisions are subject to correction both by the District and High Courts and the Board of Revenue.

Section 125, *sub-section* (1).—Insert after the word "control" the words "and authorized by this Act to dispose of on appeal."

Sub-section (2).—Insert after the word "control" the words "and authorized by this Act to dispose of on appeal."

Section 126, *sub-section* (1).—Insert after the word "case" the words "in which an appeal lies to them under this Act."

Sub-section (2).—Insert after the word "control" the words "and in which an appeal lies to them under this Act."

Section 127.— Omit. This is superfluous.

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Section 130.—Insert after the word "relative" the word "or". Insert in the same section after the word "servant" the words "with written order".

Insert in the same section after the word "agent" the words "with Vakalath from the proprietor or from the managing proprietor if there is more than one proprietor".

Section 132 (i).—Omit from the words "and the summons to the end." Because in the adjudication of suits concerning terms of tenancy, rights of rent and waram and local custom and usage, the evidence both oral and documentary cannot be selected and produced before the issues are framed. There should be ample time given for both parties for the filing of records and list of witnesses after the issues are framed. The first summons should be for filing the written statement and for settlement of issues alone.

Section 132 (v).—Omit the word "full" before "power" and substitute after "power" the words "subject to appeal".

Section 133, *sub-section* (1).—At the commencement after the words "in any suit" insert "*by a registered proprietor in possession no plea of* jus tertii *ought to be entertained. But in any suit for rent by a landlord other than the registered proprietor in possession*" and insert "*other*" before "proceeding".

Section 135.—Omit the words "such reasonable portion" and substitute the word "whole". The equity of allowing the ryot to pay only a portion of what is due by him instead of the whole is inexplicable. This will only give room to ryots to withhold payments justly due to landholders in time and to postpone them indefinitely.

Section 137.—Insert after the word "trespasser". "*The court shall pass a decree ejecting him and directing the payment of compensation in the shape of prohibitory assessment which shall be not less than twice the amount of rent that may be due for the land*" and omit the rest of the section.

The moment the landlord makes up his mind to allow a trespasser to continue to remain on the land, a compact arises between him and the trespasser, the terms of which have to be mutually settled between themselves. As a matter of practice the landlord requires the trespasser to put in a darkhast which after the necessary enquiries and notice to the villagers, if required, he grants. From that time forward the trespasser becomes a tenant. Thus the landlord having the power to dispose of the alternative question contemplated in section 137 of this Bill, there is no necessity for legislative interference here. Because a principle already recognised by law need not be re-enacted.

Trespass on land may be by—

(1) Taking possession of land without having previously put in a darkhast.
(2) Taking possession of land without waiting for the acceptance of a darkhast put in.
(3) Taking possession of the landlord's private lands.
(4) Encroachment on zemindar forest reserves and other porambokes.

In all these cases if the law imposes no higher penalty for unauthorised occupation than an obligation on the part of the trespasser on detection to quit the land at the instance of the landlord and to pay such fair and equitable rent as the court thinks proper, the inducement to trespass would be very great and in large estates even a strict vigilance would fail to control the tendency in the tenant to bring in more lands under his cultivation than those specified in his patta.

As the Bill does not contemplate the imposition of any penalty on unauthorized occupation of land and as it further gives to the tenants the possibility of cheating the landlord out of his legitimate income till such time as the unauthorized cultivation should remain undetected, the tenants in combination with the village karnam on whom the landlord has to depend for all cultivation and rent returns would be making serious inroads on the landlord's rights in many cases with the prospect of acquiring more than a fleeting interest in the lands in respect of which the trespass is made. It is a known fact that ryots usually try to encroach upon lands set aside