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[Despatch Abstract.]

Madras (Tenancy) Bill

Copy to the Select Committee on the memorandum of Criticisms & observations of the Madras Land Holders Association on the Bill as previously amended by the Select Committee

Government {1899} of Madras.

LEGISLATIVE.

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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 His Highness V. R. KRISHNAYACHENDRA, K.C.I.E., Raja of Venkatagiri, 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. 2[illegible] & 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 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 may 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 holdings 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 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. Chapter II.

Clause (*g*).—Insert in (*g*) after the word "plantation of" "taxable, fruit yielding, revenue-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 its produce on such lands for which he does not pay rent. In mirasi districts, the mirasdars 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. [illegible]right which he was not definitely given and which he never thought was given to [illegible] a right which he never up to date exercised and never even dreamt of exercising, intended to be given him by this legislation.

Mining is at best only a speculation. It may either be a success or a [illegible] 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

Chapter III. 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 over; 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 [illegible]ayra tree-tax and the land-revenue for the lands on which the trees stand. [illegible] the tree pattadar nor the land pattadar is allowed to cut the tree, unless the [illegible] 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 increasi agrarian population may not be materially diminished, it will be only reasonable circumscribe the accrual of occupancy right on such lands as have been abandoned relinquished, and not to extend it to lands acquired by purchase, sale, succession, gi 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 sufferance. 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 sufferance. 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 occup he land for an additional revenue year beyond the year in which he receives a no quit. This is unfair and illegal. If it be the object of the Legislature to pro tenant's right over the crops that might be standing at the expiry of the current he may be allowed to continue till he reaps the crops and not till the end of the 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 ru 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 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 ஆவணம் 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.

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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, [illegible] 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 second crop under a tank, when they are prejudicial to the first crop, without 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 [illegible] 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 Chinglepet district there are extensive cocoa plantations; from time to time tenants plant cocoa trees on their dry lands on consideration 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.

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 distrain moveable property of a defaulter at any time after the arrears fall due wh 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 dis... 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 ... Tenancy Act, section 121) and there seems no valid reason why the same p... 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 ... ays 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 fo... 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

Chapter VII. 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, ... 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 reven a long time after it became due their moveable properties are distrained with difficulty and expenditure; and afterwards they are brought to sale. In al cases if the ryot gives security to the satisfaction of the distrainer the distress i withdrawn. The efforts, difficulty and expenditure incurred by the landhold distraining become useless as the object (the arrears due) is not realized. The ment is delayed. Under these circumstances, certainly, the taking of the se delays the recovery of the land revenue, and causes, expenses and loss, to the holder. So the security cannot be accepted in every case of distraint, unless a reason is alleged by the ryots and is accepted by the landholder. Hence the of security should be left entirely to the discretion of the landholder. The with the Collector is unnecessary, since it will interfere with the speedy collec land revenue and since landlord's property is a sufficient security for the amo be realized by distress or paid by the ryot under protest or in case the distre adjudged to be illegal.

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

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

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

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

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

Substitute the words "*in a Civil Court*" between the words "distrainer "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 tionable. They refer specially to the provision that the Collector may decide th distress was excessive and may direct the restoration of the distrained property owners. Now the definition of excessive distraint, given in section 45, is extr indefinite, and can admit of as many views on the subject as there are Coll Further there is no margin allowed to cover the expenses of distraint and sale, should form a charge against the tenant and can only be roughly estimated. however, is the least objection. The Collector who decrees the excessive distr himself the Judge before whom the suit for damages may be brought by the agg person, and in each case his decision is without appeal. It is, therefore, sub that there should be an appeal from the order of the Collector declaring the di excessive, and that the suit for damages should like any other action for tort, lie Civil Court. The ryot will naturally bring his suit before the Collector wh

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 straint. 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."

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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 High Courts as Courts of appeal. This policy may be adopted throughout this 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 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.

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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 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.

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.

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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 [illegible], &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. [illegible]alike 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

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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 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 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 proprietors 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."

Chapter XIII. *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 XIV. *Section* 103.—Substitute "Rs. 50" for "Rs. 500."

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

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

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(*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.

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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 servants or by hired labour for twelve continuous years immediately before the 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 pannai." The latter description is vague. Because in cases where the proprietor unable to cultivate his land with his own stock, &c., he will be under the necessity 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 in 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 these 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.

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 W[illegible] the income of the estates under its management, which are in varying pro[illegible] average rate of the peishcush to the gross income is about 32 per cent. [illegible] 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 co[illegible]tion 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 aft "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 pas[s] a decree ejecting him and directing the payment of compensation in the shape of prohibi[tory] assessment which shall be not less than twice the amount of rent that may be due for land*" and omit the rest of the section.

The moment the landlord makes up his mind to allow a trespasser to continue t[o] remain on the land, a compact arises between him and the trespasser, the terms o[f] 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 la[nd] even a strict vigilance would fail to control the tendency in the tenant t[o] ing 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

Chapter XVI.

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.

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 p[ro]cing 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.

Chapter XVII.

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 personation.

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 eschewin e 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 amends might be made by putting a few amendments or addenda to the Rent 1865, and by getting landlord and tenant to understand the provisions of the Law and conform to them with that good will and cordiality which is essential in e system in which two or more persons have to coalesce. The first class had not n gentlemen of the service in it, and the few that figured in it had not taken any attit 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 su is convenience. There are many kinds of service inams granted by proprietors time to time to suit their own convenience, on the express condition that the 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 ov ridden by the provisions of this chapter. It is hardly possible to stat than this in which the ordinary Laws of Contract with all its safeguar utterly useless by a special piece of legislation which is not wanted in th the tenants and which is calculated to do immense harm in the matter of the 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 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.

17

Legislative (1899) Department.

CURRENT No 453

758

Dept

From The President.
Madras Landholders
Association

Order / PS. No. 123 d/4-12-99

Communicated to the Select
Committee on the Madras Tenancy Bill

No.

Dated 29—11—99

Received } 30—11—99

Registered }

Enclosures one:

Spare copies

SUBJECT.

Forwarding a memorandum & criticisms & observations on the Madras Land Bill

T 4/11

J.E. 1-12-99.

K.T. 1-12-99.

Dept 1/12

Dept
1/12/99
The Select Committee on the Madras Tenancy Bill

A

Note: The remarks alone will be printed in the proceedings of Government with the Bill as was done in the case of paper no 14.

M.R. Forsyth
Section Subsections will have to be put above the remarks referring to them, before going to press.

Dept 6/12

Yes. All this will be done as in the last occasion.
Dept

Ly. [illegible] 453

18. Venkatagiri Town.

29th November 18.

18

Reg 1238 4/12

To

The Secretary)
Legislative department

Sir,

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 Honble Members of the Select Committee when the Bill comes for their consideration.

I remain
Yours sincerely
V. R. Krishnaiah
Yachendra

Raja of Venkatagiri
President, Madras Landholders Association.

* Sent per separate book-post.

ASSTT SECY TO GOVT & GT
30 NOV 1929
LEGAL MUNI EDU & LE & DEPTT

ASSIST SECY TO GOVT
30 NOV. 1899
JUDICIAL JUNL EDL & LEG DEPTT

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THE MADRAS LAND BILL, 189 .

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Abbreviations.

Numbers in square brackets refer to Sections of the Bill as introduced.
B.T.A. = Bengal Tenancy Act, VIII of 1885.
M.R.A. = Madras Rent Recovery Act, VIII of 1865.
P.T.A. = Punjab Tenancy Act, XVI of 1887.

A

BILL

TO

Declare and amend the Law relating to the holding of land in the Presidency of Madras.

(As provisionally amended by the Select Committee.)

WHEREAS it is expedient to amend and declare the law *relating to the holding of land* in the Presidency of Madras; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

B.T.A. 1. Short title.

1. This Act may be called the Madras *Land* Act, 189 :

Commencement.

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

Local extent.

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

B.T.A. 2. Repeal.

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

B.T.A. 3 and 5. Definitions.

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

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Section 1.

The association comprises of members of both the Zemindari 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 Zemindar and the non-occupancy ryot or tenant-at-will's tenancy under a Zemindar 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.'

(1) "Estate" means

(*a*) any permanently-settled estate, whether a zemíndári, jágír, mittah or pálaiyam;

"Estate."

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

(*c*) any unsettled pálaiyam or jágír;

(*d*) any inam or shrotriam village or *part of a village* of which the grant was made or confirmed, or has been recognised, by the British Government;

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

"Village."

(3) "*Landholder*" means a person *holding* an estate and *every other assignee of public land revenue;* and includes *every* assignee, lessee, mortgagee with possession and *every* purchaser of the interest of, and *every* farmer of *land-revenue payable to* any such person. It also includes managers of estates of disqualified *landholders*, and public officers in possession of estates as stake-holders or holding land in attachment for arrears of revenue or under the orders of a Civil Court.

Landholder.

Explanation.—Where there is a dispute as to *the right to hold* an estate, or as to who, among joint-*holders* of an estate, is entitled to proceed as *landholder* under this Act, the *landholder* shall, for the purposes of this Act, be the person in whose name the estate is for the time being registered in the office of the Collector of the district

wherein the estate is situated; and where an estate is so registered in the names of two or more persons as joint-*holders* thereof, the *landholder* shall, for the purposes of this Act, be the person who is recognised by the other joint-*holders* as the managing *holder* of the estate or who, in case of dispute, is recognised and registered by the Collector as senior joint-*holder*.

(4) "*Ryot*" *means a person who* occupies land on condition of paying to a landholder in kind or in money the land-revenue which is legally due upon it.

Ryot.

Provided that no *person* shall be deemed to be a 'ryot' by reason only of his *occupying a house or other building or* the land appurtenant thereto.

(5) *The land-revenue payable by a ryot to a landholder* includes (*a*) money payable on account of the use and enjoyment of trees held independently of land: (*b*) money payable on account of the use and enjoyment of water supplied for cultivation of land, where the charge for such water has not been consolidated with the *land-revenue payable* for the land: (*c*) any cesses, fees or charges payable along with the *land-revenue* of land or trees according to law or usage having the force of law: (*d*) money recoverable in respect of land, trees or water, under any other enactment for the time being in force as if it was rent, *and* (*e*) *any other sum or sums which a ryot is bound to pay under this Act on account of his occupation of the land.*

"Land-revenue."

Explanation.—The payments to be made by a farmer of *land-revenue* to a *landholder* are not '*land-revenue.*'

Section 3. 38

In section 3, 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 Zemindaries 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 Zemindar, 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 Zemindars. None of these come under the category of a ryot. Nor does the term 'Land

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

"Landlord."

(7) "Tenant" means a person who holds land *from a landlord under an agreement* to pay rent *in respect thereof*.

"Tenant."

(8) "Rent" means whatever is lawfully payable or deliverable in money or in kind *under an agreement between a* landlord *and a tenant in respect* of the use or occupation of *land for the purposes of agriculture, horticulture or grazing* by the tenant *from the landlord*.

"Rent."

(9) "Public cultivable land" means land on which land-revenue is payable.

"Public cultivable land."

(10) "Holding" means a *specific* parcel or *specific* parcels of land held by a *ryot*.

Holding.

(11) "Revenue field" means a field, a survey field, or any parcel of land on which a definite amount in kind or in money, has been paid, or may be due, or which in case of dispute, may be declared by a Collector to be a revenue field.

Revenue field.

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

"Signed."

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

"Prescribed."

Revenue' as defined in the Bill, include payments made to the Zemindar by these classes of people. It is quite impossible for Zemindars 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.

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.

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

"Revenue year."

CHAPTER II.

General Rights in respect of Land.

4. (1) Subject to the provisions of this Act, a landholder is entitled to collect land-revenue on all public cultivable land in the occupation of a ryot.

General Rights.

(2) The land, the buildings upon it and its products shall be regarded as the security of the land-revenue payable by a ryot to a landholder.

(3) Notwithstanding anything contained in any Act or Regulation now in force, a ryot possesses in respect of all lands entered in his puttah as against the landholder proprietary right subject only to the payment of the land-revenue.

(4) Any improvement effected by a ryot shall belong to him absolutely, and, in the absence of any usage having the force of law to the contrary, shall not render him liable to pay, directly or indirectly, an enhanced rate of land-revenue on account of any increase of production, or of any increase in the value of any crops raised as a consequence of such improvement.

"Improvement" means anything done by a ryot in his holding which is calculated to increase its value or to enhance its fertility.

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Section 4 Subsection (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 Zemindars expressly conferred on them by the terms of the Permanent Settlement and have been exercised by them since then.

Section 4 (4)

The provision under this would interfere with the right of the Zemindars 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

(5) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of *sub-section* 4— [114] B. T. A. 76.

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

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

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

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.

Under "improvement" the present Bill makes a material alteration from the provisions in Section 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 propeity 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 proprietors' 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."

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 damage.*"

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.

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.

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.

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

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.

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

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

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 holdings 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 portion would cost money

(g) the plantation of trees and useful plants ; and

(h) any addition to the fertility of the holding or any part thereof, effected by means of good tillage, high manuring, or the application of any fertilizing agent.

(6) An occupancy ryot may not be evicted from his holding or any part thereof, for non-payment of the land-revenue except under the provisions of this Act.

(7) When a landholder assigns waste land for cultivation he shall do so at the fixed or customary rate of land-revenue.

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 fr m raising second crop unless with the consent of the Revenue authorities.

Subsection (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 [illegible] ment 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 arrangements 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."

(8) Landholders are in possession of threshing floors, cattle-stands, and other lands set apart for the common agricultural use of the villagers as trustees for and on behalf of the village communities concerned, and shall not assign such lands or permit them to be used for any other purpose without the written order of the District Collector.

(9) No ryot may except for the purposes for which such lands are appropriated interfere with or make use of any lands set apart for the common agricultural use of the villages without the written order of the landholder.

(10) (a) Landholders are bound to keep in a state of repair the public irrigation works which were in existence at the time of the permanent settlement or which have been subsequently constructed and which have been in use for irrigation at any time within ten years before the commencement of this Act.

(b) Ryots are bound to supply the customary labour known under the name of Kudimaramat for petty repairs to all existing public irrigation works.

(11) Subject to the provisions of the Madras Forest Act of 1882 and to the customary rights of the ryot to grazing, taking green leaves for manure and cutting wood for domestic or agricultural purposes, landholders are hereby declared to have proprietary rights in all forests.

(12) In waste lands and forests landholders have the right to mine and to quarry subject in the case of quarrying to the customary right of the ryots to excavate stone for building purposes but not for sale.

Subsection (8)

Add after the words 'District Collector' "*provided such lands were excluded from the assets of the Zemindari at the time of the permanent settlement.*" If the communal lands were included in the assets of the Zemindari, 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.

Subsection (10).

Omit Sub-Section 10 (a) :

Government may, perhaps, realize the difficulties of the position of the Zemindar, by considering its own case. If Zemindari tenants are armed with this power and the result is—as intended—that all Zemindari 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.

Subsections (11) & (12).

Omit Sub-Sections 11 and 12. By the permanent settlement all the waste lands and purambokes 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 Zemindari and ryotwari villages of the district. Will it not be unfair that it should compel the Zemindars to respect a supposed right to the tenants in

(13) (*a*) A ryot possesses the right to mine and to quarry and to excavate gravel or clay in the ground vertically beneath his holding.

(*b*) When a riot intends to mine or quarry or to excavate gravel or clay within his holding for profit he shall give notice to the landholder of his intention to do so.

(*c*) Either the landholder or the ryot may thereupon apply to the Collector to adjust or re-adjust the revenue payable in respect of the field in which the ryot intends to mine, quarry or excavate.

(*d*) In disposing of any such application, the Collector shall have regard to the rules sanctioned by Government in respect of similar Government lands when used for a like purpose.

the Zemindari forests and purambokes, when the Government itself is not prepared to recognise such rights to the ryots in its own forests and purambokes 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.

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 orginal 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 comprized, 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."

5. Subject to the provisions of this Act, *every ryot* in the Presidency of Madras *shall be* deemed to *have* a permanent *right* of *occupancy* in his holding.

Presumption of existence of occupancy right.

6. Except as provided in section 14 and sections 100 to 102 and 104, the relations with their tenants of ryots, of landholders in respect of their private lands, and of any other owners of land, are not regulated by the provisions of this Act, but are left to the operation of private agreement.

Relations of ryots and landholders with their tenants.

CHAPTER III.

Ryots.

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

[6] B.T.A. 19.
Continuance of existing occupancy rights.

8. *Every ryot* has the right to the enjoyment and use of all trees standing in his holding which have not been assigned to another person before the ryot entered on his holding and *he shall be entitled to cut down* such *trees* unless there is a *local custom* to the contrary, the burden of proving which shall be on the landholder.

[9] B.T.A. 23.
Right to the use of trees.

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 putta 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 putta 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 Zemindar 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 ryots 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 warum 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 Puramboke 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 Puttadar nor the land Puttadar is allowed to cut the tree, unless the tree-tax is compounded with the land-tax when the tree Puttadars and the land Puttadars 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 30 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.

9. (*a*) *A* ryot shall pay for his holding fair and equitable rates *as shall be hereinafter provided.*

[10] B.T.A. 24. Obligation to pay fair rates.

(*b*) The *land-revenue* payable for the time being by a ryot shall be presumed to be fair and equitable until the contrary is proved.

[15] B.T.A. 27. Presumption as to fair rates.

10. The *land-revenue payable by* a ryot shall not be enhanced except as provided by this Act.

[16] B.T.A, 28. Restriction on enhancement.

11. All rights of occupancy shall be transferable by sale, gift or otherwise.

[12] Occupancy right transferable.

Section 12

12. (1) When the entire interests of *landholder* and ryot in a holding become united in the same person by transfer, succession or otherwise, the occupancy right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

[13] B.T.A. 22. Effect of acquisition of occupancy right by landholder.

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

(3) A person holding land as a farmer of *land-revenue payable to a landholder* shall not, while so holding, acquire a right of occupancy in any land comprised in his farm.

(4) A person holding an inam or an unsettled estate whose predecessor in title was in possession of the occupancy right in any or all of the land covered by his grant shall not be affected by the provisions of sub-section (1).

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

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.

Sub-section (4) - Explanation

It is inexplicable that so much restriction should be imposed on the accruel of occupancy right, even when the right has been purchased by the Zemindar 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 Zemindar, the difference is only in the order of precedence. In other words, occupancy right if accrued subsequent to the Zemindari 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.

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13. If a ryot dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, *devolve* in the same manner as immovable property.

[14] B.T.A. 26. Devolution of occupancy right on death.

CHAPTER IV.

TENANTS.

14. Subject to the provisions of sections 100 to 102 and 104 a tenant shall not be liable to be ejected *under this Act* by his landlord except—

[38] B.T.A. 49. Restriction on ejectment of tenants.

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

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

Section 14 clause (b)—

There are two cases where temporary leases for Zemindar'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 sufferance. 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.

15. A landlord may proceed under this Act for the recovery of rent from a tenant if *he has* taken a written agreement from such tenant specifying the rent to be paid but not otherwise.

[62] M.R.A. 13. Obligation of landlord to take written agreement from tenants.

CHAPTER V.

GENERAL PROVISIONS AS TO LAND-REVENUE.

16. In the disposal of suits involving disputes regarding rates of land-revenue payable by ryots the following Rules shall be observed :—

Rules for deciding disputes as to rates of land-revenue.

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(*i*) In estates which have been surveyed by the British Government previous to 1st January 1859, and in which a money assessment has been fixed on the fields, such assessment is to be considered the proper land-revenue payable.

Act VIII of 1865, section 11 (ii).

(*ii*) In the case of all other estates,

(*a*) The Collector shall adopt the rates of assessment in money, or of division in kind, prevailing in the cultivated lands in the year preceding the assessment of the permanent peskash, or, in the case of estates not permanently settled, the rates which were in force immediately prior to the date on which the grant of the estate was made, confirmed or recognized.

Reg. XXX of 1802, section 9.

(*b*) Where these rates may not be ascertainable the Collector shall fix the land-revenue in accordance with local usage, and if such local usage is not clearly ascertainable, then in accordance with the rates established and generally paid in the district for lands of similar description and quality.

Act VIII of 1865, section 11.

Provided that if either party be dissatisfied with the rates determined under Rule (ii) (*b*), he may claim that the land-revenue payable be discharged in kind according to "the Waram," that is, according to the established rate of the village for dividing the crop between the Government or the landholder and the cultivator. When "the Waram" cannot be ascertained, such money rates shall be decreed as may appear to the Collector just and equitable, provided that such rates shall in no case exceed the equivalent of half the gross produce after deducting the expenses of cultivation, of harvesting and of storage. Such money rates shall be determined on a calculation of the average price which the ryot has been able to obtain at the time of harvest on the average of the previous ten years.

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Section 16 clause (ii) (b)

In section 16, ii (*b*) before 'District' insert "same village, Taluq or."

Clause (iii)

(iii) In the case of immemorial waste land, it shall be lawful for landholders to arrange their own terms of land-revenue; provided that the rates laid down in the foregoing Rules be not exceeded and that nothing in this rule shall be held to affect any special rights which by

Act VIII of 1865, section 11 (iv).

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 Zemindari as in ryotwari lands. By the permanent settlement the Zemindars 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

law, or usage having the force of law, are held by any class or person in such waste land.

(iv) Nothing contained in this section shall affect the right of any landholder to raise the land-revenue upon any land in consequence of additional value imparted to it by any work of irrigation or other improvement executed at his own expense; or where additional value has been imparted to any land by any work of irrigation or other improvement executed at the expense of Government, and where the landholder has therefore been required to pay an additional sum to Government. But in either case the sanction of the Collector as to the amount of additional land-revenue payable upon such land shall be obtained by the landholder previous to his raising the land-revenue upon the land.

(v) Nothing contained in this section shall affect the right of a ryot to sue for the reduction of land-revenue payable by him on the ground that it has been unduly raised after 1st May 1871.

[25 (d)].

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."

It is certain that periodical settlement must have been made by the Zemindars 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 Zemindars 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.

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 zemindars. There are two reasons against this wrong assumption. In the first place there are sufficient safe guards provided in clause iv of section 11 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.

(vi) No putta which may have been granted by any landholder at rates lower than the rates payable under these rules upon any lands, or upon lands of similar quality and description, shall be binding upon his successor, unless such putta shall have been *bonâ fide* granted for the erection of dwelling houses, factories, or other permanent buildings, or for the purpose of clearing and bringing waste land into cultivation, or for the purpose of making any permanent improvement thereon, and unless the ryot shall have substantially performed the conditions upon which such lower rates were allowed.

Act VIII of 1865, section 11.

17. Contracts to pay land-revenue, not inconsistent with the provisions of this Act, shall, notwithstanding anything contained in the above rules, be enforced.

[39] M.R.A. 11 (1). Certain contracts to pay land-revenue enforceable.

18. If a question arises as to the amount of *land-revenue payable by a ryot* or the conditions under which he holds in any revenue year, he shall be presumed, until the contrary is shown, to hold at the same *rate* and under the same conditions as in the last preceding revenue year.

[40] B.T.A. 51. Presumption as to amount of land-revenue and conditions of holding.

19. (1) When *land-revenue* shall remain unpaid at the time when, according to any agreement or, in the absence of agreement, according to the custom of the country, it ought to have been paid, the amount remaining unpaid shall be deemed an arrear.

[41] B.T.A. 54 (3.) M.R.A. 14. What deemed an arrear of land-revenue.

(2) *If in time of* famine or general *distress* the Local Government orders a suspension of the collection of any or all of the land-revenue, payable by a landholder to Government in respect of any estate or portion of an estate, the landholder shall as regards such estate or portion of an estate suspend the collection of such proportion of the land-revenue payable to him by the ryots as is equal to the proportion of land-revenue payable by the land-

Suspension of the collection of land-revenue in time of famine.

Section 19

Omit sub-sections 2 to 5 of section 19.

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 (Zemindars)

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holder to Government the collection of which has been suspended and so long as such order remains in force the powers of the landholder to distrain, attach, sell or eject shall not be exercised.

Local Government may make rules for the carrying out of the provisions of sub-section (2).

(3) The Local Government may make rules for the carrying out of the provisions of sub-section (2), and in particular, and without prejudice to the generality of the provisions of this sub-section, for regulating the powers of landholders to distrain, attach, or sell as long as such order remains in operation.

Publication of the order of Local Government and its effect.

(4) *The order of* the Local Government in this behalf *shall be published in the Gazette of the District affected: to postpone for such period* as *the order may direct* the time *or times* of payment *of land-revenue under* sub-section (1).

Collectors may direct payments by instalments in certain cases.

(5) Collectors in dealing with proceedings taken under section 40 and Chapters VII and VIII of this Act for the realization of land-revenue due to landholders are hereby empowered to direct payments by instalments in cases where a ryot may be able to prove loss owing to extraordinary calamity.

[42] B.T.A. 67.
M.R.A. 37.
Interest on arrears.

20. An arrear shall bear simple interest at the rate of *one* pie per rupee per mensem, fractions of a month and of a rupee being disregarded in the calculation, *from the* date on which the arrear fell due until the arrear is liquidated.

ryots, within the year. When the Government begins to collect its Peshkash 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 Zemindari 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 Zemindars alone. A compulsory enactment such as this is unreasonable and contrary to the solemn promises made by Government at the time of Permament Settlement.

Subsection (5)

A 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 Zemindar is difficult.

Section 20

A It is inconceivable why fractions of a month and of a rupee should be disregarded in the calculation. Is 15 annas 11 pies to be omitted altogether, or 29 days of a month to be disregarded? ~~I do not understand the justice of this rule.~~ Old 12 per cent. per annum may be made to remain without difficulties and loses. If the arrear is not paid, the Zemindar has to borrow at his usurious rate; the sowcar does not show the same concession to the Zemindar who only borrows owing to the negligence or indifference of the Ryots. By way of illustration suppose in a Zemindari 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 Zemindar will be nearly Rs. 20,000. By this section the Zemindars 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 Zemindar. 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 Zemindars 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.

Section 21. Subsection (1)

[43] B.T.A. 56.
M.R.A. 81.
Right of tenant to receipt for land-revenue.

21. (1) Every *ryot* who makes a payment on account of *land-revenue* to a land*holder may specify the items to which he wishes the payment to be credited, and* shall be entitled to obtain forthwith a written receipt for the amount paid by him signed by the land*holder* or by the land*holder's* authorized agent.

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

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

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

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

A 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.

Subsection (2)

A Substitute '*copy*' for '*counterfoil.*'

In Government villages the கரும்பு and the கைச்சாத்து form the aggregate record of payment and receipt of rent. This has been the practice by way of imitation in many Zemindaries. 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 கரும்பு துண்டு 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 the landlord. 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 fradulently 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*.

[44] B.T.A. 58 (i).
M.R.A. 81.
Penalty for withholding receipt.

22. If a land*holder*, without reasonable cause, refuses or neglects to deliver to a *ryot* a receipt containing the particulars prescribed by section 21 for any *land-revenue* paid by the *ryot*, the *ryot* may, within three months from the date of payment, institute a suit before the Collector to recover from the land*holder* a penalty not exceeding double the amount or value of that *land-revenue with costs* as the Collector thinks fit.

23. The headman of each village shall be presumed to be the authorized agent of the land*holder* for the purpose of receiving *land-revenue* and granting receipts under sections 21 and 22, unless the land*holder* has duly appointed for such purpose as his authorized agent some other person *who is* resident in the village or within three miles of it *or who attends in the village to receive the land-revenue on his behalf*; provided that the *ryots* may pay their *land-revenue* to the land*holder* by postal money-orders under rules which the Local Government may from time to time prescribe.

[45] Persons to whom, and how, land-revenue may be paid.

24. (1) In any of the following cases *in which land-revenue is due and is payable in money*, namely—

[46], B. T. A. 61. Application to deposit land-revenue.

(*a*) when a *ryot* tenders *land-revenue* and the land*holder* refuses to receive it or refuses to grant a receipt for it;

(*b*) when a *ryot* bound to pay money on account of *land-revenue*, has reason to believe that the person to whom *the same* is payable will not be willing to receive it *or to credit it to the item or items specified by the ryot* and to grant him a receipt for it;

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

(*d*) when the *ryot* entertains a *bonâ fide* doubt as to who is entitled to receive the *land-revenue* which has become due;

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

(2) The application shall contain a statement of the grounds on which it is made; and shall state *the item or items to which the payment is to be credited and also*—

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

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

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

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

25. (1) If it appears to the Collector, or other officer to whom an application is made under the last foregoing section, that the applicant is entitled under that section to deposit the *land-revenue*, he shall receive the *amount* and shall give a receipt for it.

[47] B.T.A. 62. Receipt for deposit in Revenue Office to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the *land-revenue paid* by the ryot and deposited as aforesaid, in the same manner and to the same extent as if that amount of *land-revenue* had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the

person to whose credit the deposit was to be entered;

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

in case (*d*) of that section, by the person entitled to *receive* the *land-revenue*.

[48] B.T.A. 63. Notification of receipt of deposit.

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

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

in cases (*a*) and (*b*) of section 24, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

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

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

[49] B.T.A. 64. Payment or refund of deposit.

27. (1) The Collector or other officer may pay the amount of the deposit to any person appearing to

him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a competent Court as to the person so entitled.

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

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

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

[50] B.T.A. 69. Order for appraising or dividing produce.

28. (1) Where *land-revenue* is taken by appraisement or division of produce—

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

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

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

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Section 27. Subsection (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 peishkash 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.

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

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

29. (1) Where a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any) and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

[51] B.T.A. 70. Procedure where officer appointed.

(2) The officer shall, before making any appraisement or division, give notice to the land*holder* and *ryot* of the time and place at which the appraisement or division, will be made; but *the officer* may *make the appraisement or division* if *the parties or any of them* fail to attend *in compliance with the notice.*

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

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

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, *if no such reference be made*, his order shall be final and shall be enforceable as a decree *of the Collector.*

(6) When the Collector refers a question in dispute between the parties under sub-section (5), he may make any order he deems fit for the protection of the produce pending the decision of the Civil Court, or for its disposal.

30. (1) Where *land-revenue* is taken by appraisement of the produce, the *ryot* shall be entitled to the exclusive possession of the produce.

[52] B.T.A. 71. Rights and liabilities as to possession of crops.

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

(3) In either case, the *ryot* shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the land-*holder.*

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

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Section 30

Omit sub-section (3) ~~of section 30~~ 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 safe guarding of the interest of the landlord in the produce.*"

With the commencement of the harvest commences the difficulties of the landlord in safe guarding 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.

Subsection (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.

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 landlords 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 landlords 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 Zemindar 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 individual-war accounts of the various process of reaping, bundling and threshing, &c., is sent the very day to the Zemin 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 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.

Recovery of Land-Revenue.

31. (1) No *landholder* shall have power to proceed against a ryot for the recovery of *land-revenue* unless and until he shall have exchanged a putta and muchalka with such ryot or tendered him such a putta as he was bound to accept.

[531 M.R.A. 2, 3 and 7. Obligation of landholder to tender putta to ryot.

Section 31, Subsection (1)

The compulsory exchange of putta 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 puttas and muchalkas nor the previous tender of putta 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 putta and muchalka is done away with the better. Puttas 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 in tact, and they are documents with annually repeating terms concerning a tenancy. There have been number of estates in the Presidency where the system of exchange of putta 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. Puttas will vary but little from year to year and a provision that a putta 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.

(2) A putta which is not entirely but is *in the opinion of the Collector* substantially correct, shall be *held to be* valid to the extent that *it may be found to be* correct.

Subsection (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 putta 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 putta 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 putta 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 putta which is not entirely but is substantially correct, such proceedings shall be valid to the extent that such putta is correct." This is extremely vague, and will, it is submitted, in no way diminish litigation based on alleged defect or irregularity in the putta. 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 putta 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 curnams and other village servants have been made independent of the Zemindars, their masters, and have been placed under the Revenue officers, it is fair and equitable that the non-tender of puttas or tender of incorrect puttas, which irregularities are likely to take place more frequently and with greater facility and impunity than hitherto, should not deprive the Zemindar of his right to recover the rent, as long as the occupancy and terms of the tenancy are admitted.

Subsection (3)

(3) A putta which contains any stipulation in restraint of cultivation or of harvesting or for *the giving up of possession of his land by the ryot* at any specified time shall be *void and of no effect*.

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.

32. The tender of a putta may be made directly to the ryot or *if the Collector shall so permit in respect of any estate or any portion of an estate*, by filing *it* in the office of the Collector or such other officer as the Local Government may *by general or special* order *direct*; and, if so filed, the Collector or such officer shall cause the putta to be served on the ryot, at the cost of the *landholder*, in the manner prescribed for the service of notice under section 43.

[54] M.R.A. 7. Putta how to be tendered.

It is stated in this section that the pattas 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 putta 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 puttas before the landholder or his authorized agent within the time mentioned in the General Notice given to the villagers for receiving puttas after the preparation of those records, the tender of puttas becomes necessary. The fault of not receiving puttas 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 puttas 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 puttas. Section 122 shows that the order of the Collector on this application is final, so the object of this provision will be frustrated.

33. Puttas and muchalkas shall be signed by the respective parties or by persons duly authorized in that behalf.

[55] M.R.A. 6. Puttas and muchalkas to be signed.

34. The putta shall contain the names of the parties; the local description and extent of the land the rate or amount and nature of the *land-*

[56] M.R.A. 4. Contents of putta and muchalka.

revenue payable thereon, according as it may be payable in money, in kind or by a share of the produce, separately specifying any fees or charges payable with it according to law or usage having the force of law; the period or periods at which such *land-revenue*, fees or charges are to be paid; the date of the *putta* and all special terms by which it is intended that the parties shall be bound. The muchalka may, at the option of the *landholder*, be a counterpart of the putta or a simple engagement to hold according to its terms.

35. Puttas and muchalkas may be exchanged for periods of one *revenue* year or more, but the tender of putta shall always take place within twelve months after the commencement of the period to which the putta relates; provided that no *landholder* shall be bound to tender, and no ryot to accept, a putta for a period of more than one revenue year.

[57] Period for which puttas and muchalkas may be exchanged.

Section 35.

Insert after 'relates,' "The same putta 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 puttas 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 litigious, 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 putta 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 Chinglepat 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 putta. 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 putta or muchalka. In the case contemplated it is not possible to tender a putta with a stipulation to cover this case also; for no putta 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 putta 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.

36. When a *landholder*, for three months after demand, refuses *or neglects* to grant such a putta as *the ryot is* entitled to receive, it shall be lawful for the *ryot* to sue for such a putta before the Collector. The Collector shall decide the terms of the putta to be granted, and if it be not granted as directed within the time specified, the decree shall be of the same force and effect as if a putta and muchalka had been exchanged.

[58] M.R.A. 8 and 71. Suit to obtain putta.

Section 36.

Vide Remarks under Section 38.

37. When a ryot for one month refuses *or neglects* to accept the putta tendered to him and to give a muchalka in exchange, the *landholder* may sue before the Collector to enforce acceptance of such putta.

[59] M.R.A. 9. Suit to enforce acceptance of putta.

Section 38

38. In adjudicating suits under the preceding section, the Collector shall first inquire whether the party sued was bound to accept a putta, and, unless this be proved, the suit shall be dismissed. If the plaintiff establishes *that the party sued is bound to accept a putta*

[60] M.R.A. 10 and 72. Procedure in adjudication of suit to enforce acceptance of putta.

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 putta and muchalka had been exchanged," should apply to decrees in suits of the same nature passed in Munsiffs' or District Courts. This will greatly shorten and simplify the procedure. At present, after having obtained a decree before the Munsiff, the parties have to come to the court of the Collector to enforce acceptance of the putta 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.

the Collector shall inquire whether the putta tendered is a proper one. If it is found to be so, the Collector shall order the defendant to accept the putta and to execute a muchalka in accordance with it. If the Collector is of opinion that the putta tendered is not a proper one, he shall decide what the terms of the putta should be, and shall then order the defendant to accept such putta and to execute a muchalka in accordance with it. If the defendant fails to comply with the Collector's order within the time specified therein the order shall be of the same force and effect as if a putta and muchalka had been exchanged.

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.

39. Save as respects lands duly relinquished or newly taken up by the *ryot*, for which the parties may exchange a supplementary putta and muchalka, *the* puttas and muchalkas exchanged or decreed between *landholders* and ryots shall remain in force until the beginning of the revenue year for which fresh puttas and muchalkas *may thereafter be* exchanged or decreed.

[61] Duration of puttas and muchalkas exchanged or decreed.

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.

40. All suits for the recovery of arrears of land-revenue shall be heard and determined by the Collector sitting as a Revenue Court, and no Civil Court shall take cognizance thereof.

[62] Jurisdiction of Civil Courts barred.

CHAPTER VII.

Recovery of Land-revenue by Distraint and Sale of Moveable Property.

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 movable 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

41. *A landholder may at* any time *during the revenue year next following the revenue year in which the* arrear *became* due, and *if* no security has been accepted therefor, in addition to any other remedy to which he is entitled by *this Act*, distrain the moveable property of the defaulting *ryot*, the *growing* crops, or the ungathered produce of the land or trees *in his holding.*

[63] B.T.A. 121. Cases in which landholder may distrain.

Provided that when a suit has been filed under section 36 *or 37 on arrear* shall be taken to become due from the date of the Collector's decree, or if that is appealed against, from the date of the last decree of the Appellate Courts.

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

42. The distress shall be effected on the personal responsibility of the land*holder* by service on the *ryot of* a written notice signed by the land*holder* or his authorized agent setting forth—

[64] B.T.A. 122, 124 and 141. M.R.A. 14 and 15. Distress how to be effected.

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

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

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

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

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

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

43. The notice of distress prescribed by section 42 shall be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode in the neighbourhood of the land to which the distress refers, or to his authorized agent, or, when such service cannot be effected, by affixing a copy of the notice to the outer door or wall of his last-known residence within the district, or on some conspicuous part of the land to which it refers.

[65] B.T.A. 123. M.R.A. 15 and 16. Notice of distress how to be served and published.

A copy of the notice of distress shall be fixed up in some conspicuous place in the village in which the land on which the arrear has accrued is situate and another copy shall be forwarded to the Collector by the land*holder* within forty-eight hours of its service on the defaulter.

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

[66] M.R.A. 19. Distrainer may procure Police assistance.

45. 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.

[67] M.R.A. 24. Distress to be proportionate to arrear.

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 subsitute "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 Zemindari; a number of distraints is generally made. The forms requisite with respect to each have to be complied with; generally 3 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.

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 peshkash. Thus the power given to the landholder to distrain the ryots 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 costs of such attachment and sale from the proceeds of sale.

[68] M.R.A. 25. Time of distress.

46. Distress shall be made after sunrise and before sunset and not otherwise.

[69] M.R.A. 28. What places distrainer may force open.

47. It shall be lawful for the distrainer to force open any stable, cow-house, granary, godown, out-house or other building, and he may also enter any dwelling-house the outer door of which may be open and may break open the door of any room in such dwelling-house for the purpose of attaching property belonging to a defaulter and *kept* therein; provided always that it shall not be lawful for such distrainer to break open or enter any apartment in such dwelling-house appropriated for the zenana or residence of women, except as hereinafter provided.

[70] M.R.A. 29. Power to force open doors, and to enter zenana in presence of a Police officer.

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

[71] M.R.A. 23. Distrained cattle or goods not to be used.

49. The distrainer shall not work the bullocks or cattle or make use of the property distrained. He shall provide necessary food for cattle or *other* live-stock, and the cost *thereof* shall be a charge against the owner and shall be recoverable as a cost of the distress.

[72] B.T.A. 216. M.R.A. 21. Right to reap and preserve produce.

50. (1) If *the defaulter or some person authorized by him* fails so to do at the proper time, the distrainer shall do all acts necessary for the preservation or maturing of standing crops or ungathered produce, and for their being reaped or gathered when ripe, and stored or preserved in such

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 1st clause of section 50 of the Land Bill is inexplicable with this omission.

granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood.

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

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

[73] B.T.A. 136 (1). M.R.A. 22. Withdrawal of distress on deposit, payment, or furnishing of security.

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 delay's 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.

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

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

[74] B.T.A 136 (4). Payment of amount due to landholder.

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.'

53. When property distrained may be stolen, lost, damaged or destroyed while in the keeping of the distrainer, by reason of his not having taken the necessary precautions for its preservation, he shall be responsible to the owner for the loss or damage, and the Collector shall, on the application of the owner, and on proof of such loss or damage, pass an order that the same shall be made good.

[75] M.R.A. 20. Liability of distrainer for loss of, or injury to, distrained property.

54. Claims to *growing* crops *or ungathered produce* distrained under section 41, shall not bar the prior claim for *land-revenue* due to the land*holder*; but if, before the day fixed for the sale, a third party appears before the Collector and claims a right or interest in *such* crops *or produce*, the Collector shall hold, or cause to be held, an immediate enquiry, and if he sees sufficient cause for doing so, may postpone the sale of such crops *or produce*. The Collector shall adjudicate upon the claim and pass such order between the claimant and the distrainer as he shall deem fit. If the claimant fails to establish his right *or interest* an order shall be issued for proceeding with the sale.

[76] M.R.A. 32. Claims by third parties.

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

[77] M.R.A. 26. Penalty for fraudulent conveyance of property to prevent distress.

56. When it may be proved to the satisfaction of the Collector that any person has forcibly or clandestinely taken away property once distrained, the Collector

[78] M.R.A. 27. Penalty for forcibly or clandestinely taking away distrained property.

may, on the application of the distrainer, cause such property to be restored, or its value to be paid, to the distrainer. *The defaulter will further be liable to the penalties prescribed by section 424 of the Indian Penal Code.*

57. If the *ryot* does not within thirty days from the date of distress file a suit before the Collector to set aside the distress or if such a suit is filed and is decided against the *ryot*, the distrainer shall, within fifteen days from the expiration of the thirty days, or from the decision of the suit, *as the case may be*, apply to the Collector for an order directing the public officer empowered by Act VII of 1839 to cause the sale of the distrained property. That officer, on receiving such order, shall fix up in some conspicuous place in the village a notice specifying the property to be sold and the time and place which he has fixed on for its sale. He shall also cause proclamation of the intended sale to be made by beat of drum in the village to which the lands belong on which the arrear has accrued. In fixing the day of sale, not less than seven days *shall* be allowed from the the time of the public notice.

[79] B.T.A. 127. M.R.A. 18. Notice of sale of distrained property.

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

[80] B.T.A. 128. Place of sale.

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 Zemindar, 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 Zemindar may appoint the Amin and the Government may give him a license to sell properties attached. The Zemindar 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.

59. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

[81] B.T.A. 129. When crops may be sold standing.

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

60. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think *fit*, and if the demand with the costs of distress and sale is satisfied by the sale of a portion *of the property* the distress shall be immediately withdrawn with respect to the remainder.

[82] B.T.A. 130. M.R.A. 33. Manner of sale.

61. If, on the property being put up for sale, a fair price in the estimation of the officer holding the sale is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed until the next day, or if a market is held at the place of sale until the next market day, the sale shall be postponed until that day and shall be then completed, whatever price may be offered for the property.

[83] B.T.A. 131. Postponement of sale.

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

[84] B.T.A. 132. M.R.A. 35. Payment of purchase-money.

63. The officer appointed to sell property distrained shall bring to the notice of the Collector any ma-

[85] M.R.A. 17. Obligation to report irregularity in distraining.

Section 59 Subsection (2)

Insert 'and removing' after the word 'gathering' in this sub-section.

terial irregularity committed by the distrainer under colour of this Act, and *may* in such case postpone the sale pending the Collector's order.

64. When it shall come to the knowledge of the Collector, that the distrainer did not serve on the *ryot* a written notice as required by section 42, or failed to publish the notice as required by section 43, *or failed to apply to the Collector for an order under section* 41 or that the distress was excessive, the Collector may direct the restoration of the distrained property to the owner. If the Collector so directs the restoration, the distrainer shall not proceed farther under *this or the following chapter of* this Act for the recovery of the arrear and the *ryot may* sue the distrainer before the Collector for any loss or damage which he *has* sustained.

[86] M.R.A. 17. Effect of irregularity in distraining.

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.

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

[87] B.T.A. 133. M.R.A 35. Certificate to be given to purchaser.

66. From the proceeds of every sale of distrained property under this *Act*, the officer holding the sale shall pay the costs of the distress and sale. The remaining proceeds shall be applied to the discharge of the arrear

[88] B. T. A. 134. Proceeds of sale how to be applied.

for which the distress was made, with interest thereon, up to the day of sale and to the discharge of any *further* arrear which may have accrued between the date of distress and the date of sale; and the surplus (if any) shall be paid to the *defaulter*. The defaulter shall receive from the officer who has conducted the sale a receipt for *an* arrear discharged from the proceeds of sale.

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

[89] B.T.A. 135. Persons prohibited from purchasing.

68. (1) When a tenant, on his produce being lawfully distrained under this *Act* for the default of *his landlord*, makes any payment for the purpose of releasing such produce from distress he shall be entitled to deduct the amount of that payment from any rent payable by him to his landlord.

[90] B.T.A. 137. Amount paid by tenant for his lessor may be deducted from rent.

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

69. When any conflict arises between the distress of a *landholder* under this *Act* and an order issued by a Civil Court in execution of a decree for the attachment and sale of the property distrained by such land*holder* the land*holder*'s distress shall prevail; but if the property is sold by a Collector in consequence of such land*holder*'s distress the surplus proceeds of the sale shall not be paid under section 66 to the *defaulter* without the sanction of the Court by which the order of attachment or sale in execution of a decree was issued.

[91] B.T.A. 139. Conflict between distress by landholder and attachment by Court.

70. Land*holders* *may* proceed under this Act against a *ryot*, or his *surety*, or both: provided that no more than the total sum of arrears and interest with costs and charges shall be realized from both, and provided also that no distraint shall be made upon the property of a surety until the arrear has been demanded from the defaulter, unless the defaulter has absconded, or *cannot be found*.

[92] M.R.A. 84. Power of landholder to proceed against surety.

376

Section 71

Vide remarks under section 64.

71. No appeal shall lie from any orders passed by a Collector under sections 51 to 58 and 64 but any *person* whose property is distrained by *a* land*holder* under section 41 in any case in which such distraint is not permitted by that section may institute a suit against *the* land*holder* for compensation.

[93] B.T.A. 140. Right to sue for compensation for wrongful distress.

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.

72. The Local Government may, from time to time, make rules consistent with this Act regulating the scale of charges which may be levied as costs of dist*ress*, custody of property and sale, and of inquiries by Collectors under sections 53 to 56, and regulating the procedure in such inquiries and in all cases of distr*ess* and sale of moveable property under this *Act*.

[94] B.T.A. 142. M.R.A. 34. Power of Local Government to make rules.

CHAPTER VIII.

Attachment and Sale of Ryot's holding.

73. When an arrear due by a ryot *is* not *paid* within the current revenue year, it shall be lawful for the land*holder* to attach and sell the defaulter's holding or *a* part of his holding, in the manner hereinafter provided, in satisfaction of the arrear and of interest thereon and of costs, if any, of the attachment *and sale*.

[96] M.R.A. 38. When holding may be attached.

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

[97] M.R.A. 39. Notice of attachment.

The notice shall be served as prescribed in section 43 and a duplicate of the notice shall be sent to Collector with an endorsement stating the date of service and the mode in which it was effected.

75. If no suit is instituted before the Collector within thirty days from the date of service to set aside the notice, or if such suit is decided against the defaulter, the *landholder may* take measures for the sale, which shall be conducted under the rules for the sale of moveable property distrained for *an* arrear. The officer conducting the sale *shall* place the purchaser in possession.

[98] M.R.A. 40. When and how holding may be sold.

382

Section 76

76. *Subject to any claims of Government land-revenue* shall be a first charge upon the holding, and the *landholder's right* to sell shall not be defeated by any encumbrance.

[99] B.T.A. 65. Land-revenue a first charge on holding.

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.

In the Statement of Objects and Reasons, *para.* 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,

77. When a holding or *a* part of a holding is sold for *an* arrear due in respect thereof, *either under the Rules for the sale of moveable property distrained for an arrear or in execution of a decree*, the purchaser shall take subject to any encumbrances *in favour of Government and subject also to any other encumbrances* created before the 22nd March 1898, but to no others.

[100] B.T.A. 159. Liabilities of purchaser as to encumbrances.

78. The proceeds of a sale of a holding or *a* part of a holding for *an* arrear shall be disbursed in like manner as the proceeds of a sale of distrained property are to be disbursed under section 66, and the defaulter shall receive from the officer who has conducted the sale a receipt for *an* arrear discharged from the proceeds of sale. The rules prescribed by section 295 of the Code of Civil Procedure shall not apply to a sale for arrears *under this Act*.

[101] B.T.A. 169. Rules for disposal of sale proceeds.

79. (1) After *the* sale of a holding or *a* part of a holding has been authorized *in execution of a decree*, it shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of arrears, interest and cost is paid, or the *landholder* makes an application for the release of the holding on the ground that the *amount* has been otherwise satisfied.

[102] B.T.A. 170. When holding may be released from attachment.

(2) Any person having the occupancy right in the holding or in part of the holding which is to be sold for *an* arrear any interest voidable on the sale or the defaulting ryot may, where the sale is authorized in execution of a decree, pay *the amount due* under this section to the officer conducting the sale and may, where the sale is authorized under section 75, pay *the amount due* to the officer

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.

conducting the sale or to the Collector or such other officer as the Local Government may order *and the attachment shall thereupon be removed*.

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

[103] B.T.A. 171. Amount paid to prevent sale to be in certain cases a mortgage-debt on the holding.

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

(*b*) *subject to any claims of Government* such mortgage shall take priority of every other charge on the occupancy right in the holding other than a charge for *an* arrear; and

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

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

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

Section 80(b)

Omit the words 'subject to any claims of Government.' *Vide* remarks under section 76.

81. When *a* holding or part of a holding is advertised for sale in execution of a degree against, or for *an* arrear due by a

[104] B.T.A. 172. Inferior tenant paying money to prevent sale may deduct from rent.

ryot defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into *the Revenue* Court or to the Collector or such other officer *as* aforesaid, as the case may be, in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord.

82. A *landholder* who has brought to sale a ryot's holding or *a* part of his holding for *an* arrear may, notwithstanding anything contained in section 294 of the Code of Civil Procedure, bid for or purchase the holding or *a* part thereof without the permission of the *Revenue* Court or the Collector, as the case may be.

[105] B.T.A. 173. Landholder may bid at sale.

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

[106] B.T.A. 174. Application by defaulting ryot to set aside sale.

Section 83 / subsection (1)

Omit this section

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.

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

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

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

CHAPTER IX.

Repair of Irrigation Works.

Section 84

In 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.*'

84. Any ryot or ryots holding irrigated land under a *landholder* may apply to the District Collector stating that the irrigation work whereby the land held by the applicant or applicants is served is out of repair and praying for the issue of an order under section 86 for the repair of the said work. The application shall state in sufficient detail the nature of the repairs deemed necessary and the probable cost of the same, and the extent *of* and *land-revenue derivable from* the land irrigated by the work. The District Collector shall then by himself or by an *Officer* subordinate to him, to whom he may depute the inquiry, cause to be served on the *landholder* a copy of the application and a notice to show cause, on a date to be stated in the notice, why the order prayed for should not issue. The notice shall also be *posted* in the village or villages wherein the land irrigated is situated.

[107] Application to District Collector for repair of irrigation works.

85. On the day fixed in the notice, or on any other date to which the inquiry may be adjourned, the District Collector or *Officer as aforesaid* shall hear the applicant or applicants, the *landholder* and any ryots of land irrigated by the work who may attend, and may take any evidence that he may think fit. If the inquiry is made by an *Officer* other than the District Collector, he shall make a report thereon to the District Collector.

[108] Inquiry on application.

86. *If* the District Collector is satisfied that the irrigation work is in *such a state of* disrepair *as materially to prejudice the irrigation of the lands dependent upon the work* and that the *landholder* is *under the provisions of this Act* bound to provide for its maintenance, *and that he has without sufficient*

[108] Order on inquiry.

cause failed so to do the District Collector may pass an order :—

(1) *requiring the landholder to repair the work within a specified time or*

(2) authorizing the execution, by the applicant or applicants or by *any of them* and any *other* ryots willing to join with them, of any of the works stated in the application or shown at the inquiry to be necessary *for the* restoration *of* the irrigation work to efficiency and stating the estimated cost of the same. *Such* order shall also fix a reasonable time within which the works should be executed.

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

Section 86, Subsection (2) proviso

In section 86, proviso to sub-section (2) after the word 'channels' add " and the damming of the Kalingulas, closing of the small breaches, preventing the widening of the breaches during rainy weather."

Insert at the end of the section the following proviso '*and provided where the tenant is authorised 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.*'

87. If the landholder refuses or neglects to carry out the order of the Collector, or if the ryots, owing to poverty or other disabling cause, are, in the Collector's judgment, incapable of undertaking the work, then the Collector may, with the previous sanction of the Local Government, execute the work, and recover from the landholder all charges thus incurred by him as an arrear of revenue.

Procedure when landholder refuses to carry out the Collector's order or when the ryots are incapable of undertaking the work.

Section 88

88. If the irrigation work belongs partly to an estate and partly to Government, the repair as aforesaid shall invariably be executed by the Collector, with the previous sanction of Government; and the charges incurred shall be divided between the Government and the landholder in proportion to the extent of land belonging to Government and the estate which is irrigable by the work. The portion due by the landholder shall be recoverable by the Collector as an arrear of land-revenue.

Procedure where the work belongs partly to an estate and partly to Government.

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.

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

[109] Recovery of cost of repair from ryots.

90. The amount recovered, less the cost, if any, of inspection of the works executed, shall be paid to the parties authorized under section 86. The cost of estimates and of inspection may be included in the amount to be stated in the order passed under section 86.

[110] Payment to persons executing repairs.

91. Every ryot from whom any sum may be recovered under section 89 shall be entitled to deduct such sum from any *land-revenue* payable by him to the *landholder*: and a receipt for the sum recovered shall be valid as a receipt for *land-revenue* due by such ryot.

[111] Amount recovered for cost of repairs may be deducted from land-revenue.

92. No Civil Court shall entertain a suit or issue an injunction regarding a District Collector's proceedings under *this-chapter*, but from any order issued by a District Collector an appeal shall lie to the Board of Revenue, whose decision shall be final.

[112] Right of appeal.

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 dir ''y or indirectly on Revenue matters and wh n 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 Godaveri 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 a 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 putta 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.

93. Nothing contained in and no proceeding taken under this Chapter shall bar a ryot from suing a landholder for damages before the Collector in respect of neglect to maintain an irrigation work.

Saving of ryot's right to sue for damages.

A 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 this Chapter.

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 Zemindar, by considering its own case. If Zemindari tenants are armed with this power and the result is—as intended—that all Zemindari 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.

Illegal Cesses.

94. (1) Land*holders* shall not levy any unauthorized tax or cess or *charge* on their *ryots* under any name or pretence. Every *ryot* from whom anything *collected* in excess of *the land-revenue payable by him* or other authorized charge specified in his putta shall be entitled to recover by suit before the Collector, in addition to the amount *so collected* such sum by way of penalty as the Collector thinks fit, not exceeding ten times the amount *so collected*.

[113] B.T.A. 74 and 75. M.R.A. 5. Penalty for illegal exactions.

(2) All stipulations and reservations

A 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.

for the payment of any such tax, cess, or *charge*, shall be void.

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

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 Zemindaries at the time of the permanent settlement and also to find accounts as to which tree-tax were included in the assets of permanent peishkash. 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 [illegible] are taxed in the Zemindaries, 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 Abkari, Sayer, Salt, &c. All other incomes the Zemindars are at liberty to raise just like the Government. This explanation is in conflict with the provision in Sec. 3, clause 5 of the Bill. The incomes from trees are regarded as land-revenue. The Zemindars have every right to enjoy incomes from trees like the Government. The Bill must clearly define the landlord's ownership of trees on all pramboke 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 Zemindars 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 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 puttas and muchalkas 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 putta lands. The terms on which the ryots are allowed to plant trees are liberal in consideration of the the tree-tax to be imposed. From the time the ryot plants trees on his putta 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 Kudivarum 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 Zemindar 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 permanant Settlement in 1802 would prove and illustrate the legal right assigned to the Zemindars 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 cawney 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.

Acquisition of Land for Building and other Purposes.

95. (1) A Principal Civil Court of original jurisdiction may, on the application of *a* land*holder*, *which has been approved by the District Collector in writing*, and on being satisfied that *such landholder* is desirous of acquiring *a* 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 for any religious, educational or charitable purpose *approved by the District Collector* and on being satisfied that the purpose is reasonable and sufficient, authorize the acquisition thereof by the land*holder* 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 land*holder*, upon such terms as may be approved by the Court, including full compensation to the *ryot*.

[122] B. T.A. 84. Acquisition of land for building and other purposes.

(2) In determining the amount of compensation, the Court shall be guided, so far as may be practicable, by the rules contained in sections 23 and 24 of the Land Acquisition Act I of 1894, and shall add fifteen per centum to the full value of land and improvements as compensation for the compulsory acquisition.

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 XII.

Relinquishment of Land.

96. (1) A *ryot shall be allowed to relinquish his lands or any part of them before the end of any revenue year*,

[123] B.T.A. 86. M.R.A. 12. Relinquishment.

(2) The relinquishment may take place according to the date prescribed in that behalf by Government from time to time.

CHAPTER XIII.

Sub-division and Transfer of Holdings.

97. It shall not be competent to a landholder to refuse to consent to the division of a holding and to the proportionate distribution of the *land-revenue* payable in respect thereof, and to enter into separate engagements with the several holders of the parts thereof so divided.

[126] B.T.A. 88 Division of holding binding on landholder.

Provided that no land*holder* shall be compelled to consent to the division, or further division, as the case may be, of a revenue field, or to the distribution of the *land-revenue* due on the field or on the part thereof included in the holding, as the case may be.

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

[127] B.T.A. 73. Notice of transfer by ryot.

99. When any *landholder or landlord* transfers the whole or a portion of his estate *or land, the landholder or landlord* and the transferee shall give notice of the transfer, by publication in the District Gazette and in such other manner as the Local Government by rule directs, to the ryots *or the tenants as the case may be* in the occupation of the land transferred, and, unless or until such notice is given, no ryot *or tenant* shall be liable to the transferee for *land-revenue or* rent which became due after the transfer and was paid to the *landholder or landlord* before notice of such transfer was given to him, and all proceedings taken by any of

[128] B.T.A. 72. Notice of transfer by landholder.

the ryots *or tenants* to whom no such notice was given against the *landholder or landlord* shall be as effectual and binding on the transferee as if they had been taken in the first instance against the transferee himself.

Eviction.

100. When any tenant shall be in arrear at the end of a revenue year and when there is no sufficient distress upon the premises to satisfy the arrear, the landlord or his authorized agent *or either of them* may apply to the Collector for a warrant authorizing him to enter upon and take possession of the premises. Such warrant shall be granted upon the production of a written statement of the person applying for the warrant, which statement shall contain the name of the defaulter, the description and extent of the premises, the amount due for arrears, interest and costs of distraint, if any, and the date at which it fell due, and also a declaration that there is no sufficient distress upon the premises. Such statement shall be filed in the office from which the warrant issues.

[130] M.R.A. 41. Eviction of tenant under Collector's warrant.

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.'

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

[131] M.R.A. 42. Contents of warrant.

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.'

102. The warrant shall be entrusted to an officer of police, who shall serve it in the manner laid down in section 43 of this Act. If within fifteen days after service, or within the period extended by the Collector under the last foregoing section, the amount named in the warrant is not discharged, and if no suit has been filed by the defaulter before the

[132] M.R.A. 43. Execution of warrant.

Collector to set aside the warrant, or if such suit has been decided against the defaulter, the police officer shall place the landlord or his authorized agent in possession.

103. If on any application for the issue of a warrant under section 100 a landlord or his authorized agent produce a statement which is false in any material particular the person producing the statement shall on conviction before a first or second class magistrate be liable to a fine which may extend to 500 rupees.

Penalty for producing false statement on an application under section 99.

Section 103

Substitute 'Rs. 50' for '500 Rupees.'

104. Upon delivery of possession, the defaulter's *right and interest in the premises* shall cease *and determine*, unless a suit *is* filed within one month in a Civil Court *and an order is made in such suit setting aside the proceedings and restoring the tenant to possession.*

[133] M.T.A. 44. Determination of tenancy.

CHAPTER XIV.

Survey, Record of Rights and Settlement of Land Revenue.

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

[134] B.T.A. 101. Power to order survey and record of rights.

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

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

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the *ryots* and their land*holders* generally *or is required to secure either ryots or landholders in enjoyment of their legal rights*; and

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

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

[135] B.T.A. 102. Particulars to be recorded.

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

(*a*) the name of the *landholder or* landlord;

(*b*) the name of the *ryot or* tenant;

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

(*d*) the situation, extent and boundaries of the land held by the *ryot or* tenant *as shown by the map of the village*;

(*e*) the *land-revenue or* rent payable at the time the record is being prepared;

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

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

[137] B.T.A. 103. Power to record particulars on application of landholder.

107. On the application of a *landholder or if there are more than one landholder, of the registered joint-holders* and on his *or their* depositing or giving security for the required amount for expenses, the District Collector may, subject to and in accordance with rules made in this behalf by the Local Government, make an order directing an officer or officers to ascertain and record the particulars specified in the last foregoing section with respect to the estate or any part thereof.

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

[137] B.T.A. 105 and 106. Publication of preliminary record and entertainment of objections thereto.

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

Section 108, Sub-section (1)

Omit the word 'two' and substitute 'six.'

(2) No objection shall be entertained by the officer to any entry in the record unless it is made within the said period: and *after the expiration of the said period, the publication of the draft shall be conclusive evidence that the record has been duly made.*

[138] B.T.A. 107. Procedure in disposing of objections to preliminary record.

109. In hearing objections to entries in the record, the officer shall, subject to any rules made from time to time in this behalf by the Local Govern-

ment, adopt the procedure laid down in this Act for the trial of suits by Collectors, and his decision in every such proceedings shall have the force of a decree.

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

Section 109—proviso

Omit 'thirty days' and substitute 'two months.'

110. When all objections to the preliminary record have been disposed of, the officer shall frame the final record and shall cause it to be published in the prescribed manner under rules to be framed in this behalf by the Local Government, and the publication shall be conclusive evidence that the record has been duly made under this chapter. The entries published shall be *presumed to be correct until the contrary is proved.*

[139] Publication of final record.

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

Section III,

~~Section III.~~ 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

111. (*1*) When, in any proceeding under this chapter, either the land-*holder* or the *ryot* applies for a settlement of *land-revenue*, or when it

[140] B.T.A. 104. Settlement of land-revenue.

appears that a *ryot* is holding land in excess of or less than that for which he is paying *land-revenue*, or when *land-revenue* is admittedly payable but a dispute arises as to the amount or rate of *land-revenue* payable, the officer shall settle a fair and equitable *land-revenue* in respect of the land held by the *ryot*.

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 Puttahs 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 determiming 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

(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.

(2) In settling *land-revenue* under this section, the officer shall presume, until the contrary is proved, that the existing *rate of land-revenue* is fair and equitable and shall have regard to the rules laid down in this Act for the guidance of Collectors in deciding disputes regarding rates of *land-revenue*.

[141] B.T.A. 108. Appeals from decisions of officers preparing record of rights.

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

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

[142] B.T.A. 110. Time from which settlement of land-revenue is to take effect.

113. When any *land-revenue* is settled under this chapter, the settlement shall take effect from the beginning of the revenue year next after the publication of the final record *and shall not thereafter be changed except under the provisions of rules (iv) and (v) of Section 16.*

[143] B.T.A. 111. Stay of proceedings during preparation of record.

114. When an order has been made under section 105,

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

(2) *the Board of Revenue or* the High Court may, if it thinks fit, transfer to the officer preparing the record any proceedings pending before a Collector or in a Civil Court for the alteration of any such *land-revenue* or for the determination of any of the matters specified or referred to in section 106.

Section 114

A 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).

[144] B.T.A. 114. Expenses of proceedings under chapter.

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

Section 115

A 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 Taluq 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.

Record of Landholder's Private Lands.

[145] B.T.A. 166. Saving as landholder's private lands.

116. Nothing in Chapter III shall confer a right of occupancy in, and nothing in Chapter IV shall apply to a *landholder's* private lands known as kambattam, khas, seri, pannai, and the like.

[146] B.T.A. 117. Power to order survey and record of landholder's private lands.

117. The Local Government may, from time to time, make an order directing such officer or officers as it shall see fit to empower in this behalf to make a survey and record of all the lands in a specified local area, which are a *landholder's* private lands within the meaning of the last foregoing section.

Section 117

A 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 in as much 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.

[147] B.T.A. 118. Power to record private land on application of landholder or ryot.

118. In the case of any land alleged to be a *landholder's* private land, on the application of the *landholder* or any *ryot claiming* the land and on his depositing the required amount for expenses, the District Collector may, subject to and in accord-

ance with rules made in this behalf by the Local Government, direct an officer to ascertain and record whether the land is or is not a *landholder's* private land.

119. When an officer proceeds under either of the two last foregoing sections, the provisions of sections 108 to 110 both inclusive, and section 112 shall apply.

[148] B.T.A. 119. Procedure for recording private land.

120. (1) The officer preparing the record shall record as *the landholder's* private land—

[149] B.T.A. 120. Rules for determination of landholder's private land.

(*a*) land which is proved to have been cultivated as kambattam, khas, seri or pannai by the *landholder* 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

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

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

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

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 (*b*) 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 land-holders 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 dependants, 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 Eevada 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.

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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.

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 cumpulsory 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 65 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 Periyar project, Krishna anicut, &c. It may be said that such a practice is only resorted to in special cases and as a general rule lands are given over on Darkast 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 whomsoever 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.

The restrictions on occupancy lands in the hands of the Zemindar are quite uncalled for. Nothing is gained by registering the Panni, 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 the Zemindar by reclaiming 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 removeable at his will. Non-occupancy lands under cultivation have been recognised institutions in Zemindaries from the Hindu and Mohammedan periods for the maintenance of the Zemindars' 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 Zemindars' 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 fron 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.

JURISDICTION AND PROCEDURE.

121. (1) The following suits shall be heard and determined by the Collector sitting as a Revenue Court and no Civil Court shall take cognizance thereof :—

Suits cognizable by the Collector sitting as a Revenue Court

(*a*) Suit regarding rates of land-revenue payable by ryots (16).

(*b*) Suit for the recovery of arrears of land revenue (40).

(*c*) Suit under contracts for payment of land-revenue (17).

(*d*) Suit for reduction of land-revenue (16) (v).

(*e*) Suit for penalty for withholding receipt (22).

(*f*) Suit to obtain a putta (36).

(*g*) Suit to enforce acceptance of a putta (37 and 38).

(*h*) Suit by ryot to set aside distress (57).

(*i*) Suit by ryot for damage for irregular excessive or wrongful distress (64 and 71).

(*j*) Suit to set aside notice of intention to sell holding (75).

(*k*) Suit for penalty for illegal cess (94).

(*l*) Suit in relation to entry in preliminary record (108).

(*m*) Suit for ejectment of trespasser (137).

(*n*) Suit for damages not otherwise provided for (145).

Chapter XVI

Section 121

Omit.

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 submit to be made.

Section 121, Subsection (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.

(2) In all the cases mentioned in the last preceding sub-section, the decree of the Revenue Court shall be subject to appeal to the District Collector, and a further appeal shall lie from the District Collector to the Board of Revenue in those cases in which the District Collector gives leave to appeal.

Appeals and second appeals in the above suits.

(3) The decision of the Board of Revenue shall be final.

Decision of the Board of Revenue final.

122. (1) The following applications shall be disposed of by the Collector and no Civil Court shall take cognizance thereof :—

Applications cognizable by the Collector.

(*a*) Application to adjust land revenue where the ryot gives notice of intention to mine a quarry for profit [4 (13) (*c*)].

(*b*) Application for sanction to fix additional land revenue (16) (iv).

(*c*) Application for leave to deposit land revenue (24).

(*d*) Application to appraise or divide produce (28, 29 and 30).

(*e*) Application to file putta in the office of Collector or other officer (32).

(*f*) Application for order to make good damage to property distrained (53).

(*g*) Application by third party as to produce distrained (54).

(*h*) Application for order for delivery up of property fraudulently distrained (55).

(*i*) Application for restoration of distrained property (56 and 64).

(*j*) Application for orders for sale of distrained property (57).

(*k*) Application by defaulting ryot to set aside sale of holding (83).

(*l*) Application for warrant for taking possession of premises (100).

(*m*) Application for extension of time for taking possession (101).

Subsection (2)

Omit.

Subsection (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.

(2) Except as otherwise provided in this section, the order of the Collector on any application mentioned in sub-section (1) shall be final.

Order of the Collector under sub-section (1) final.

(3) In the following cases the order of the Collector shall be subject to appeal to the District Collector whose decision shall be final :—

Exceptions.

(*a*) Application to adjust land revenue, [4 (13) (*c*)].

(*b*) Application for sanction to fix additional land revenue [16 (iv)].

(*c*) Application to appraise or divide produce (28, 29 and 30).

(*d*) Application by defaulting ryot to set aside sale (83).

(*e*) Application for warrant for taking possession of premises (100).

(4) Any application under the provisions of this Act in relation to the repair of irrigation works shall be disposed of by the District Collector, and an appeal shall lie from any order made by him on any such application to the Board of Revenue, and the decision of the Board of Revenue shall be final.

Disposal of applications regarding repair of irrigation works.

(5) Any application under the provisions of this Act in relation to the preparation of the Record of Rights shall be made to the Special Collector appointed by Government, and an appeal shall lie to the Board of Revenue from any decision of the Special Collector in respect of the settlement of land revenue, but in no other case.

Disposal of applications regarding preparation of the record of rights.

123. The period of limitation for an appeal under the last two foregoing sections shall run from the date of the order or decree appealed against, and shall be as follows ; that is to say :—

(P.T.A S. 81.)
Limitation for appeals under sections 121 and 122.

(*a*) When the appeal lies to the District Collector—thirty days.

(*b*) When the appeal lies to the Board Revenue—sixty days.

Subsection (2)

Omit. The Collector's decision cannot be made final.

Subsection (3)

Omit.

clause (b)

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

clauses (c) & d

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

Subsection (4)

Suits in sub-section 4 shall be decided by District and High Courts.

Subsection (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.'

124. (1) The general superintendence and control over all other Revenue Officers and Revenue Courts shall be vested in, and all such officers and courts shall be subordinate to, the Board of Revenue.

(P. T. A. S. 78.)
Superintendence and control over Revenue officers and Revenue Courts.

(2) For the purposes of this Act, subject to the general superintendence and control of the Board of Revenue, a District Collector shall control all other Revenue Officers and Revenue Courts in his district.

125. The Board of Revenue or the District Collector may by written order distribute, in such manner as it or he thinks fit, any business cognizable by any Collector or Revenue Court under its or his control.

(P. T A. 79.)
Power to distribute business, and withdraw and transfer cases.

(2) The Board of Revenue or a District Collector may withdraw any case pending before any Collector or Revenue Court under its or his control, and either dispose of it itself or himself, or by written order refer it for disposal to any other Collector or Revenue Court under its or his control.

126. (1) The Board of Revenue may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to it.

(P. T. A. 84.)
Power to call for, examine and revise proceedings of Revenue officers and Revenue Courts.

(2) A District Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court under his control.

(3) If in any case in which a District Collector has called for a record, he is of opinion that the proceedings taken or the order or decree made should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Board of Revenue.

(4) If after examining a record called for by itself under sub-section (1) or submitted to it under sub-section (3), the Board of Revenue is of opinion that it is inexpedient to interfere with the proceedings or the order or decree, it shall pass an order accordingly.

(5) If after examining the record, the Board of Revenue is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High

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, subsection (1)

Insert after the word 'control' the words 'and authorized by this Act to dispose of or appeal.'

Subsection (2)

Insert after the word 'control' the words 'and authorized by this Act to dispose of on appeal.'

Section 126, subsection (1)

Insert after the word 'case' the words 'in which an appeal lies to them under this Act.'

Subsection (2)

Insert after the word 'control' the words 'and in which an appeal lies to them under this Act.'

Court in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the proceedings or an order or decree of a Civil Court, it shall fix a day for hearing the case, and may, on that or any subsequent day to which it may adjourn the hearing or which it may appoint in this behalf, pass such order as it thinks fit in the case.

(6) Except when the Board of Revenue fixes under sub-section (1) a day for hearing the case, no party has any right to be heard before the Board of Revenue when exercising its powers under this section.

Section 127

Omit. This is superfluous.

127. Any case or proceeding pending before the Board of Revenue or before any Revenue Court may, if the Board of Revenue deems it advisable for reasons to be recorded, be referred by the Board for the decision or orders of the High Court.

Power to refer a case or proceeding for the decision or orders of the High Court.

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

150.]
Power to invest Revenue or Judicial officer with powers of Collector.

129. (1) The cause of action in all suits triable by Civil Courts between landholder and *ryot or landlord and tenant* as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the holding in connection with which the suit is brought.

[151] B.T.A. 144.
Jurisdiction in proceedings under Act.

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

59

Section 130

668

130. Plaintiffs and defendants shall be allowed to employ a relative, a servant or other authorized agent to act in their behalf in suits brought before Collectors under this Act.

[152] M.R.A. 52.
Agents may be employed.

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.'

131. Every Collector shall keep a register, in the following form, of the suits heard and decided by him :—

[153] B. T. A. 146. M. R. A. 77.
Special register of suits.

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

Section 132 (1)

132. The trial of suits by Collectors under this Act *and the publication of reports of cases finally decided* shall be regulated by rules, consistent with this Act, *which* the Local Government *is hereby empowered to make* and by the following provisions :—

[154] B. T. A. 143 (2) and 148. M. R. A. 53 to 57, 61, 63, 68 and 69.
Procedure in suits before Collectors.

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.

(i) A date shall be fixed for the hearing of the suit, and the same shall be notified to the parties, who shall be entitled to be heard in person or by agent, *and the summons shall be for final disposal unless the Collector, for reasons to be recorded, otherwise orders.*

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

(iii) The officer trying the suit shall record with his own hand, in English, a memorandum con-

taining the material portions of the evidence and he shall record, either in the same way or by dictation to a short-hand writer, whose transcript he shall correct where necessary and sign, his decision and the reasons therefor.

(iv) No judgment of a Collector under this Act shall be set aside for want of form or for irregularity in the procedure, but upon the merits only.

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

(vi) Subject to *rules to be made by the Local Government under this Act and to* the provisions of this Act, the Code of Civil Procedure *in so far as it may be applicable* shall apply to all suits tried by Collectors under this Act.

Section 132 (v)

Omit the word 'full' before 'power' and substitute after 'power' the words 'subject to appeal.'

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

[156] B. T. A. 149. Payment of money admitted to be due to third person.

Section 133, Subsection (1) cl

In section 133 (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.'

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

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

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

134. In any suit for *land-revenue* or in any proceeding under this Act to recover *land-revenue* if a *ryot* admits that money is due from him to the plaintiff or applicant on account of *land-revenue* but pleads that the amount claimed is in excess of the amount due, the *Revenue* Court or Collector, as the case may be, shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the *ryot* pays into *such* Court or office the amount so admitted to be due.

[156] B. T. A. 150. Payment of money admitted to be due to landholder.

135. When a *ryot* is liable to pay money into the *Revenue* Court or office of the Collector under either of the last two foregoing sections, if *such* Court or Collector thinks that there are sufficient reasons for so doing, the *Revenue* Court or Collector may take cognizance of the *ryot's* plea on his paying such reasonable portion of the money as the *Revenue* Court or Collector directs.

[157] B.T.A. 151. Provision as to payment of portion of money.

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 land-holders in time and to postpone them indefinitely.

136. When a *ryot* pays money under either of the said sections, the *Revenue* Court or Collector shall give the *ryot* a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the

[158] B.T.A. 152. Court or Collector to grant receipt.

plaintiff, the applicant or the third person, as the case may be.

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

[161] B.T.A. 157.
Power of Collector to fix fair rate of land-revenue as alternative to ejectment of trespasser.

Section 137

In sec. 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 Dharkast 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 Dharkast.

(2) Taking possession of land without waiting for the acceptance of a Dharkast put in.

(3) Taking possession of the landlord's private lands.

(4) Encroachment on Zemindar Forest reserves and other purambokes.

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 pattah.

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., water spread 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.

General Remarks of this Chapter.

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 Zemindary 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.

CHAPTER XVII.

Contract and Custom.

138. A Collector or Court shall not recognize any contract relied upon by a landholder under this Act unless it be in writing and duly registered under the Indian Registration Act and unless it be shown to his or its satisfaction, that such contract was entered into by defendant with full knowledge of its terms and consequences, and likewise that such defendant was not, at the time of making it subject to the undue influence, or within the power of such landholder.

What contracts relied upon by a landholder shall be recognized by a Collector or Court.

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 the 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

139. (1) Nothing in any Contract between a land*holder* and a *ryot* made before or after the passing of this Act—

[162] B.T.A. 178.
Restrictions on exclusion of Act by agreement.

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

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

(*c*) shall entitle a land*holder* to *evict* a *ryot* otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a ryot to make improvements.

(2) Nothing in any contract made between a landlord and a *ryot* since the 1st day of May 1871 and before the 22*nd day of March* 1898 shall prevent a ryot from acquiring in accordance with this Act an occupancy right in land.

(3) Nothing in any contract made between a land*holder* and a *ryot* after the *twenty-second day of March* 1898 shall—

(*a*) prevent a ryot from acquiring an occupancy right in land;

(*b*) take away or limit the right of a ryot to use land as provided by section 4 (11) *of this Act*;

(*c*) take away the right of a tenant to surrender his holding or part of his holding in accordance with section 95;

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

(*e*) take away the right of a ryot to apply for a reduction of rent under *rule* (*iv*) *of* section 16;

(*f*) affect the provisions of section 20 relating to interest payable on arrears of *land-revenue*:

regard to the genuineness of the executions or the *bonâ fide* of the contract except on the ground of false personation.

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 — 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 Mahomedan 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

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

[163] B. T. A. 182. Homesteads.

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

[164] B.T. A. 183. Saving of custom.

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 adenda 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 two 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 safe guards 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.

Limitation.

142. (1) The suits, and applications specified in schedule II annexed to this Act shall be institu-

[165] B. T. A. 184. Limitation in suits, &c. in schedule II.

ted and made within the time prescribed in that schedule for them respectively; and every such suit instituted or application made after the period of limitation so prescribed shall be dismissed, although limitation has not been pleaded.

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

Section 143

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

[166] B. T. A. 185. Portions of Indian Limitation Act not applicable to such suits, &c.

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 appurtenent 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.

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

CHAPTER XIX.

SUPPLEMENTAL.

Penalties.

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

[167] B.T.A. 189. M.R.A. 80. Penalties for illegal interference with produce.

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

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

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

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

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

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

General right of suit.

145. (1) Any person deeming himself aggrieved, (a) by any proceedings taken under colour of this Act, or (b) by neglect of or breach of any of its provisions, shall be at liberty to seek redress by filing a suit for damages before the Collector.

General right of suit for damages.

(2) This section shall not be deemed to bar any right of action in a Civil Court in any case not specially taken out of its jurisdiction by this Act.

(3) Provided always that any person who files a suit for damages under sub-section (1), shall not be entitled to file a suit in respect of the same cause of action before a Civil Court.

Section 145

Omit sub-sections (2) and (3) and substitute 'Civil Court' for 'Collector' in Sub-Sec. (1).

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.

Agents of Landlords.

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

[168] B.T.A. 187. M.R.A. 79 Power of landlord to act through agent.

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

Section 146, Subsection (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.

:t had been served on or given to the landlord in person.

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

[169] B.T.A. 188.
Joint landlords to act collectively or by common agent.

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

Saving of rent enhanced during Publication of Act.

[171]
Invalidation of enhancement during publication of Act.

148. No enhancement of rent made or agreed to between the 22nd March 1898 and the date of commencement of this Act shall be valid or binding on any *ryot*.

Publication of Rules under Act.

[172] B.T.A. 190.
Rules to be made after previous publication.

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

Delegation of Powers.

[173]
Delegation of powers to Board of Revenue.

150. The Local Government may delegate to the Board of Revenue all or any of its powers under this Act save and except the powers specified in the next following section and in sections 1, 3 (2), 105, 112, 117 and 128.

[174]
Investiture of officer with powers of District Collector

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

SCHEDULE I.

FORM OF RECEIPT.

Patta No. *of Fasli.*

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

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

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

SCHEDULE II.

LIMITATION.

Part I.—Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
* Suit regarding rates of land-revenue payable by ryots under section (16).	...	...
Suit for the recovery of arrears of land-revenue under section (40).	Three years	The date when the arrear became due.
Suit under contracts for the payment of land-revenue under section (17).	Three years	The date of the breach.
Suit for reduction of land-revenue under section [16 (v).]	Three years	The date of the raising of the land-revenue.
† Suit for penalty for withholding receipt under section (22).	...	...
Suit to obtain a puttah under section (36).	Three months	The date of the expiration of three months after demand.
Suit to enforce acceptance of a puttah under sections (37) and (38).	Three months	The date of the expiration of one month after refusal or neglect.
† Suit by ryot to set aside distress under section (57).	...	...
Suit by ryot for damage for irregular or wrongful distress under sections (71) and (78).	Three months	The date of the alleged wrongful distress.
* Suit to set aside notice of intention to sell holding under section (75).	...	...
Suit for penalty for illegal cess (section 94).	Six months	The date of the levy of the unauthorized tax or charge.
* Suit in relation to entry in preliminary record under sections (108) and (109).	...	...
† Suit to restrain payment of money under section (133).	...	...
* Suit for ejectment of trespasser under section (137).	...	...
Suit for damages not otherwise provided for under section (145).	Three months	The date of the accrual of the cause of action.

Part II.—Applications.

Description of Application.	Period of limitation.	Time from which period begins to run.
* Application to adjust land-revenue where ryot gives notice of intention to mine or quarry, under section [4 (13) (c)].	...	...
* Application for sanction to fix additional land-revenue under section [16 (iv)]	...	...
Application for leave to deposit land-revenue under section (24).	Six months	The date when the land-revenue became due.
* Application to appraise or divide produce under sections (28), (29) and (30).	...	...
* Application to file puttah in the office of Collector or other officer under section (32).	...	...
Application for order to make good damage to property distrained under section (53).	Three months	The date when the loss, damage or destruction of the property distrained became known to the owner.
† Application by third party as to produce distrained under section (54).	...	...
Application for order for delivery up of property fraudulently conveyed under section (55).	Three months	The date when the fraudulent conveyance became known to the distrainer.
Application for restoration of distrained property under sections (56) and (64).	Three months	The date when the taking away of property forcibly or clandestinely became known to the distrainer or the irregularity in distraining, &c., became known to the owner, as the case may be.
† Application for order for sale of distrained property under section (57).	...	...
† Application by defaulting ryot to set aside sale of holding under section (83).	...	...
* Application for warrant for taking possession of premises under section (100).	...	...
* Application for extension of time for taking possession under section (101).	...	...

* Limitation inapplicable. † Unnecessary. Section itself prescribes period.

Limitation of six months under section 24 for application for leave to deposit land-revenue is unnecessary as section 24 prescribes an alternative mode of payment of land-revenue. This limitation will be taken more advantage of for evading the payment of land-revenue to the landholder direct. The liability of the payment being continuous, it is not fair and equitable to bar this continuity to the advantage of the ryot and disadvantage of the landlord.

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1899

V. R. Krishna Gachendra
Rajah of Vellanadapuram
Presidency Landholders Association

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