

Legislative (1899) Department.

ORDINARY MS.

G.O., No. 127-8

DATED 6-12-99.

INDEXED.

[Despatch Abstract.]

Forwarding to the Govt of India
a copy of the Malabar Compens-
ation for Tenants' Improvements
Act for the assent of His
Excellency the Governor General

BACK PAPERS.

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

FURTHER PAPERS.

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

Marginal notes

Short title, and local extent.

Repeal of Act 1 of 1887.

Interpretation clause.

Tenancy

Ejectment

Improvement

No. 6 of 1898.

A

BILL

TO

Secure to Tenants in the Malabar District Compensation for Improvements.

(As amended by the Select Committee.)

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in the Malabar district; It is hereby enacted as follows:—

1. This Act may be called the Malabar Compensation for Tenants' Improvements Act, 189 , and it shall be applicable to the whole of the Malabar district.

5

2. Madras Act I of 1887 is hereby repealed.

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

(1) "Tenant," with its grammatical variations and cognate expressions, includes a person who as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land is in possession thereof or who with the bona fide intention of attorning and paying the customary rent to the person entitled to cultivate or let waste land but without the permission of such person brings such land under cultivation and is in occupation thereof as cultivator.

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(2) "Ejectment" includes redemption or recovery of possession of land mortgaged.

Article 148, Schedule II, The Limitation Act XV of 1877.

(3) "Improvement" means any work or product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding was let, mortgaged, or occupied.

Section 76(1), Bengal Tenancy Act VIII 1885.

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4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act:—

(a) the erection of dwelling-houses, buildings appurtenant thereto, and farm buildings;

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;

(c) the preparation of land for irrigation;

(d) the conversion of one-crop into two-crop land;

(e) 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;

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

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

(h) the planting or protection and maintenance of fruit trees, timber trees, and other useful trees and plants.

5. (1) Every tenant shall on ejection be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejection who derived title from either of them, and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money, (if any), be entitled to remain in possession until ejection in execution of a decree or order of court.

(2) A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

6. (1) In a suit for ejection instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that on payment by the plaintiff into court of the amount so found due and

What are deemed to be improvements

Tenant who is ejected to be entitled to compensation

Decree in ejection suit

also the mortgage money (if any) the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejection the amount (if any) remaining due to the defendant after such set-off.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement for which compensation has been so adjudged when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejection as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (c) of section 244 of the Code of Civil Procedure.

7. Whenever a court passes a decree or order for ejection against a tenant and such tenant has erected any building, constructed any work or planted any tree which the court finds is not an improvement for which compensation can be claimed, but which the court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the court in its decree or order.

8. The Local Government may, from time to time, by notification in the Fort St. George and Malabar District Gazettes, make rules requiring the court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors, and the mode of selecting them.

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the Court shall determine, as nearly as may

Tenant may remove building, work or tree not deemed improvements, with in time to be fixed.

Power to make rules for estimating compensation appointment of assessors &c.

The fee payable to them, and the procedure to be followed in a case of a difference of opinion between the judge and one or more of such assessors.

be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent. of an annuity equal to such money value for such number of years, and also the cost of making the improvement determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.

The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

10. When the improvement is not an improvement to which section 9 applies but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away.

11. When the improvement is not an improvement to which section 9 or 10 applies the compensation to be awarded shall be the cost of the labour including supervision thereof, and of the materials together with other expenditure, if any, which would at the time of the valuation be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.

(a) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

Present value of improvement to be calculated.

Improvement caused by increase in the value of the annual net produce.

Improvement caused by trees or plants spontaneously or otherwise grown.

Other kinds of improvements

Value of improvement to be ascertained in the way most favourable to the tenant.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100.

In each case, the court shall award the higher amount.

13. When the improvement consists in the protection and maintenance of timber trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11. *or fruit*

14. The Local Government may prepare for the whole or any part of the Malabar district tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9, 10, 11 and 12 shall not, except where the Court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Local Government may prepare tables for the whole or any part of the Malabar district showing all or any of the following matters:—

(a) The price of cocoanuts, arecanuts, pepper and paddy.

(b) The cost of—

- (i) cultivating and harvesting a crop of paddy; 40
- (ii) planting, protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine until the tree or vine is in bearing; 45
- (iii) protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing. 50

(2) The tables prepared under this section shall on publication be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved; provided that in so far as such

Improvement caused by protection & maintenance of trees & plants.

Power to frame tables of maximum & minimum rates.

Power to prepare other tables.

tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

5 **16.** In respect of any product for which no table showing the price has been published the Court shall adopt as the money value for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years immediately preceding the institution of the suit.

15 **17.** The tables prepared under this Act shall be published in English and Malayalam in the Fort St. George and Malabar District Gazettes, and shall be kept publicly posted in the courts having jurisdiction over the area to which the tables apply.

The Local Government may by like publication cancel or vary from time to time the tables so published.

25 **18.** When trees are planted in excess of the following scale, the court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may notwithstanding anything hereinbefore contained either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature:—

35	Cocoanut trees		120	per acre.
	Areca nut trees		720	"
	Jack trees		60	"

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

40 **19.** Nothing in any contract made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.

45 **Provided that** nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

50 **20.** Nothing in this Act shall be construed as taking away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act.

And whenever the presumption under § 15 as to price is sought to be rebutted -

Value to be fixed where no table has been prepared.

Tables to be published.

Compensation may be refused where overplanted in excess of the scale.

Saving clause.

Proviso.

Saving clause.

Government of Fort St. George.
LEGISLATIVE DEPARTMENT.

A

BILL

TO

Secure to Tenants in the Malabar District Compensation for Improvements.

(As amended by the Select Committee.)

Approved - vide
Connections entered in
22-11-99
Comp-Committee
25/11



V.E.
Revised proof in
wide margin
24/11/99

MADRAS ACT No. OF 1899.

An Act to secure to Tenants in the Malabar District Compensation for Improvements.

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in the Malabar district; It is hereby enacted as follows:—

1. This Act may be called the Malabar Compensation for Tenants' Improvements Act, 1899, and it shall be applicable to the whole of the Malabar district.

2. Madras Act I of 1887 is hereby repealed.

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

(1) "Tenant," with its grammatical variations and cognate expressions, includes a person who as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land is in possession thereof or who with the *bona fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste land but without the permission of such person brings such land under cultivation and is in occupation thereof as cultivator.

(2) "Ejectment" includes redemption or recovery of possession of land mortgaged.

(3) "Improvement" means any work or product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding was let, mortgaged, or occupied.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act:—

- (a) the erection of dwelling-houses, buildings appurtenant thereto, and farm buildings;
- (b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;
- (c) the preparation of land for irrigation;
- (d) the conversion of one-crop into two-crop land;
- (e) 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;
- (f) the reclamation, clearance, enclosure, or permanent improvement of land for agricultural purposes;
- (g) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto;
- (h) the planting or protection and maintenance of fruit trees, timber trees, and other useful trees and plants.

5. (1) Every tenant shall on ejectment be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money, (if any), be entitled to remain in possession until ejectment in execution of a decree or order of court.

(2) A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

Short title,
A local
extent.

Repeal of Act
I of 1887.

Interpretation
clause.

Tenant.

Ejectment.

Improvement.

What are
presumed to be
improvements.

Tenant who
is entitled to
compensation
on
ejectment.

Article 148,
Schedule II,
The Limita-
tion Act XV
of 1877.

Section 76(1),
Bengal
Tenancy
Act VIII of
1885.

Transfer of
Property Act,
section 92.

6. (1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that on payment by the plaintiff into court of the amount so found due and also the mortgage money (if any) the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to the defendant after such set-off.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement for which compensation has been so adjudged when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejectment as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy shall be determined by order of the court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (c) of section 244 of the Code of Civil Procedure.

7. Whenever a court passes a decree or order for ejectment against a tenant and such tenant has erected any building, constructed any work or planted any tree which the court finds is not an improvement for which compensation can be claimed, but which the court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the court in its decree or order.

8. The Local Government may, from time to time, by notification in the Fort St. George and Malabar District Gazettes, make rules requiring the court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the Local Government thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in a case if a difference of opinion between the judge and one or more of such assessors.

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the court shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent. of an annuity equal to such money value for such number of years, and also the cost of making the improvement determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

(3) If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

EXPLANATION.

The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

10. When the improvement is not an improvement to which section 9 applies but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away.

Decree in
ejectment
with 2 be

notional on
payment of
amount of com-
pensation as -
contained under
this Act or the dif-
ference between it
and the sum found
due to the
plaintiff from the deft

Compensation for
Subsequent im-
provements and
revaluation of
any of im-
provements at the
time of ejectment.

Tenant may
remove
buildings,
works or trees
not deemed
improvements,
within
a time to be
fixed.

Power to
make rules
for appoint-
ment of
assessors, &c.

Improvement
producing
an increase in
the value of
the annual
net produce.

(3)

Explanation

Improvement
consisting of
trees or plants
spontaneously
grown or
sown or planted
by tenants

11. When the improvement is not an improvement to which section 9 or 10 applies the compensation to be awarded shall be the cost of the labour including supervision thereof, and of the materials together with other expenditure, if any, which would at the time of the valuation be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

ILLUSTRATIONS.

(a) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100. In each case, the court shall award the higher amount.

13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

14. The Local Government may prepare for the whole or any part of the Malabar district tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9, 10, 11 and 12 shall not, except where the court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Local Government may prepare tables for the whole or any part of the Malabar district showing all or any of the following matters:—

- (a) The price of cocoanuts, arecanuts, pepper and paddy.
- (b) The cost of—
 - (i) cultivating and harvesting a crop of paddy;
 - (ii) planting, protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine until the tree or vine is in bearing;
 - (iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved; provided that in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

16. In respect of any product for which no table showing the price has been published and whenever the presumption under section 15 as to price is sought to be rebutted the court shall adopt as the money value for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years immediately preceding the institution of the suit.

17. The tables prepared under this Act shall be published in English and Malayalam in the Fort St. George and Malabar District Gazettes, and shall be kept publicly posted in the courts having jurisdiction over the area to which the tables apply.

The Local Government may by like publication cancel or vary from time to time the tables so published.

Other kinds of improvements.

Value of improvement to be ascertained in the way most favourable to the tenant.

Improvement caused by the protection and maintenance of trees and plants. *not* Power to frame tables of maximum and minimum rates of compensation.

Power to prepare tables. *of products, the cost of cultivation, planting, protecting and maintaining trees and plants.*

Such tables to be prepared. *Summary evidence that the prices and amounts specified in the tables are the proper rates and amounts.*

Value to be ascertained where no table has been prepared. *The court shall adopt as the money value for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years immediately preceding the institution of the suit.*

Tables to be published.

Compensation
may be
refused where
trees have
been over-
planted.

18. When trees are planted in excess of the following scale, the court, if compensation, that, in the circumstances of the particular case, the land is overplanted, as are in excess standing anything hereinbefore contained either refuse to grant or may grant compensation at a lower rate, for so many of the scale and are immature :—

	..	..	..	..	..	..	120 per acre.
Cocoanut trees	..	..	..	..	..	..	720 "
Arecanut trees	..	..	..	..	..	..	60 "

In the case of a garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

*Contracts
tenants' right to
make improvements
and claim compensation
is not affected.*

*Saving
clause.
Provided.*

19. Notwithstanding anything in any contract made after the 1st day of January 1886 shall take away the right of a tenant to make improvements and to claim compensation in accordance with the provisions of this Act.

Provided that nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

Saving
clause.

20. Nothing in this Act shall be construed as taking away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act.

11. When the improvement is not an improvement, the compensation to be awarded shall be the value thereof and of the materials together with the cost of the valuation be required, less the deduction on account of the deterioration from age or other cause.

12. Notwithstanding anything contained in any other law, compensation to be awarded for an improvement shall be as prescribed by any of the said sections which it may apply.

Illustration

(a) The compensation to be awarded for an improvement under section 9 to be Rs. 7, but for the same under section 10 to be Rs. 10.

(b) The compensation to be awarded for an improvement ascertained under section 10 to be Rs. 20, but in each case, the court shall award the higher amount.

13. When the improvement consists in the planting of fruit trees or of other useful trees or plants, or in the construction of a building, or in the improvement of the land, the compensation to be awarded shall be the proper cost of such protection and maintenance.

14. The Local Government may prepare district tables showing the maximum and minimum amounts to be awarded under this Act for all or any class of improvements, and may have been published the amount awarded as a guide, and 12 shall not, except where the court is satisfied that the care, skill or enterprise on the part of the tenant is such as to warrant a higher award, shall it in any case be less than such minimum amount.

15. (1) For the purpose of determining the compensation to be awarded under this Act, the Local Government may cause to be prepared and published any part of the Malabar district showing all or any of the following—

- (a) The price of cocoanuts, arecanuts, and other produce;
- (b) The cost of—
 - (i) cultivating and harvesting a crop;
 - (ii) planting, protecting and maintaining a jack tree and a pepper vine;
 - (iii) protecting and maintaining a tree and a pepper vine for a period of ten years.

(2) The tables prepared under this section shall be evidence and the rates and amounts therein shall be proper rates and amounts until the contrary is proved. If the tables prescribe prices of products, the presumption shall be that the average price as provided in the tables is the proper price.

16. In respect of any product for which a price has been published and whenever the presumption is rebutted, the court shall adopt as the money value of the improvement under section 9, the average price as published in the tables for the taluk where the land is situated, for a period of ten years from the institution of the suit.

Tables to be published.

17. The tables prepared under the Act shall be published in the Fort St. George and Malabar Districts in the courts having jurisdiction.

The Local Government may by order direct that the tables so published.

Compensation may be refused where trees have been over-planted.

18. When trees are planted in a garden, that, in the circumstances of the particular case, standing anything hereinbefore contained or may grant compensation at a lower rate of the scale and are immature:—

Cocoanut trees	..	..
Arecanut trees	..	..
Jack trees	..	..

In the case of a mixed garden of an acre according to the above scale.

Contracts affecting tenants' right to make improvements and claim compensation under the Act invalid.

19. Nothing in any contract made away or limit the right of a tenant to make improvements and claim compensation under the Act for them in accordance with the provisions of the Act.

Proviso.

Provided that nothing herein contained shall affect any registered made after the effecting of the Act or any subsequent registration due therefor at the date of the Act.

Saving clause.

20. Nothing in this Act shall affect any person who may be entitled by law to any other than those dealt with in the Act.

LEGISLATIVE DEPARTMENT,

Fort St. George,

1st December 1899.

R. No. 146.

From

H. Tremenhore Esq. I.C.S.,

SECRETARY TO THE MADRAS LEGISLATIVE COUNCIL,

To

The PRIVATE SECRETARY TO HIS EXCELLENCY THE GOVERNOR.

SIR,

In forwarding a copy of the Act specified in the margin, I have the honour
An act to secure to tenants in the Malabar District compensation for improvements. to state that the Act was passed by the Madras
Council for making Laws and Regulations on the 14th ultimo
and to request that you will be good enough to submit it to His Excellency the
Governor for his assent in accordance with Council Rule No. 53.

I have the honour to be,

Sir,

Your most obedient Servant,

H. Tremenhore

Secretary to the Madras

Legislative Council.

2/12/99

MADRAS ACT No. or 1899.

An Act to secure to Tenants in the Malabar District Compensation for Improvements.

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in the Malabar district; It is hereby enacted as follows:—

1. This Act may be called the Malabar Compensation for Tenants' Improvements Act, 1899, and it shall be applicable to the whole of the Malabar district.

2. Madras Act I of 1887 is hereby repealed.

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

(1) "Tenant," with its grammatical variations and cognate expressions, includes a person who as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land is in possession thereof or who with the *bonâ fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste land but without the permission of such person brings such land under cultivation and is in occupation thereof as cultivator.

(2) "Ejectment" includes redemption or recovery of possession of land

(3) "Improvement" includes redemption or recovery of possession of land value of the holding, is suitable to it mark or product of a work which adds to the holding was let, mortgaged, or occupied.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act:—

(a) the erection of dwelling-houses, buildings appurtenant thereto, and farm buildings;

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;

(c) the preparation of land for irrigation;

(d) the conversion of one-crop into two-crop land;

(e) 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;

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

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

(h) the planting or protection and maintenance of fruit trees, timber trees, and other useful trees and plants.

5. (1) Every tenant shall on ejectment be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money (if any), be entitled to remain in possession until ejectment in execution of a decree or order of court.

(2) A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

Decree in ejectment to be conditional on payment of amount of compensation ascertained under this Act or the difference between it and the amount, if any, adjudged to the plaintiff from the defendant.

Compensation for subsequent improvements and re-valuation, if necessary, of improvements at the time of ejectment.

Tenant may remove buildings, works or trees not deemed improvements, within a time to be fixed.

Re-appointment of assessors, &c.

Improvement producing an increase in the value of the annual net produce.

Improvement consisting of trees or plants spontaneously grown during tenancy or sown or planted by tenants.

6. (1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that on payment by the plaintiff into court of the amount so found due and also the mortgage money (if any) the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to the defendant after such set-off.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement for which compensation has been so adjudged when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejectment as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy shall be determined by order of the court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (c) of section 244 of the Code of Civil Procedure.

7. Whenever a court passes a decree or order for ejectment against a tenant and such tenant has erected any building, constructed any work or planted any tree which the court finds is not an improvement for which compensation is payable, but which the court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the court in its decree. The Government may, from time to time, by notification in the Fort St. George and Malabar District Gazettes, make rules requiring the court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the Local Government thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in case of a difference of opinion between the judge and one or more of such assessors.

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the court shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent. of an annuity equal to such money value for such number of years, and also the cost of making the improvement determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

(3) If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.—The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

10. When the improvement is not an improvement to which section 9 applies but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction, to be cut and carried away.

11. When the improvement is not an improvement to which section 9 or 10 applies the compensation to be awarded shall be the cost of the labour including supervision thereof and of the materials together with other expenditure, if any, which would at the time of the valuation be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.

(a) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100.

In each case, the court shall award the higher amount.

13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

14. The Local Government may prepare district tables showing the maximum and the minimum rates for any part of the Malabar awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9, 10, 11 and 12 shall not, except where the court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Local Government may prepare tables for the whole or any part of the Malabar district showing all or any of the following matters:—

(a) The price of cocoanuts, arecanuts, pepper and paddy.

(b) The cost of—

(i) cultivating and harvesting a crop of paddy;

(ii) planting, protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine until the tree or vine is in bearing;

(iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved; provided that in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

16. In respect of any product for which no table showing the price has been published and whenever the presumption under section 15 as to price is sought to be rebutted the court shall adopt as the money value for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years immediately preceding the institution of the suit.

Other kinds of improvements.

Value of improvement to be ascertained in the way most favourable to the tenant.

Improvement consisting in the protection and maintenance of trees and plants not sown or planted by tenants and of trees and plants spontaneously grown prior to tenancy.

Power to frame tables of maximum and minimum compensation.

Power to prepare tables of prices of products, the cost of cultivating paddy, planting, protecting and maintaining trees and plants.

Such tables to be presumptive evidence that the prices and costs therein mentioned are correct.

Value to be ascertained where no table has been prepared or the correctness of the price mentioned in the table is disputed.

Tables to be published.

17. The tables prepared under this Act shall be published in English and Malayalam in the Fort St. George and Malabar District Gazettes, and shall be kept publicly posted in the courts having jurisdiction over the area to which the tables apply.

The Local Government may by like publication cancel or vary from time to time the tables so published.

Compensation may be refused where trees have been overplanted.

18. When trees are planted in excess of the following scale, the court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may notwithstanding anything hereinbefore contained either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature:—

Cocoanut trees	..	..	..	..	..	..	..	120 per acre.
Arecanut trees	..	..	..	..	..	..	..	720 "
Jack trees	..	..	..	..	..	..	..	60 "

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

Contracts affecting tenant's right to make improvements and claim compensation under the Act invalid.

19. Nothing in any contract made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.

Proviso.

Provided that nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

Saving clause.

20. Nothing in this Act shall be construed as taking away the improvements other than those dealt with under this Act.

This Law was made at a meeting of the Council of the Governor of Fort St. George held for the purpose of making Laws and Regulations on the 14th day of November 1899.

A. E. Havelock
President

I declare my assent to this Law.

The 4th December 1899.

A. E. Havelock
Governor

ORDER
MIS. *no 127 d/612-99*

The following letter will be despatched to the Government of India:—

Letter to *no 128 d/612-99*

6/12
THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

I am directed to forward a copy

the Act specified in

the margin which was

passed by the Madras Legislative Council on the

14th ultimo and which received the

assent of His Excellency the Governor on the

4th instant, and to request that

it may be submitted to His Excellency the

Governor-General for his assent.

2. Twenty-five

Bill as introduced with Statement of Objects and Reasons, Report of the Select Committee with the Bill as amended by the Committee.

copies of each of the

Papers relating to the Bill Nos.

papers specified in the

Abstract proceedings of the Legislative Council relating to the Bill, dated 24th January

margin are enclosed

14th November 1899.

for reference.

99.
5-12-99

An Act to Secure to Tenants in the Malabar District Compensation for Improvements.

Note Copy of the Act with the usual Endorsement will be submitted to the Secretary for Signature along with fair of this letter.

5/12/99

When given for copying 5/12
When copied _____
When examined _____
When signed _____

189 .

No.

DATED

REFERENCES TO C. No.

OF GOVERNMENT

A A A A A A A

OF GOVERNMENT.

SENT WITH DESP.

NOT FILLED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B. -

- A = Copy in full.
- B = Not to be copied.
- P = Copy abstract only.
- Q = Copy heading only.