

*Proceedings of the Madras Government, Revenue Department,
6th January 1873.*

No. 9. Read the following Proceedings of the Board of Revenue, dated 12th November 1872, No. 2,187 :—

Read the following letter from R. K. PUCKLE, Esq., Collector of Tinnevely, to the Secretary to the Board of Revenue, dated Courtallum, 6th August 1872, No. 335 :—

As requested in the Board's Proceedings, No. 1,291, dated 11th ultimo, I have the honour to explain my allusion to the unsettled relations between landlord and tenant in this district.

2. Up to the date of the introduction of Act VIII. of 1865, puttass were seldom given to the tenants, and muchilkas were still more rarely taken by the landlords from their tenants; a verbal agreement to pay the usual rate paid for similar land by others was then customary, Regulation XXV. of 1802 notwithstanding, and the tenants paid with more or less regularity. No doubt the landlords took advantage of the poverty and ignorance of their tenants in certain cases, and laid on trifling imposts from time to time, such as Porpichei (a handful taken from the heap), Yeri or Kalvai meri (cess for repair of tanks or channels), Kaval vari (watchman's fees), Nazur for the transfer of puttass, Kanganam vari (a cess for watching the threshing floor), Tirupani vari (a cess for the temple), etc., etc., besides requiring gratuitous labour and petty offerings on the occasion of a ceremony or feast at the place; but the whole thing represented but a few measures of grain per acre, and the people expected to pay in some form or other rather more than the acknowledged rental; in fact, they do so now, even in Government villages, where the Kolada vagei, Chit vari, Tirupani vagei, etc., are surcharges for the common fund, the Curnam's batta, the village feasts, etc.

3. The introduction of the Rent Recovery Act, however, was the tenants' opportunity, and they were not long in finding out that they had power under the Act to withhold payment altogether. At first, the landlords were opposed to issuing puttass, as they reasoned that they would thereby be giving their tenants a fixed right to the land, which was the very thing of all others that they most strongly objected to. The tenants, finding their landlords infringe the law, withheld payment or carried off the crops. The landlords were then as anxious as they had been averse to give puttass, but they omitted to take muchilkas, and were thus still beyond the pale of the law. They next gave puttass and offered to take muchilkas, but the tenants refused to execute the latter, and the landlords then took action. The Rent Recovery Act, however, only provides for the recovery of the arrears of one fasli, so all old arrears were lost to the landlords, and it was an open question whether they would gain much by suing for current arrears. The so-called summary suit was open to appeal and special appeal, and execution could be stayed pending appeal.

4. In the first case that I tried under the Act, the proprietor of Nanjan-kulam was kept out of his rental and much injury was done to his property for three years, while the appeal went up to the High Court, which eventually confirmed my decision. But as the tenants were paupers, there was nothing to recover from them, and the landlord got no satisfaction. Even now he cannot

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collect his rental, and being a very old man, has not strength or energy sufficient to file a suit against every tenant annually, and has thus let the tenants have the run of the property.

5. The tenants of the Terku Mayilodei proprietor stoutly refused to pay Swamibhogam or even to take their puttass. This landlord has now been litigating with his tenants for the last six years with very little success, and I have had to attach his land this year for arrears of revenue.

6. In the Sivagiri Zemindari, the tenants refused to pay road-cess from the very outset, though Act III. of 1866 provides for their doing so, and owing to family dissensions, etc., time has been allowed to pass by, and there are 14,000 Rupees due to the Zemindar that are hardly likely to be ever collected. So strong is the general feeling of the uncertain state of the law and the helplessness of the landlords, that when some fine villages of this estate were recently offered for sale, only two or three people could be found to bid and the price offered was not more than seven years' purchase of the rental.

7. In the Ettiapuram Zemindari, the tenants of Kolarpatti withheld all rental for years, and periodically carried off the whole of the produce which they should have divided with the Zemindar. They were led on by a dismissed Catechist, who persuaded them not to listen to any terms offered, though on one occasion I induced the Zemindar to make them a large concession. At length, however, their leader made himself too conspicuous in a riot, and had to leave the country; the tenants have since come to terms, but they might have continued to carry off the grain for an indefinite period as the Sessions Court has held that this is not a punishable offence.

8. In the Urkad Zemindari, the tenants lately carried off the whole of the grain in like manner, and no portion of it is likely to be recovered.

9. In the Utumalei Zemindari, 4,000 tenants refused puttass until such time as the Zemindar should make a re-survey of his estate, and give them all garden lands on dry assessment. This Zemindar was kept out of his rental for months, if not for years, and was put to great straits to pay his pesheush.

10. The Yedakal proprietor has been litigating with his tenants for seven years, and after various contradictory judgments and appeal after appeal, he is now just where he started, and is instituting a suit *de novo* in the Civil Court; in the meantime, he has received no rental but has had to pay the Government cess, and when the crops were lately distrained by the Tahsildar for arrears, the tenants carried them off, and the Government realized nothing.

11. At Kalvai, the tenants withheld all rental for upwards of twelve years, and then the Court decreed that the landlords (the village share-holders) could neither collect arrears or demand rent in future.

In the meantime, some of the Maravars had murdered one of the landlords (for which six of them were transported for life), and had invaded the wedding feast of another, kicked over his cooking pots and robbed the guests of their jewels; and on another occasion, when I camped in the village, they robbed a sheep-fold near my tent at night out of mere bravado.

12. The tenants as a rule are Maravars, the descendants of the turbulent followers of the former Polygars, or Shanars, a most litigious race; and such people

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actuated by private vakils and others who roam about to stir up dissensions that may lead to their own profit, are capable of annoying their landlords to such a degree that villages where such differences are known to exist are utterly unsaleable, and the landlords throughout the country have become impoverished in a marked degree within the last few years.

13. The remedies I would suggest are, the amendment of Act VIII. of 1865 by making it a really summary Act, by making the decision of one Fasli hold good under like circumstances for successive years, by allowing a landlord to sue *a body of tenants* on one and the same issue should such tenants be all similarly circumstanced in that particular respect, by making it compulsory on a tenant to pay a rental in money instead of in grain should his landlord wish it and should the amount be approved of by the Collector or one of his Division Officers, and by allowing the value of the stamp to be calculated on the particular rental at issue and not on that of the sum total of the putta as at present.

14. I enclose a letter from the Sub-Collector giving further information and expressing his views on the subject.

ENCLOSURE No. 1.

Note on the subject on which information is called for in the foot-note to the Collector's communication on Board's Proceedings, No. 1,291, dated 11th July 1872.

In the Nanguneri taluq there are no Zemindaries or Muttahs, but assuming that for the purposes of Act VIII. of 1865 the "Panniars" or "Puttadars" (or whatever name they are known by) who hold permanent puttass for large tracts of land and palmyra forests are landlords, the relation between them and their tenants is at present hostile in the extreme and most unsatisfactory.

2. Without the Shanars, who inhabit these tracts, the palmyras would be almost valueless to the landlord, and without the palmyras the land would probably be uncultivated; for years these Shanars have climbed the trees giving a fixed quantity of the produce to the "Puttadar" and paying to him assessment on the land they cultivate.

3. Of late years, apparently five or six years ago, for the first time, they claim a tenant-right in the soil and trees, assert their right to permanent occupancy, and state (what is obviously untrue) that they never regarded the "Puttadar" in any other light than as the ordinary village mirassidar or collector of Government dues, and say they have never paid any other than Government assessment direct.

4. These claims have been obstinately resisted by the "Puttadars," who at once insisted on their right to employ any palmyra climbers they pleased, to refuse to allow the hostile Shanars to cultivate their lands, holding them as tenants at will from Fasli to Fasli.

5. A late decision* of the High Court seems strongly to favour the "Puttadars" case. On the contrary, the Shanars have a show of

right on their side on the score of long customary holding in some cases.

6. In the case of one village the matter has been decided by a Civil Court in the "Puttadar's" favour, and at the present moment Police arrangements have to be made to prevent disturbance, and enable the landlord to introduce new tenants and palmyra climbers.

In another village, where there is a similar dispute pending, special Police are on duty, and acts of violence and spite and false charges against every official are of frequent occurrence.

In a similar dispute, inquiry into which was commenced in the Sub-Collector's Court in 1867, and in which two contradictory decisions were passed, the matter is now under appeal in the Civil Court.

* Special Appeal No. 9 of 1870.
Madras High Court Reports Vol. VI., page 164.

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Within the last year, several proceedings under Chapter XXII., Criminal Procedure Code, have been necessitated in connection with these disputes, and until there is some positive declaration of the law laying down the respective rights of the landlord and tenant and defining these terms more explicitly than is done under Act VIII. of 1865, I do not see much prospect of a better state of things.

7. In the Ambasamudram and Tenkasi taluqs there are two considerable Zemindaries, Urkad and Uttumalei, and in the latter taluq one Zemindari, Surandai, and many Muttahs, the greater number of which are fractions of what was the great Chokampatti Zemindari.

8. In many of these estates, Act VIII. of 1865 is being, I think, so worked as to place landlords in a position of great embarrassment.

9. In Fasli 1280 there were 396 cases to compel tenants to accept putta and exchange muchilka.

10. In only too many of these cases for acceptance of puttas the objections raised are, as far as my experience goes, simply vexatious and untenable: it is pleaded that no demand to accept was made, a plea which can generally be refuted: if not, another formal demand can be made and after some delay the case again comes on on its merits: in other cases, no reason for refusal to accept is given except that other tenants objected to accept, and defendant is ready to accept if they do: in some cases there is a vakil or one or two of the most influential ryots whose lead is simply followed by the rest as a flock of sheep follows the bell-weather. The consequence is that all the tenants very likely refuse puttas even though the points at issue have been decided on their merits; there is an appeal to the Civil Court and in some cases then to the High Court, and it may be two or sometimes three years before a final decision is passed in what is called a summary suit. So the tenants continue to hold their land and enjoy the produce, while the landlord of course receives from them no assessment, nor can he enforce payment of it; meanwhile he is put to straits to pay his peshcush.

11. Again, the landlord has to file a separate suit against each individual tenant and the decision holds good in regard to one Fasli only; he may have to file suit in each case in the succeeding Fasli. I know a case of this at the present moment. The Muttadars gave puttas for Fasli 1279 drawn up in accordance with the wishes of the tenants, and providing certain concessions not claimable by law; they are accepted for Fasli 1279. For Fasli 1280 they were refused, but after suits brought against *all* the tenants of estate, acceptance was enforced and every pie of the arrears has now been collected; for Fasli 1281 they again refuse to accept the puttas drawn upon precisely similar terms.

12. A great number of difficult questions as to tenancy, occupation rights, rates, etc., are being now agitated, and the tenants will no doubt be equal to the emergency in finding fresh questions should it be necessary, in order to carry on this warfare in which "fabian tactics" are for them almost the same thing as success.

13. As examples of the bitter and uncompromising nature of the struggle between landlord and tenants, and the disadvantage at which the former now stands: there was a dispute about some trifling payments claimed as customary by the Zemindar of Urkad on division of the produce; a handful of grain or a bundle of straw on each seed kotah of grain, or whatever it was. Decision was given for the Zemindar, but pending an appeal the tenants absolutely refused to give the cess, and the Zemindar refused to accept his share of the produce without it; rather than yield the tenants were allowing their crops to rot on the ground: with a very great trouble and by personal intervention, a disturbance was prevented for a term by a compromise effected on the spot; the crops were reaped and delivered on the Zemindar's threshing floors: while so, the compromise fell through and the whole of the grain was swept off by the tenants *en masse* before division. Seventeen of the ringleaders were tried and convicted by me of theft of that portion only of the grain which was the Zemindar's portion of the produce. On appeal, the convicted persons were acquitted by the Sessions Court on the ground that admitting, as was done, that the facts were established, the offence of theft had not been committed.

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14. The ground on which the Court went was that under the rulings* of the High Court referred to, where there is a *bona fide* claim of right and it is very hard to say what is and what is not a *bona fide* claim; the reaping and carrying away of crops despite the proprietor's people, the acts of tenants do not fall within the provisions of Section 141, Indian Penal Code, the common purpose not being to commit any offence.

Also that, until after division, there is no property or possession on the part of a landlord, no grain delivered by his tenants on his threshing floors, and consequently there can be no theft committed on such grain or any part of it.

15. Whether these rulings were intended to be of such general application I know not, but they would, of course if followed, be legitimate conclusions to cover the case of such grain taken forcibly out of a granary; and if tenants may take away their grain in the manner, why should they go through the form of delivering it at all?

16. Relying no doubt, as the tenants do, on the law as it at present seems to stand, the following is the state of affairs in a proprietary village on permanent rent in Tenkasi taluq. A decision was given in the Sub-Collector's Court some two years ago in favour of the tenants with costs and damages to the amount of Rupees 6,805; the ryots who are little better than paupers acknowledge their inability to give security in the event of an appeal now pending being decided against them, as I think it very likely will be; meanwhile, the proprietor is forced to pay the amount decreed, the tenants are paying no rent whatever, and as I hear and have reason to believe, carrying off the crops and cutting down palmyras *ad libitum* secure from all interference of the Revenue Courts and the Magistrates. The position of a landlord under these circumstances does not appear a desirable one.

17. The tenants generally prefer the sharing system and as if they insist upon it, they can apparently cause it to be retained, I do not see how the landlord can adopt any other system under which they might have fewer disputes and a better chance of realizing their dues.

NANNAGARAM,
1st August 1872.

(Signed) F. BRANDT,
Sub-Collector.

(True Copy.)

(Signed) R. K. PUCKLE,
Collector.

THE Collector in this letter explains, as requested by Government, an allusion G. O., 8th May 1872, No. 742, paragraph 4. he made in a report on another matter to the "unsettled relations between landlord and tenant in the Tinnevely district." There is also a Note on the same subject from the Sub-Collector.

2. Whatever the state of things may be, it is necessary, before discussing it, to dispel the erroneous assumption on which the Collector bases his remarks, that it has all been brought about by Madras Act VIII. of 1859. 'The introduction of the Rent Recovery Act' he states 'was the tenants' opportunity: they were not long in finding out that they had now power to withhold payment altogether.' It is obvious to remark that these results cannot possibly be due to a mere consolidating enactment. With the exception of a few salutary clauses which provided a readier settlement than previously existed for the decision of the question as to the proper rent payable by tenants holding under a Zemindar or other Assignee of the public revenue, it may be confidently asserted that Act VIII. of 1865 introduced no material innovations whatever—none, certainly, that tend to place the tenant in the preposterous position described. On the other hand, it is probable enough that

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an Act which repealed sundry early Regulations of a verbose and complex character, and re-enacted them in simple and concise language, was not long in finding its way to those for whom it was intended, whether landlords or tenants; and if the latter, under a clearer apprehension of their rights, combined in some quarters in resisting illegal procedure and exaction, their doing so is not by any means to be deplored.

3. In this way, soon after the passing of the Act—as appears from the Collector's narrative—the tenants combined to force the landlords to give them written leases; but after this they combined again to refuse counterparts of these leases. Why they should have done this after accepting the leases and so cutting away all ground of contention, it is not easy to surmise. The landlords as a matter of course must have got judgment with costs; but then, says the Collector, this Act provides only for the recovery of one year's arrears—"so all old arrears were lost to the landlords." It is quite impossible to see how this could happen. Any competent Civil Court can entertain a suit for three years' arrears of rent.

Section 7 of the Act.

If leases and counterparts (puttas and muchilkas as they are called in the Act)

have been exchanged, so much the easier for the landlord to prove his case; but it is quite enough for him to show that he *tendered* such a putta as the tenant was bound to accept; and here it clearly appears that the putta tendered was actually accepted.

4. But the Collector goes further; he says that the landlords doubted even whether it was worth their while to sue for current arrears; the reasons which influenced them being that the "so-called summary suit was open to appeal and special appeal, and that execution was stayable pending appeal."

5. No part of this procedure was inaugurated by Act VIII. of 1865, and it certainly is an unique trait of character that an Indian creditor with a strong case should be deterred from prosecuting his claims because it is open to his debtor to carry the suit into appeal, especially when, as in the present case, he has the advantage of the longer purse, and where, above all, any want of diligence would entail not only direct and immediate loss, but operate as an encouragement to fraud throughout every village in his estate. In paragraph 4, the Collector mentions a suit where he gave judgment for the landlord, and where the High Court in special appeal affirmed that judgment; but, he adds, "as the tenants were paupers there was nothing to recover from them, and the landlord got no satisfaction." How these pauper tenants managed to carry on all this expensive litigation and to give security for the due performance of the decree of the Appellate Court, without which execution of the original decree could not have been stayed, is not explained; nor is any mention made of the remedy of ejection from the land, which is possessed by the landlord, under warrant of the Collector, when rent is due and there is no sufficient distress upon the premises to satisfy the same (Section 41). Certainly, the Collector's assertions regarding the *general* prevalence of these disputes and dissensions are not borne out by the returns furnished to the High Court of the litigation in Tinnevely on these matters, of which an analysis for the past year has been compiled by the Board's Acting Sub-Secretary. Nor is the illustration given by the Collector of "the general feeling of the

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uncertain state of the law and the helplessness of the landlords" in paragraph 6 of his letter by any means conclusive; namely, that when some fine villages of the Sivagiri Zemindari were recently offered for sale, only two or three people could be found to bid, and the price offered was not more than seven years purchase of the rental. The sale was not for arrears of the public revenue, when the auction purchaser's title is good against all the world, with liberty to cancel all leases below the standard rent. What was offered for sale was the right, title, and interest of the present Zemindar. Owing to his own folly and extravagance and not for any purposes of necessity as would render his liabilities binding on his heir, he is deeply involved in debt. His creditors of course can attach and sell the whole or any portion of the estate; but as the heir's interests are not affected thereby, it follows that the alienation will be good only for the Zemindar's life: a fact which the heir, the eldest son, who is notoriously on ill terms with his father, has no doubt taken care to notify. The proper sum to bid for the villages is therefore a mere matter of speculation based on the chances of the old man's longevity.

6. But the Collector next complains that the tenants continually carry off the whole of the produce of their fields, cutting the crop—a portion of which in many localities forms the landlord's rent—without the Zemindar's knowledge or the presence of his people; and they may continue to do this, he says, "for an indefinite period, as the Session Court has held that this is not a punishable offence." The Board do not for one moment suppose that the Session Judge has gone further than to hold, what indeed is obvious enough, that the criminal intention which is necessary to constitute theft may be rebutted by proof that the defendants acted under a claim of right in good faith entertained by them. If, however, he decided that in no possible case can a tenant so dealing with the crop be convicted of a criminal offence against property, it appears highly desirable that the High Court should be moved to determine whether that is the law. It certainly is not the view

Section 83, Act VIII. of 1865, last clause.

of the Legislature. But, putting aside

for the moment all question of criminal prosecutions against such tenants, the Collector may order any tenant to furnish security for his rent before he cuts his crop, and if the tenant fails to furnish such security, the Collector may make over to the landlord such a portion of the crop as is equivalent to the rent due, (Section 83); further, if the clandestine removal of the crop—in cases where by the custom of the country it must be cut and heaped in the landlord's presence—has actually taken place, the remedy is equally swift and certain (Section 84). Thus the law is quite sufficient, very simple, and very summary, and when this is the case, it is idle to point to the admissibility of "appeals and special appeals." It is contrary to all experience that litigation should flourish in these circumstances; indeed as to *special* appeals, the law simply shuts them out when the question is one of fact. The truth no doubt is that the Zemindars do not pursue their remedy by the prescribed procedure. They are too proud or too indolent to define terms with their ryots by tendering them a proper putta and suing them before the Collector in default of acceptance. Then, when they wish to distrain or to take any other proceedings under the Act, they find themselves

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barred by the provisions of Section 7. This is the sole supposition which renders the passage in italics in the following extract from the Collector's letter comprehensible:—"In the Urkad Zemindari, the tenants lately carried off the whole of the grain, and no portion of it is likely to be recovered." As this Zemindar is now a ward of theirs, the Board request the Collector will make a full and particular report on the subject, with the reasons for the opinion thus expressed. He will also explain why neither of the courses laid down in Section 18, Madras Act II. of 1864, was taken against the parties who are reported (paragraph 10) to have carried off property distrained by the Revenue authorities themselves.

7. It will be seen from the foregoing remarks that the Collector appears to the Board to condemn the Act without due consideration. The remedies he has proposed are:—

1st—To make the Act "really summary," which is to be done "by making the decision of one year hold good under like circumstances for successive years." But it is obvious that the circumstances remaining the same (and the Act being unaltered) the respective rights of the parties do now remain unchanged. If, however, either of them disputes the premises, he is entitled to a fresh decision. As costs and damages await him if he fails to prove his contention, it may be presumed he will be careful how he stirs in the matter.

2ndly—"To allow a landlord to sue a body of tenants on one and the same issue, should such tenants be all similarly circumstanced in that particular respect." On this the Board have to observe that instead of suing one ryot in a representative case, the Zemindar would have to sue several hundreds or thousands at once, for it is not of course proposed that he shall sue a body of ryots, without serving them with notices to appear and defend themselves. A suit of this kind would take some months or years to terminate. The Collector's suggestion appears to be based on the apprehension that no tenant will be guided in his conduct to his landlord by the decision in a case in which he was not himself a party. But there is no reason to fear this; when the law in a certain set of circumstances is once established, men in civilized communities guide themselves by it, being deterred from neglecting it by the penalties which invariably follow on non-compliance therewith. The Maravars and Shanars of Tinnevely may be of a turbulent and litigious disposition, but it is not to be believed that they will systematically engage in a course which they must possess intelligence enough to know to be a losing one.

3rd.—That, at the option of the landlord, the grain rent shall be commuted into a money rent.

The Board consider this highly inexpedient, as well calculated to lead to more numerous and more serious misunderstandings than ever.

4th.—That the Court Fee Stamp should be lowered in certain cases. The Collector should give further information, with examples of the present hardship.

8. There remains the Sub-Collector's Memorandum. A great portion of his remarks is taken up with the system of carrying off the crops by the tenants, on the remedies for which the Board have already enlarged. The other case described, that of the Shanars occupying under landholders who hold under Ryotwari Settlements, is said to be now decreed in favour of the landholders.

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This no doubt is the correct view of the law. Neither the old Regulations nor the new Act ever attempted to legislate between these tenants of the Government *in capite* and parties admitted by them to occupy their lands. Such tenants, not being of the description of the landholders described in Section 3, cannot be called upon to grant a putta under Section 8; but they have the privilege of proceeding to recover their rents by distraint under the Act, if there is an agreement in writing as to the amount to be paid (Section 13.)

9. The first Member is not a party to these Proceedings and has recorded a Minute of dissent, in which he advocates the adoption of some of the Collector's proposed amendments of the law.

No. 10.

ORDER THEREON, 6th January 1873, No. 5.

Miscellaneous.

THE Government concur with the majority of the Board. The Zemindars of Tinnevely may find their Maravar

tenants especially difficult to deal with, but there appears no reason to doubt that the Act, when properly worked, affords all requisite facilities to landlords in securing their rents. Certainly no general complaint has been received that the Act is insufficient for this purpose.

(True Extract.)

(Signed)

D. F. CARMICHAEL,

Secretary to Government.

To the Board of Revenue.

Exd. J. Tulloch.

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L.S.C. 4/1-73.
 6th Jan 73.

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