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# MADRAS RECORD OFFICE.

## Government of Madras.

Revenue DEPARTMENT.

G.O. No. 827

Press  
Mis.

Dated 15-7-1885.

Not to be folded or roughly handled

Draft Tenancy Bill —

PROCEEDINGS OF THE BOARD OF REVENUE.

READ—again the following Proceedings of the Board of Revenue, dated 11th February 1884, No. 464 :—

ABSTRACT.—Communicating to all Collectors for report Government Order on the Draft Tenancy Bill prepared by the Honorable D. F. Carmichael, and intimating that replies should reach the Board by the 10th April at latest.

READ—also the following letter from N. A. ROUPELL, Esq., Collector of Anantapur, to the Secretary to the Board of Revenue, dated 10th April 1884, No. 136 :—

I have the honor to reply to Board's Resolution, dated 11th February 1884, No. 464.

2. The Madras Tenancy Bill in its present form is a very drastic measure, framed in the interest of the raiyat, who under it would gain substantial advantages at the expense of the proprietor. It creates fundamental changes in the status of the proprietor and of the tenant, and consequently in their relations to each other. The raiyat is not only protected, but benefited beyond his fondest dreams, while the proprietor will assuredly, at no distant date, be consigned to the position of a mere annuitant upon his estate. He is deprived of all control over his property. His ordinary and long-enjoyed rights are at once swept away without warning and for ever.

3. The Bengal Tenancy Bill, from which the measure now under consideration has been to a great extent extracted, had its origin in a critical state of affairs; animosity between the receivers and payers of rent had reached such a pitch, owing to heavy rack-renting, that agrarian disturbances broke out and discontent and suffering on the part of the peasantry were general and notorious. Even there, however, it seems doubtful whether, as both Bills assume, the proprietor or landlord is an unmitigated evil, and whether the poverty of the raiyats is entirely due to his action or may not be in an appreciable degree traceable to the increase of the population upon the same area and to the irrepressible passion for borrowing and loading themselves with debt for marriages and other social festivities.

4. In Bengal, to avoid treading upon false ground, elaborate and extensive enquiries have been held to ascertain the actual facts and their causes and the law and custom prevailing. Further investigations have lately been ordered, and the question is not yet ripe for final settlement.

5. As regards the present Bill, we have been favored with no "statement of facts and reasons." The memorandum of the Honorable Mr. Carmichael has not been circulated, and Collectors are left to draw their own individual inferences as to the necessity for the measure. The Bill is general in its application, and in my humble opinion, it would have been better if the facts which gave rise to its being drafted and circulated had been specifically stated. Without such facts before us, it is impossible to say how far, if at all, the Bill, as it at present stands, can claim acceptance.

6. So far as my experience goes, the necessity for such general radical changes and stringent provisions against proprietors as the Bill involves, is by no means beyond question.

7. The practice in different zemindaris varies considerably, and while, in some of them, the rent is rather liable to variation at the expense of the proprietor than settled according to a reasonable standard, I doubt whether the same can be said of all. The reports now to be submitted by the Collectors of zemindari districts will throw some light on this matter. From this district, the lands in which are, with a few insignificant exceptions, held by raiyats directly under Government, no information is available.

8. That the Bill contains many valuable provisions I freely admit. Amongst these I would enumerate Sections 52—54, 55—59, with some modifications, 79, the withdrawal of the power of summary distraint of the moveable property of the defaulter, and Chapter VI generally. My objections to the measure are that it subverts the existing system before adequate grounds for so doing have been shown; that it involves the wholesale confiscation of the long-standing rights and privileges of proprietors; that it is markedly one-sided in its character, favoring the raiyat at the proprietor's expense; that it destroys the right of private contract in respect of the lands of proprietors; that it, suddenly and without notice, declares null and void innumerable existing agreements duly drawn up and registered and at present legally valid, many of these being, with the free consent of both parties, based upon long-established custom as to the 'varam' or as to money-rent, such money-rent not always being higher than that fixed upon neighbouring Government lands of similar quality.

9. I will now touch upon some of the details of the Bill.

CHAPTER I.—In Section 4 after "(V) Raiyat," the term "under raiyat," subsequently used in the body of the Bill, should be defined. Under the same Section (XII), the word "before" appears to be a mistake for "after."

CHAPTER III.—This chapter has, amongst its objects, to secure fixity of tenure for the raiyat and make provision for improvements (Section 26) in his holding. The provisions would indicate that experience has shown that such tenure depend on the mere caprice of the landlord—that they are, in point of fact, utterly insecure—in other words, that ejectments are frequent, and improvements are therefore not made. Are these the real facts? Are there not many raiyats who have held at reasonable fixed rates for a long period of time, who have effected improvements at their own cost, and who are, and feel themselves, quite secure in their tenure so long as they pay the rent?

Under this Bill, rights of settlement and of occupancy are granted upon very easy terms, and thousands of raiyats would suddenly find themselves in the position practically of landed proprietors, with rights of sale and bequeathal in respect of land, for which they have paid no consideration whatever.

Sections 12 and 16.—Under the Limitation Act, suits for possession would be barred only where the same land had been held continuously for twelve years by the opposing party. Under this Bill, the right of occupancy with its attendant privileges is very easily acquired.

Section 13.—Why should the status of a settled raiyat be kept alive for one year after he has ceased to hold raiyati land as a raiyat in the village or estate concerned?

Section 14 (2).—Can an absconding raiyat for an indefinite period retain his right to the building which he has erected on his holding, after he has abandoned it?

Section 21.—This is hard upon the proprietor. Why confiscate his right to deal as he chooses with land which, once having been an occupancy-holding, ceases to be so and reverts to his private possession? What reasonable rights of a future tenant could be held to have been unfairly injured by the holding having again become "private" land?

The object of the Bill is clearly to convert all the lands in an estate into occupancy-holdings.

Section 24.—A portion of a holding should not be surrendered without the consent of the proprietor.

CHAPTER IV.—Section 34.—Where the legal limit of five-sixteenths is paid as a money-rent, sub-letting will not be feasible. By under-raiyats this provision will be more honored in the breach than in the observance. This attempt to restrict the law of supply and demand is certain to be evaded in practice, where the parties are agreed that such evasion would be for their mutual benefit.

Section 35.—Where the "Varam" is half the gross produce for the landlord and half for the cultivator, the rent-payer under this section would be placed at a disadvantage, as compared with the tenant under Section 34. In some cases, the money-rent has been fixed by long-established custom in the same way as the "Varam."

I understand that in some zemindaris the old "Paimash" (survey) rates fixed for the purpose of settling the peishcush\* and recorded in the Phaisal† Jlugu accounts, are still in some cases respected. Where these are not higher than the "Varam," why should they not be held equally binding with the latter?

\* Revenue payable by a proprietor.

† i.e., settled according to rule.

Section 37.—This section must be read with Sections 43 to 47.

Section 52.—A period should be fixed for the delivery of the muchilika.

Section 59.—Suppose he does not apply, or, applying, fails to return the receipt, owing to its having been destroyed or mislaid, what then is to be done with the deposit?

The record of the case is in the office. There may be no doubt about the genuineness of the claim, what objection is there to returning it to the depositor?

CHAPTER V.—Section 91 (1).—"High Court" is inadvertently entered for "District Court."

The cancellation of agreements favoring proprietors or landlords (Sections 34, 42, 45) stands out in startling contrast with the upholding (Section 44) of those which favor the tenants.

10. Lastly, I would remark that, in return for the advantages heaped upon raiyats at his expense, for his loss of property-rights, and other privileges which he has hitherto enjoyed, the proprietor gets nothing. He alone is the loser, and can have little cause either to regard with favor tenants now made his masters or to feel grateful to a Government which has made him the victim of such one-sided legislation. I would deprecate the general adoption of this sweeping measure without the most cogent proofs of its necessity.

READ—also the following letter from A. J. STUART, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Perurgathoor, 5th April 1884, No. 131:—

I have the honor to submit my report on the Tenancy Bill, together with extracts from memoranda prepared by V. Srinivasa Charlu, my Sarishtadar, and N. Nummiah Chettiar, Tahsildar of Arcot, whom I have personally consulted.

The opinions of my Divisional Officers have been asked and will be forwarded when received.

ENCLOSURE No 1.

A few Observations on the Scope and Object of the Bill.

The Bill aims at giving the bulk of the ryots of zemindaries what are known as the three Fs., namely:—

1. Fixity of tenure.
2. Free sale.
3. Fair rents.

2. The old Rent Act provided for (1) Exchange of putta and muchilika; (2) Fixity of tenure as long as rent was paid, if the tenant had, by custom or otherwise, a right to have a fixity of tenure, but not otherwise; (3) Contract rents when they exist, and in other cases rent the same as of neighbouring land of similar quality, or paimash rent, or failing these, varam. It left the question of sale rights untouched, to be decided according to local custom.

3. Under the administration based on this Act, particularly the difficulty of asserting and maintaining their rights, very many tenants have consented to contract rents much above paimash rates, and many have been ousted and given place to those who cannot claim any right of sale or of permanent tenancy.

4. The question is how far with this state of things is it just or politic to introduce the three Rs. It is obvious that under the circumstances stated in paragraph 3, whatever is now newly given, or given back, to the tenants must come out of the pockets, as they now are, of the landlord, and I do not think it would be at all just or politic to make great changes suddenly.

5. I would, therefore, advocate giving the three Rs. to all who have held continuously for twenty years in respect only of such lands as they or their forefathers have so held, or which have come to them by purchase or transfer from persons so holding.

6. All other tenants would be ordinary tenants holding on contract, if one exists, or at the existing rates, or at rates of surrounding lands of equal quality, or on váram, and having no fixity of the tenure or not as now for the next twenty years.

7. At the end of twenty years from date of New Act, the terms applicable to the former class of tenants to be made applicable to all and to be thenceforward universal.

8. This will give time to landlords to prepare for what is coming, and it seems just not to alter at a stroke what has grown up gradually under the existing law. The landlord, who has the right now to oust, will be able to sell the new tenant-right for what it will fetch, and the Bill will be fully accomplished at the end of twenty years, namely, that all tenants will have then, or for the future, all the rights it is desirable to give them, whereas under the present Bill there is no provision for eventually improving the status of the ordinary ryot, and the Bill will fail to accomplish fully, and for ever, the establishment of a ryotwari class of an independent and improving character.

9. It is also to be expected that under the Bill, from time to time, occupancy tenancies will fall in by the dying out of families, and so, in process of time, things will gradually revert to their present condition, ordinary ryots being put in by the zemindars in every case when an occupancy tenancy falls in. This may happen also in other ways, e.g., non-payment of rent in times of famine or scarcity, improvidence of particular tenants, &c., in all which ways lands will be gradually passing from the occupancy to ordinary tenants. Therefore, it seems best to provide that after a certain time there shall be none but occupancy tenants.

10. For the ordinary ryot the Bill should provide a saving of any existing rights of tenure or fixity of tenure or fixed rent, and besides, compensation on ejectment for improvements other than those resulting from ordinary cultivation, on which subject some observation will be found further on.

11. I doubt whether the framers of the Bill have fully considered its effect upon the immense number of inamdars, whose voices are far more influential than those of all the zemindars put together. Great caution is required in touching their present status as regards their tenants, which the whole Rent Act has scarcely touched at all. I am disposed to think that it would be well either to exclude all inamdars from the Act or to include only those who possess entire villages, one or more.

12. There is little difference between the tenant under a petty inamdar and the cultivator of the puttah lands of say a Brahmin, Komaty or Mahomedan ryot, who does not actually cultivate himself, and the question of the tenants of the minor inams may well be left, with that of the under-tenants of ryots and others, for consideration if the future makes it necessary.

I proceed to note what occurs to me on the provisions of the Bill as it stands, in the order of the sections.

**Section 4—Private Land.**—This definition may be read to include lands held by tenants at will, just as a ryot's "holding" may be actually cultivated, and often is, by "under-tenants" but still is "held" by the ryot. In Kangundi Zemindari, the zemindar has in process of time reduced nearly all his ryots to this position, and would probably claim nearly the whole estate as private land, and show that he has turned out the tenants at will, and been in the habit of putting up the lands to the highest bidder, the highest bidder cultivating for the year. It seems the intention of the Act to give occupancy rights to all such tenants if they have cultivated some lands in the estate for twelve years, and the rights of ordinary ryots to all other tenants, but the present definition of private and raiyati lands may, I think, prevent this.

Would some such definition as this do—

"Private land includes Seri, Khas, Pannai and other lands held as his own home farm by the proprietor himself, as well as.

"Lands which have been within the last twelve years cultivated for six years on the whole, by the landlord through his own servants, or otherwise than by a tenant paying rent."

This would exclude all lands regularly leased to tenants, and would include those reserved as home farm by the proprietor, and cultivated otherwise than by tenants, even though they may, under special circumstances, have been temporarily leased to tenants.

What part of inam land is "private" also does not clearly appear, and, considering the enormous number of inams, it is a matter of almost as much importance how the law will deal with inam tenancies as with zemindari tenancies.

On the definition of private and raiyati land will turn very much of the effect of the Act and no loophole should be left by which the intention of the law may be evaded.

The following provision appears necessary:—  
A tenant under a renter shall be considered as a tenant under the proprietor.  
Lands cultivated by a renter and included in his farm shall be held to have been leased to him as tenant by the proprietor.

**XII, Arrear.**—For "before sunset" I think "after sunset" should be written.  
**Section 4—VI, Raiyat.**—"Holds land" is not quite definite. I presume it means "holds" under the proprietor and does not include one who "holds" from another who again "holds" under the proprietor, in fact an under-tenant.

**Section 22 (2).**—Confirms this view as it contemplates and provides only for rent payable to the proprietor. This might be made clearer.

**Section 14 (1).**—The term "bastu" in the margin should be replaced by an English equivalent. I have never met with the term.

**Section 18 (1).**—There is risk that people here benefited will be turned out while the Act is under discussion; a date prior to publication of Act seems needed.

**20 (d).**—He may be ejected by a Civil Court in pursuance of an ordinary decree. I suppose this should be stated. As he has a right to sell, mortgage, &c., it follows that the Civil Courts in a suit on a sale or mortgage must be able to eject him. Add "as between him and the proprietor."

**22 (2).**—In this section it is doubtful if "Section 24" is a misprint for "Section 34." If not it is inconsistent with that section which lays down a limit for money rents for all ryots. "Or such rent as may have been decided on under Section 47" should be added.

**27.**—This provision directly attacks the zemindar-rights in the tanks and other large irrigation works made by their predecessors in title and kept up by themselves precisely as the Government keeps up their irrigation works. Imagine a zemindar having to get the consent of all the ryots under a tank before he can repair it. In these respects, the rights of the Government are historically the rights of the zemindar, and they cannot be overlooked or invaded.

I don't think this can be set right without making a distinctive class of irrigation works generally as being "landlord's improvements," and providing only that the tenant may do them if the landlord neglects.

A further provision would be not unreasonable appointing an arbitration to which the ryot could apply for permission to repair such works as far as they require it, if after notice the landlord fails to do so, and to deduct the cost from rent, the arbitration to fix the amount which may be so spent and deducted from rent.

It seems doubtful if the provisions of this section can fairly be applied in all cases even to the digging of wells or any other improvement, except (F). As a means of improvement to a landed estate, the digging of wells is likely to play a very important part in agriculture, and it seems questionable whether it is right to hand over entirely to the occupancy tenant the first right of making and benefiting by the improvement.

There are many places where a well costs but a few rupees, but where the returns from the land when watered are out of proportion large as compared with the outlay and the additional labor of raising water, especially so when the water is near the surface.

An improving landlord in such places may very greatly improve the property by making numerous wells. The landlord should, I think, have at least an equal right with the tenant to invest capital in the improvement, and to recover in rent something equivalent to half the extra produce resulting from water minus the extra cost for cultivation, and similarly with other improvements.

I think that besides "landlord's improvements," such as large irrigation works which the landlord should have the first right to make, there should be improvements which landlord and tenant both have a right to make, and provisions should be devised for permitting both to co-operate in these, or if either declines, then for the other to execute the improvement. Moreover, there is wanting a provision to compel the tenant to make use of a substantial improvement, such as a well when made by a landlord. The provision for enhancement of rent should contain a clause making it the duty of the tenant to do so, and providing that the rent may be calculated on the supposition that he does, even though in fact he refuses to do so.

**28.**—This section requires, I think, to be supplemented by power to the landlord to object to proposed improvement and provision of a tribunal to decide between them. The landlord

29.—In some zemindaries, lands actually cultivated only are sold, not being always coterminous with sold lands. The Government is sometimes the owner of the land, and the tenant is equally interested with the tenant in the land and may fairly be entitled to be heard if the proposed improvement is likely to deteriorate the land, e.g., to make it sondu or salt.

29.—In some zemindaries, lands actually cultivated only are paid for, and areas cultivated not being always conterminous with fields of known size, measurement is necessary. It is sometimes the case also in Government villages with cultivation of lands not held on putta cultivated one year and left waste another. The provision to restrict measurement to once in ten years would be unreasonable in such cases. Similar cases arise when water is taken for portions of fields. Also, when a dispute about the boundaries of a field or fields of known extent arises, the cultivators of both fields may refuse to pay rent till it is settled in which field the disputed portion lies. The provision, as it stands, I think too sweeping. The frequent application to the Collector for permission will be troublesome to the landlord as well as disagreeable, and I see what important purpose is served by it.

33.—The length of a standard may be question of the highest importance, and I do not

34.—The Bill takes no notice of the primary distinction which has been made between wet and dry lands. In Government orders.

In Government lands the distinction is fully recognized, founded as it is on the provision by expensive works of water for irrigation, by which the produce is directly increased very much. The tanks and other irrigation works in a zemindary are kept up by the zemindar whose predecessor in title constructed them; clearly therefore there is a broad and just ground for the distinction in the share of the produce which the landlord ought to get from the wet and dry lands. Section 34 makes no distinction, but enacts that the maximum money rent shall be the same for wet, without distinction between wet and dry lands.

If this proportion is fair for wet, it is too high for dry, and if fair for dry it is too low for wet, and in either case one of the two parties concerned, landlord or tenant, must suffer. Why should a maximum limit be calculated so as only to apply beneficially to wet lands and not at all to dry and garden, i.e., well lands.

The value of  $\frac{1}{3}$  of the gross for wet and  $\frac{1}{4}$  for dry is a maximum for money rent.

The value of  $\frac{1}{3}$  of the gross for wet and  $\frac{1}{4}$  for dry lands would be a fairer standard or maximum for money rents. I think further that in justice to the parties concerned a third older than the existing tenancy, or such as have paid extra assessment to the proprietor for twelve years, e.g., such maximum rates for wet, vell, and dry lands, respectively, as the value of  $\frac{1}{12}$ ,  $\frac{1}{12}$ ,  $\frac{1}{12}$  of the produce. The proprietor's interest will be manifestly very much affected by subjecting such well lands to the same maximum rent as dry lands, while if only a maximum rent suited to wet lands is laid down tenants of dry

The provision in regard to reducing existing correlative condition the admission of claims by collector, to the Collector of North Arcot, dated whenever it is in their power to show that a net 1884, No. 282:—  
the operations of this Act, particularly of Section No. 442, of 13th ultimo, to make a few remarks for, and unless it is, the zemindars will probably Proceedings, No. 464, of the 11th February, 1885, to reply to the present Bill.

35.—I would add, "in no case shall the varan, and that legislation on the subject is most

37.—This provision should be subject to the provision "any renter of land revenue" would

46.—This gives a right to all persons who have held, holding, or have been entitled to hold, any land revenue, to be subject to the provisions of the Bill.

46.—This gives a right to landlord, not now holding—any raiyati land in the village or estate, on whom the zemindar has a right to demand a cess of 5 per cent. on them for the zemindar's benevolent sanitary and educational purposes.

In a town where land is valuable, people also have a similar right in respect of any land they own, while hitherto these class of "Occupancy Riatys" will thus include the great mass of their incomes, to which, as yet, no other taxes have come to be considered.

The right here given affects, g. ousted from, and deprived of, their holdings; yet the number of persons in a village to go free while holding some raiyati land in the village or estate must be small. It is not paid for such lands in Gov Raiyat" for them seems a misnomer. I would suggest that they be called "free lands." A misnomer of the kind might, I think, lead to error in the country. I would omit this sivat."

47.—Should not the limitation of proprietors and their tenants.  
Here again, if there is a limit Is it intended to give a right of occupancy to under tenants

Here again, if there is a limit Is it intended to give a right of occupancy to under-tenants  
lands and for garden lands under the definition of "Raiyat and Raiyati lands" will give such rights.

52.—The putta cannot give all the land to the tenant. If not, is it intended that holding as an under-tenant qualify for the benefit of the sections; but I don't think so. It will qualify under these sections; but I don't think so.

...ning of this sub-section is doubtful. Does it mean, in the  
...land every year, that, in order to qualify him for the condi-  
...must be in one village, in an estate comprising more than

BOARD OF REVENUE, 1ST SEPTEMBER 1861.

give and take up land and water, and various things have to be settled before final demand can be fixed. Putta including all this cannot therefore be given till the last three months of the year. Our own jamabandies cannot be conducted early in the year.

3.—The receipt is too complicated; (f) should be left out; the rent cannot always be specified every year with circumstances, such as use of water or not.

4.—Offers a premium on ryots falsely denying receipt given; by so much the year. Enough to subject landlord to fine, at discretion, tendered, as evidence o

53.—The receipt is too complicated; (f) should be left out; the rent cannot always be specified; it varies every year with circumstances, such as use of water or not.  
(4) Too severe a penalty. Offers a premium on ryots falsely denying receipt given; by so doing he gets off his entire rent for the year. Enough to subject landlord to fine, at discretion, within reasonable limit.

54 and 55.—Provision  
 tender by him. Any dishonest ryot pay rent to him in  
 ent, and making the landlord pay rent to him in  
 under Section 63 sufficient. Laws that are too severe remain a  
 advantage of unfairly to annoy or injure.

56 (3).—The reference by Collectors and Divisional Officers to a Munsif's Court of a diffi-  
 appears to be involved in this section.

57.—The reference by Collectors and Divisional Officers to a Munsif's Court of a diffi-  
 of the crops is increased ten-fold by the application of water to dry  
 have one-fifth increase?

58.—The reference by Collectors and Divisional Officers to a Munsif's Court of a diffi-  
 acre for dry could not be made

[illegible]

72 (2).—The same rent shall be paid by the tenant as he would have to pay if the land were let at a fair rental value, less the amount of the improvement made by the landlord, or the company, or a private company duly brought in to dry land, increasing the crop and making it more fertile than it was before the improvement.

74.—In place of "an improvement has been made by the landlord," the words "the inherent powers of the soil, when labor required to cultivate it." The inherent powers of the soil, when improved by the landlord, or the company for the water.

74.—In the case of a private enterprise, the Government or a private company, the Government or the company for the water. The Government or a private company, the Government or the company for the water. The Government or a private company, the Government or the company for the water.

79.—This should be confined to occupancy ryots. It will be a new thing in many cases to place ordinary ryots in permanent possession by law, and seems to go beyond the scope of what is needed, which I take to be to give security to all the regular and permanent ryots of every estate.

78.—These persons not settled for twelve years at the time the Act comes into force, and for them he should be at as often as he likes, subject to the rent limitation other rights they may have.

Chapter IV.—This chapter deals with the occupation and the procedure in this section and their rights must be very

**Lands in remainder.** Chapter IV.—This chapter contains provisions as often as needed, which other rights they may have.  
estate. under occupation, and the process of lands newly taken up, under this section and their rights must be very

I think this should make no such provision for their ryots ejected for non-payment of rent, and therefore has sufficient power to sell his holding or to provide as an alternative that the landlord may have the right to eject them for payment of arrears, the

14. Section 39.—The wording fair to provide for the collection of the land revenue is put up to auction for payment.

The conduct of a landlord levy is a process of cultivation apart from any unusual process of compensation. Land gradually improves in the hands of the cultivator, and such improvement is the advantage of the cultivator, and such improvement is the advantage of the cultivator generally, and not the advantage of the landlord.

16. *Section 50.*—I do not see the necessity for in Revenue or of Collectors in the matter of kists; except themselves. Where this is the case, I would allow the Collector under Section 61.

17. *Sections 52—54.*—It is not stated whether the difference in the proprietor's power. I would leave the pro there were no putta or muchilika, but not the power to app should all be specifically stated.

18. Section 53 (3).—I don't see why a proprietor should have more than three-fifths of the receipts. It is a point, I should say, for his own consideration, or provision for its recovery, penalty of some kind must be provided; otherwise there is no provision in the Act of the Section 54 (1), by the way, mentions such a penalty in incoming tenant; the amount of tenant's improvements not represented.

19. *Section 54 (1).*—One month is, I think, a sufficient time.

20. *Section 54 (2) & (3).*—I don't see why the raiya or refusal to give muchilika, while the proprietor is only

91.—Appeals should continue as now to the District Court I think and not to the Collector.

92.—Here should be included all kists of one year until the close of the next. As it stands, the year allowed will depend on the kist and may necessitate action for separate kists proceeding for the whole arrear may be found better, and a year should be allowed for the whole.

Suppose that a ryot has no crops but a large herd of cattle; how is the arrear recovered? The law now allows distraint and sale of cattle, and has always done so. It has always also allowed the distraint and sale of moveables, jewels, &c. To take this away will be to throw all attachments upon crop, and all must be made at harvest, i.e., at one time, and this will be found impracticable, suits for recovery of rent will multiply and time be less occupied with them. I see no reason why the provisions of Section 92 *et seq.* should not apply to cattle and moveables, exemptions being made of implements of husbandry, ploughing cattle and domestic furniture.

I entirely agree in the last extract from my Sarishtadar's memorandum, and think that the right to distraint crops or moveable property must be left to the landlord. Without this power we should ourselves have the greatest difficulty in collecting the Government revenue, and the same must be true in zemindaries; they cannot pay their peshkash punctually if not supported in making their collections. These powers are the custom of the country and are, in my opinion, indispensable to the management of zemindary property, which will be in great danger of coming to a dead lock if this power is taken away. The enormous number of tenants, and the small amount due from each will make it impossible to collect the rent if the power of attachment is withdrawn or the power by which this is accomplished is other than prompt and local. The present safeguard of requiring sale-orders of Divisional Officers and sale by Government Officer is ample protection.

READ—also the following letter from A. J. STUART, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated 5th April 1884, No. 132:—  
In continuation of my letter, No. 131, dated 5th instant, I have the honor to forward, in original, Sub-Collector's letter, No. 282, dated 2nd idem, containing his remarks on the Draft Tenancy Bill.

ENCLOSURE of No. 1.  
From G. W. FAWCETT, Esq., Acting Sub-Collector, to the Collector of North Arcot, dated Vellore, 2nd April 1884, No. 282:—  
I have the honor, as requested in your letter, dated 13th ult., to make a few remarks on the Draft Tenancy Bill accompanying Board's Circular No. 442, of 13th ult., of the 11th February. It is unnecessary to comment on the general purpose of the Act. All Revenue officers will, I fancy, agree that its object is a good one, and that legislation on the subject is most necessary.

3. Chapter I, Section 4, Clause 1.—The expression "any renter of land revenue" would seem to be a mistake for "any land rented."

Chapter III, Sections 12 and 16.—Any raiyat who having held—holding by his representative in interest being equivalent to his holding—any raiyat land in the estate, for twelve consecutive years, is a holder of general any raiyat land in the village or the date on which the Act comes into force, will, under Sections 12 and 16 of the right of occupancy in that land; and he will also have a similar right in respect of the may hold after that date. Those, I think, who have a similar right in respect of the of the raiyats. It is true that, in some estates, raiyats have come to be considered as at-will, and are constantly being ousted from, and deprived of, their holdings; yet those that pass a year without holding some raiyat land in the village or estate must and, if so, the term "Ordinary Raiyat" for them seems a misnomer. I would suggest be called "Non-Occupancy Raiyat." A misnomer of the kind might, I think, lead to error in interpretation of the Act by the proprietors and their tenants.

5. Sections 12 and 16.—(a) Is it intended to give a right of occupancy to under-tenants Sections 12 and 16 taken with (b) the definition of "Raiyat and Raiyat lands" will give such right I don't think this advisable. (at all) If not, is it intended that holding as an under-tenant should qualify for occupancy right as a landlord's tenant? It will qualify under these sections; but I don't think it is advisable.

6. Section 12.—(1) The meaning of this sub-section is doubtful. Does it mean, in the case of a man holding different raiyat land every year, that, in order to qualify him for the condition of a settled raiyat, all such lands must be in one village, in an estate comprising more than one

village or is it sufficient if he has held raiyat lands in different villages? This should be stated, or the point will be disputed.

7. Section 13.—This section seems to me very dangerous. Suppose a raiyat to be ejected unlawfully; a year might pass before he got restitution, and then his status and occupancy right would be gone, in most cases never to be recovered. A sharp Zemindar could very easily deprive his raiyats of their occupancy rights under this section. A proviso should be added to the effect that the word "ceased" in the first line of the section shall be deemed not to include any cessation brought about by means declared by this Act to be illegal. In connection with this point, it is to be noted that there is no penalty provided by the Act for illegal ejectment; and that it is not even mentioned in Section 61 as a matter in respect of which a suit may be filed. I shall refer to this under Section 61.

8. Section 21.—If Section 13 be amended in the way I suggest, there will, I think, be no necessity for this section. When the proprietor has acquired the occupancy right in a legal manner, there is no reason, that I can see, why he should be obliged to make it over, even on a premium or "fine," to an "ordinary" or "non-occupancy" raiyat.

The section is not necessary, it is to be noted, when the land is taken by one who is already "Occupancy Raiyat," for such raiyat acquires the right in any land he may hold after the date of the passing of the Act.

9. Section 21.—The section speaks of the proprietor acquiring the occupancy right; but there is no provision in the Act enabling him to acquire it. It is, I presume, intended that he shall be deemed to have acquired it where the person holding the right surrenders, or abandons, the land, is ejected under the Act. This should, I think, be stated.

10. I would add a section to the Act, enabling "Ordinary" or "non-occupancy" raiyats to purchase the right of occupancy from the proprietor; the price to be regulated entirely by private agreement. It would not, I imagine, be quite safe to allow a corresponding purchase by the "Proprietor" from an occupancy raiyat, even with the approval of the Collector.

11. Section 25.—The constructive "surrender" mentioned in this section can only be enforced by a suit for ejectment under the proviso to Section 79. This Section 25 appears, therefore, unnecessary. It would not, I think, be safe to allow ejectment without suit, even in such cases.

12. Sections 26–28.—These rules appear to me excellent.

13. Chapter IV.—This chapter provides general rules on the subject of the rent of lands under occupation, and the procedure for varying that rent; but lays down no rules for fixing rent of lands newly taken up, or taken up after a short interval of lying waste. No rules are necessary in the case of "Ordinary" or "non-occupancy Raiyats," for, under Section 22, it will be entirely a matter of private agreement. Section 21 also fixes the rent in cases where the land lying waste was last held by an occupancy raiyat. But there are no rules for fixing the rent to be paid by an "Occupancy Raiyat" who takes up new land, or land formerly held by an "Ordinary" or "non-occupancy" raiyat. It is intended, I presume, that the matter be left to private agreement. I think this should be stated.

14. Section 39.—The wording of the section would seem to require alteration. Otherwise, agreements for the collection of the raiyats', &c., share of the road-cess will be void.

The conduct of a landlord levying additional imposts would not always come under the definition of "extortion," as defined in the Indian Penal Code—an Act passed by the Government of India.

15. Section 40.—Six months seems an unnecessarily long period. Three ought to be enough.

16. Section 50.—I do not see the necessity for interference on the part of the Board of Revenue or of Collectors in the matter of kists; except where the parties can't come to terms themselves. Where this is the case, I would allow the kists to be settled by a suit before the Collector under Section 61.

17. Sections 52–54.—It is not stated whether the absence of patta or muchilika makes any difference in the proprietor's power. I would leave the proprietor power to sue for rent even when there were no patta or muchilika, but not the power to apply for distress under Section 92. This should all be specifically stated.

18. Section 53 (3).—I don't see why a proprietor should be bound by law to keep copies of receipts. It is a point, I should say, for his own consideration. If, however, it is to be the law, a penalty of some kind must be provided; otherwise the clause will be nugatory. The abstract of the Section 54 (1), by the way, mentions such a penalty; but there is none in the text of the section.

19. Section 54 (1).—One month is, I think, a sufficient time to allow, or, at the outside three.

20. Section 54 (2) & (3).—I don't see why the raiyat should be made criminally liable for refusal to give muchilika, while the proprietor is only liable to a civil penalty for default

exactly corresponding. An act to come within the criminal law ought to be an act directly or indirectly, the general public, or in which the general public are, to some extent or at the very most it might serve as an example to other raiyats, and induce them to refuse damages proved, and the trouble of the suit would probably be a sufficient penalty. The proprietor should be allowed to sue for a muchilika. The costs and damages would, I think, prove a sufficient penalty when a proprietor neglects to give putta. It is always, I think, sufficient for the law to declare the right and give them the means of enforcing those rights by suit. Any further interference is, I think, mischievous.

21. *Section 54 (continued)*—The section provides for certain procedure by the proprietor and raiyat in case of either making the default specified, and provides the penalties just discussed but gives no power to enforce the putta and muchilika, or to alter it when it is not, in the Collector's opinion, a proper one.

22. *Sections 54 (2) & (3)*—The wording in the case of the proprietor is "If... neglects," but in the case of the raiyat it is only "If... refuses." The words "on one month after demand" should, I think, be inserted after "refuses." The words "received a putta of the kind described in Section 52" should be inserted after "neglects." The proprietor should first give putta himself, before he demands the muchilika, which Section 52 declares to be its counterpart.

23. *Section 58*—The Collector should, I think, be empowered to deduct a small percentage of the amount, and credit it to Government, to operate as a check on the proprietor.

24. *Chapter X, Section 61*—I can't see any reason for ousting the jurisdiction of the Civil Courts in suits for the recovery of rent. Such suits are, now within the cognizance of District Munsifs. They will be a great burden on the Revenue Courts without, so far as I can see, any advantage. Even suits for ejectment might, I think, fairly be left to the Civil Courts. Suit to enforce putta and muchilika and suits to recover restitution and damages for illegal ejectment should be added to the list given in the return.

25. *Section 67*—I don't understand why written statements are not ordinarily to be filed. Plaints are to be in writing, and the Code of Civil Procedure is to apply. Written statements are ordinarily filed in the summary suits now heard under Act VIII of 1865, and save a great deal of trouble.

26. *Section 74*—I would provide that, when the rent of a holding has been enhanced or reduced, no suit to vary the rent shall be for ten years; except in the case of improvement by the proprietor, or alteration in area, the case noticed in Section 43. This would be similar to the provision in the new Irish Land Act.

27. *Section 75*—It is declared in Section 22 that the rent payable by an "ordinary" or "non-occupancy" raiyat is to be regulated entirely by private agreement between him and the proprietor, subject to the limitation provided by Section 34—this is, by the way, misprinted in Section 24 in Section 22—and Section 47 declares that any landholder may, subject to the like restriction, enhance the rent of an "ordinary raiyat." It seems unnecessary, therefore, to call in the assistance of the Collector in his case except to eject in case of refusal.

28. *Section 77 (1)*—This seems to me harsh and unnecessary. The proprietor may be allowed interest at 12 per cent. and expenses. This with the costs of the suit, would be a sufficient penalty.

29. *Section 77 (3)*—The wording seems to need correction. It is not intended, I fancy, that execution can be ordered till the expiry of the appeal time.

30. *Sections 79 et seq.*—The provisions on the subject of ejectment and compensation for disturbance seem fair.

31. *Section 91*—The words "Collector of the District" where they first occur in the third line, appear to be a mistake for "District Judge" in accordance with the abstract, and the words "District Judge" in the first line of sub-section (3).

32. *Chapter VI*—This chapter deprives landholders of the power, given by Act VIII of 1865, to distrain of their own motion. I am not aware of the reasons for this change. The power of distress has not, so far as my experience goes, been abused. The suit for damages for illegal distress provided by Act VIII of 1865 seems to me to provide ample remedy. The chapter will throw a great deal of work on revenue officers, for no advantage that I can see. There will, too, be a considerable establishment needed, to carry out all the distraints applied for with any degree of promptitude; and they will be entertained at the cost of Government, for the Act provides no means of paying them. Perhaps the 5 per cent. charged under the present Act was omitted from Section 104 by oversight. It should be entered. Also it is not necessary that the distraining and the selling officers should be the same person.

as the Act provides. If they are, the cost of the establishment will be much greater. A peon on Rs. 5 or Rs. 6 can distrain; he cannot be trusted to sell.

33. *Section 106 (3)*—I don't see the necessity for the words "Not being the defaulter." Such a receipt ought to afford full protection to the defaulter too.

34. *Section 107 (2)*—Where is the suit to be filed? In the Revenue Courts, or in the Civil Courts?

35. *Section 110 & Section 116 (a)*—The acts contemplated might possibly not come within the definition of the offence of criminal trespass, and the Indian Penal Code is an Act of the Government of India.

35. *Section 112*—The "Section 93" is a mistake for "Section 92."

READ—also the following letter from A. J. STUART, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Punganoor, 7th April 1884, No. 135:—

In continuation of my letter, No. 132, dated 6th instant, I have the honor to forward herewith copy\* of memorandum by the Deputy Collector on General Duties on the Draft Tenancy Bill.

From the Collector of Arcot, dated 16th April 1884, No. 157.

READ—also the following letter from A. CRUICKSHANK, Esq., Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 7th April 1884, No. 170:—

With reference to the Proceedings of the Board, dated the 11th February last, No. 464, I have the honor to forward herewith copies of the remarks of the Sub-Collector, Head Assistant Collector, and the Deputy Collector on the bill referred to therein.

2. I have no remarks to offer, as the Bill seems to me to meet all the difficulties that have hitherto arisen in rent recovery cases.

#### ENCLOSURE No. 1.

From KANCHI SUBBA RAO Pantulu Caru, Deputy Collector, to the Collector, South Arcot District, dated Chidambaram, 12th March 1884, No. 114.

Adverting to your footnote, No. 551, of the 29th ultimo, to Revenue Board's Proceedings, No. 464, of the 11th idem, calling for a report on the draft of Madras Tenancy Bill, I have the honor to state that the principles of the Bill would have been more easily gathered had the memorandum by the Honorable D. F. Carmichael regarding the said Draft Bill been circulated with the Draft Bill. The study of the Bill has become difficult inasmuch as no objects and reasons" printed at the foot of the Bill, as it has been usual.

2. The Draft Bill deals with several questions of right unknown to most parts of the Madras Presidency hitherto, and it was highly expedient to give sufficient time for the study and discussion of the various subjects before calling for a complete report. As only a fortnight's time has been allowed for submitting this report, I fear that this is by no means complete and satisfactory report.

3. I will now proceed with the Draft Bill.

*Preamble*—A ryot or puttadar in a Government ryotwari village is practically a proprietor as soon as he obtains putta and he is not interfered with in his dealings with the land in any manner he likes so long as the putta is not cancelled either by relinquishment or by the sale according to Revenue Recovery Act or a decree by a Civil Court, &c. Whereas according to this Bill, a ryot cannot have the titles of "settled ryot or Occupancy-Ryot" unless he continually holds rent-paying or raiyati lands or private lands for not less than twelve years. Under such circumstances and for several other reasons, a tenant in a proprietary village cannot claim equal footing of security with the puttadar of a Government ryotwari village both in rights

and interests. A puttadar in ryotwari village must be termed as a landlord, like proprietors or inamndars, though the former pay full assessment and the latter too pay that on favorable terms. The attempt at placing a cultivating ryot in a zemindary village on the same footing as that of the puttadar in a Government ryotwari village must seriously interfere with the rights and interests of the landlord himself; if not, it would also create numerous confusions in the present long-standing usage, and would accordingly result in endless suits between proprietors and tenants. To give no cause for such results, the rights and interests of the proprietor or landlord himself has first to be distinctly defined. Such rights and interests do vary from district to district, if not from taluk to taluk. So it is a matter for a deep and patient consideration to render justice to both landlord and tenant. I would, therefore, suggest that the following preamble will meet:—

"Whereas it is expedient to make better provision for defining the relations between landlords and tenants and for the collection of rents, it is hereby enacted as follows:—"

## CHAPTER I.

## PRELIMINARY.

Section 1.—I would call it Madras Rent Recovery Act of 1883.

Section 3.—The final consideration of the Bill shall not be attempted at unless it is with objects and reasons is published in all vernaculars for not less than twelve months.

Section 4.—"Estate." (d) may be substituted by "muttas" such as in Salem District, (e) putta lands in Government ryotwari villages shall be added. If not, Section XIII of the Act VIII of 1865 shall form part of this Act unless it is contemplated that a separate Act be passed to meet such cases. When one or two be joint putta for an entire Government village, the lands are naturally sublet to tenants upon some conditions. The latter do cultivate them paying rent to the puttadars. So both of them shall legally be bound to each other so far as their respective interests are concerned in connection with such lands. In my opinion, the Bill under consideration shall be made equally applicable also to puttadars in Government villages.

"Proprietor." Shrotriamdars and inamndars are not registered as proprietors of an estate in the Collector's registers, and so the definition of "proprietor" is inconsistent with sub-section 1. In my opinion, the word "proprietor" need not be defined, as the word "landlord" will meet for all the purposes.

"Private land." By these words, the franchise of the draft means lands kept for the personal tillage of the landlord. I fail to see why the land cannot be treated as such land ever since the landlord commences to cultivate it with his own plow and seed. It is a word known to Northern Circars, and it means to lands pawn as "khas" in Malabar, not generally mean to "private lands." They are practical. The definition may, therefore, be as follows: "private land" means to "khas," "par" or "kamattam," or lands under the landlord's own tillage.

"Raiyati land" means "raiya's land." It would naturally mean to those lands which pay rent either in money or in kind to the landlord. I fail to see why "homestead" and "or the land in the occupation of ryots" under "raiya's land." It should properly be free, from immemorial of time, shall be in use for public purposes. In all earliest and ancient accounts, it may be found that a portion of the village area has been always treated as "porumb," such as village-site, tank, river, path, thrashing, burial and burning grounds, &c. In fixing peishcush, porumb lands have been always deducted from the gross assets of the estate. I therefore submit that treating "homestead land" as raiyati is open to the objection of being injurious to the tenant, and the elusion, therefore, is not at all just and necessary for the Act now under consideration. With these observations, I would define "raiya's land" as follows:—

"Raiyati land" means those lands on account of which rent is paid by the tenant to the landlord either in ready money or in kind.

"Raiyat." To include a proprietor under this head in respect of private land is apparently unnecessary.

"Rent" means to payments either in money or in kind by the tenant to the landlord or by the under-tenant to the tenant. These, I submit, clearly and distinctly define the word.

"Landlord." I would strongly recommend that the very words in which the word "landholders" was defined in Madras Act VIII of 1865 be adopted in defining this term. They do meet for all purposes.

"Tenant." I would add "to the landlord" after the last word "rent."

The following terms also need definitions:—

|                              |     |             |
|------------------------------|-----|-------------|
| Under-ryots or Under-tenants | ... | Section 34. |
| Imports                      | ... | Do. 39 (2)  |
| Civil Court                  | ... | " 61        |
| Ejectment                    | ... | " 86        |
| 1. Superior Landlord         | ... | " 108       |
| 2. Inferior do.              | ... | " 108       |

## CHAPTER II.—

## PRIVATE AND RAIYATI LANDS.

Section 5.—I suggest that the landlord and tenant shall be allowed to appeal to the Collector within sixty days after publication of the register, in cases where they are not satisfied with entries made by the Curnam as regards the extent, description and rent of the lands, &c., and the register shall not be a final document until the claim is settled finally by a Court of law to whom a second appeal is made. If this indulgence is not allowed, the register is entirely worthless for reference in a judicial point of view. The Government have nothing to do with individual registers, inasmuch as the permanent settlements have been made with the landlords. The Draft Bill in its subsequent part claims no reference to this register in defining any questions. Even granting that the registers are required for the guidance of landlords, the preparation thereof should not at all be left to the Curnam without any supervision and binding over him. A landlord would, for the purposes of this Act, naturally claim more lands than usual as his private, and every raiyat would claim to be a settled raiyat, though he may not have held lands in the village for twelve years consecutively. If accounts for twelve years have been preserved, the register may be prepared with reference to those entries subject to being checked by a committee, not less than five in number, under the orders of the Collector, and at the cost of the landlord and tenants, to be borne proportionately to the area occupied by each for cultivation. This section requires wider discussion.

## CHAPTER III.

## The Settled Raiyat.

Section 12 (1).—The words "or estate" twice occurred in this section may be omitted. A person may become a settled raiyat of the village by holding lands for twelve years therein; the same man cannot be a settled raiyat in the village if he holds lands in several villages when he is not a settled raiyat in any one of them. The whole estate must be in the same village.

Section 14 (1).—A landlord purchases a homestead land from another and allows a settled raiyat to occupy the land for a dwelling-house, &c., subject to payment of an annual rent. The said raiyat ceases to be a settled raiyat by desertion or death. Has not the landlord the right of permitting another to occupy the site on similar condition? If not, it seriously interfere with the right of the landlord. Here the tenant held it temporarily and would be just if it reverts to the landlord. Even the puttadar in a Government village is not such a right. The liberal policy of the Government has always been to protect and newly create rights and privileges in favor of a man, whether he is a landlord or tenant, in property. I therefore suggest that, in lieu of the words "notwithstanding any contract to the contrary," the following may be substituted—"subject to any contract between the landlord and tenant."

## The Occupancy Raiyat.

Section 16 (1).—I do propose the same amendment as that I proposed as regards Section 14 (1).

Section 18 (1).—I would add a proviso after the last word "land" thus: Provided it is not contrary to any written contract between the landlord and tenant.

Section 20.—The words "subject to any contract between the landlord and tenant" shall be substituted for the words "notwithstanding any contract between them, to the contrary."

(a).—"And of the landlord" shall follow the last word "tenant" to meet the policy of the Act.

Section 21.—It is not clear whether the landlord can retain such lands as his "private land," or no objection. In that case, it would be reasonable if the tenant is made to acquire the occupancy right by holding such lands for twelve years consecutively.

Section 23.—This is apparently a section securing a new right in favor of a cultivator even if he has not held the land for twelve years. I am afraid that this would work injuriously to the landlord.

for fear of being deprived of the occupancy right will not generally make over lands for cultivation to a person even for a year, and on the other hand employ him on daily wages. Government allows free trade and it regulates not any prices at which articles shall be sold. Under such circumstances, why a landlord alone shall be put under such restrictions and freedom interfered with? The policy of the Government shall, therefore, be far from even new rights in favor of those who acquire it not by any other consideration. I would, therefore, substitute the words "contrary to any contract between the landlord and tenant" for the words "notwithstanding any contract to the contrary."

Section 26 (2).—"Proviso."—The words "of the land" shall be inserted between the words "value" and "of."

Section 28 (1).—It would be really very hard if a cultivator for a year builds a substantial house in the land without the permission of the landlord. Save in Malabar coast, it is a well-known fact that raiyats generally reside in the village-site, but not in the fields. Suppose a person builds a house as soon as he is allowed to cultivate the land for a year and he surrenders the land the next year; notwithstanding, he does not quit the house, which is, on the other hand, not required by the landlord; is not the latter put under the unnecessary difficulty to proceed with the ejection of the said person in due course of law? I would, therefore, suggest that an ordinance shall not be entitled to make any improvement without the landlord's permission.

(2).—This clause must be removed from the Bill. There will be endless suits filed and would entail the necessity of opening additional courts for the disposal of such suits.

Section 29.—"Proviso."—When there is not such a restriction as regards putting land in Government villages, I see no cause why a landlord shall not be entitled to measure the land at least once in a year. The proviso, as it is, interferes too much and very unnecessarily with the freedom of the landlord. The lands are not demarcated. For want of field-boundaries, it is natural for ryots to encroach upon adjoining lands though it may be seen while covered with crops as the ryot's usual land. It may, therefore, be found necessary to have the land measured that the tenant may not be let off from paying rent for the excess. This procedure is in vogue even in Government villages where the field boundaries have been marked out both on the ground and on the map. For these reasons, I suggest that the landlord may be empowered to measure the land not more than once in a year if necessary.

#### CHAPTER IV.

Section 34.—The prevailing rates of money-rent does vary with reference to the quality of the soil, the nearest durable and free means of irrigation even in the same village. Where the cultivator has not to render customary labor for cleaning, the channels and where the source of irrigation is full or 800 per acre. The rate of money-rent varies from twelve-sixteenths of a rupee to one rupee, and many landlords who have to pay between ten-sixteenths means lands kept up by the poor soil and the difficulty of word "proprietor" to twelve-sixteenths of a rupee, as the landlord and the cultivator know the value of the holding. Where he is not to render labor for cleaning, the matter to their option, or else they pay these rates by competition and the land is valued with the free trade and bargain. There are cases in which even five-sixteenths are not paid, but would propose that it may be ten-sixteenths. The maximum rate of five-sixteenths is, therefore, to pay any tax to another, while the rate as to what rate he may let or have. So it is reasonable to not fix favourable rate on inams as the legislature will be taken as interfering very unreasonably with the rate of rent from tenants as they do the country. If the maximum rate is at all to be fixed, it should be ten-sixteenths instead of five-sixteenths as now proposed.

Section 35.—The words "Government" shall be omitted. The Government is not bound to pay any tax to another, while the rate as to what rate he may let or have. So it is reasonable to not fix favourable rate on inams as the legislature will be taken as interfering very unreasonably with the rate of rent from tenants as they do the country. If the maximum rate is at all to be fixed, it should be ten-sixteenths instead of five-sixteenths as now proposed.

Section 37.—If there is competition among settled ryots to pay rent higher than that by the former tenant, why the landlord has to pay to Government. The Government is not bound to sustain loss of rent from ryots surrendered by a tenant and while the landlord cannot be allowed to receive collect from ryots in Government villages. Where there is no such competition, the landlord should be deprived of that higher rent? While a landlord to let the land to lands surrendered by a tenant and while the landlord sustains loss of rent for some years until a settled ryot occupies the land, why should he be allowed to receive collect from ryots in Government villages. Where there is no such competition, the landlord should be deprived of that higher rent? While a landlord to let the land to lands surrendered by a tenant and while the landlord sustains loss of rent for some years until a settled ryot occupies the land, why should he be allowed to receive collect from ryots in Government villages.

Section 39 (1).—In addition and where a settled ryot offers to cultivate the land for settlement between the landlord and the ryot, I suppose there is no objection for the landlord without hire. Are the cultivator on that reduced rent. Does not in this case the landlord sustain loss of rent for some years until a settled ryot occupies the land, why should he be allowed to receive collect from ryots in Government villages. Where there is no such competition, the landlord should be deprived of that higher rent? While a landlord to let the land to lands surrendered by a tenant and while the landlord sustains loss of rent for some years until a settled ryot occupies the land, why should he be allowed to receive collect from ryots in Government villages.

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Section 41.—See remarks on Section 34.

Section 42 (1).—Apparently, there is no justice in telling that the contract between the landlord and tenant shall not be enforced. I would, therefore, suggest that the sub-sections 2 and 3 of this section may form sub-sections of Section 35 and the sub-section (1) shall together be struck off.

Section 43 (1).—"Subject to any contract between the landlord and tenant" shall be substituted to words "notwithstanding any contract to the contrary."

Section 44 (1) and 47.—Vide remarks on Section 34.

Section 49.—The decree of the Collector is unnecessary when both parties agreed and the settlement executed and duly registered in a Sub-Registrar's office. Cases where both parties do not agree may, of course, be laid before the Collector for disposal.

Sections 50 and 51.—Although this provision will not affect large zemindaries consisting of several taluks, it would interfere with petty proprietors, shrotriendars and inamdars holding one or two villages which would be under their daily reach and control. A tenant raises both dry and wet crops in different lands and these crops are harvested more or less from September to May. When the ryot reaps a crop, the landlord asks him for the instalment and receives it without hardship both to himself and the cultivator. If, on the other hand, he has to receive only in four instalments, the cultivators, who would in a generality of cases have consumed grain already harvested, will be put under difficulty in paying up kists in large sums, finally at a time when he has no crop in hand. As a rule, tenants are poor and they are generally indebted to others but landlords. A money-lender waits on every harvest and takes whatever he could. If the landlord on the spot is placed under legal restriction that he should not demand money more than four times a year, not only he would suffer but also the tenant would have to be bullied by either of them. When both landlord and creditor are present at the thrashing ground, the tenant will satisfy the two demands to a certain extent so pull on without much hardship. For all these reasons, I am ventured to say that there will be no legal restriction as regards collecting kists or instalments of rent.

Section 54 (3).—It would be a difficult task to take such a case before a Magistrate. The Magistrate would argue that muchilka he is required to give is not a proper one. It may be turned into a revenue question for settlement. So the word "Collector" may be substituted for "Magistrate."

Sections 55 to 59.—These provisions would throw considerable work on Collectors or their Divisional Officers, and they cannot be carried out without additional establishment to be entered into at the expense of tenants. Similar inconveniences are felt by Government village puttas when they suspect the conduct of village authorities. The law thus framed encourages those who buy or receive in mortgage lands already sold or mortgaged to others and who try to collect evidence in proof of their having paid money on account of the disputed land, though the money would have been paid to the landlord or villagers by the man who has got it by a previous title-deed.

Section 61 (3).—What shall be the procedure of the Civil Court after it receives a reference?

Is the determination of the Civil Court to be embodied in the Collector's decree or should it have an independent effect? So far as the point of law is concerned, there will be no difficulty in embodying it in the decree. How far the determination of Civil Court on the point of fact is binding on the Collector who pronounces judgment? In my opinion, the reference on the point of fact is unnecessary.

Sections 65 and 67.—It would throw considerable labor on the Revenue Court if it is to take up the statement of every defendant. So many officers would find it convenient if the defendant is made to file a statement, and they were made to settle issues and to pass decree after hearing evidence adduced by both parties.

Section 72 (1).—I hope the one-fifth referred to herein is above the existing rent. If it is inclusive of that, it would contradict with five-sixteenths allowed by Section 34.

Section 77 (3).—Written application is always safe.

Section 79 (1).—Can any occupancy-ryot be sued on similar ground?

Section 80 (1).—Not only this seems to be an unusual provision, but also the Collector will find it very inconvenient to determine the amount of compensation in each case. It would, therefore, be safe and convenient for all purposes if the raiyat's interest in the land is first sold in public auction. If it is not purchased by others, the landlord can move the Court to eject the ryot without any claim for compensation.

Section 83.—This section may be made applicable only to occupancy-ryats but not to any raiyat at all, because it would tend to numerous petty suits and quarrels.

Section 85.—The Collector shall, on application by the landlord, eject the tenant after the crop sown by the latter under Section 84 (a) is reaped.

*Section 86.*—A landlord is to be ejected on the motion of tenant under this section. under what circumstances the latter can do so? Does the word tenant mean to settled, occupied and ordinary raiyats or any one of the three? This being a new provision unknown to Act VIII of 1865, it needs full explanation.

*Section 91 (3).*—The Civil Court has power to determine any point of law or fact referred by the Collector under Section 61 (3). Otherwise, the Court cannot entertain any suit. It is not clear in what suits the Court's decrees or orders would be applicable. The law is specific and distinct on this point.

*Section 92.*—As a rule, a landlord has no right to claim for rent till it falls due on the prescribed instalments. Thereafter, he should ask the raiyat for the rent, and if he fails to pay, the former has to move the Collector for the distraint of crops. It cannot be expected that the Collector would be left on the holding ungathered by the time the Collector's order is executed by the distrainer, which shall not in any case be less than fifteen days from the date of the presentation of the application. If these distrainers are not permanently maintained in the office of the Collector at the expense of landlords, the distraint cannot be carried out by the ordinary revenue establishment, and each case will not be disposed of even for several months together. On the whole, this section, if passed will practically be a dead letter, as it is inoperative. If the interests of the landlord are to be preserved, he shall be empowered to distrain crops, and in this respect the same procedure as that laid down in Act VIII of 1865 will suffice.

*Section 93 (1).*—In addition the following also shall be specified.

(g). The date at which and in what manner a demand was served on the tenant for payment of the rent.

*Section 102.*—The purchaser shall not be allowed more than three days to pay up the purchase money. The resale shall be conducted at the risk of the defaulting purchaser.

*Section 110.*—It is against common justice to find a landlord guilty of criminal trespass on his own land.

*Section 116-A* may be omitted as the provision is made in Section 110.

From the Collector of Arcot, South dated 9th April 1884, No. 171.

READ—also the following letter from H. St. A. GOODRICH, Esq., Collector of Arcot, to the Secretary to the Board of Revenue, dated 6th April 1884, No. 998:

I have the honor to report, as directed in Resolution of the Board, No. 464 of 11th February 1884, upon the Draft Bill circulated therewith (which may, for convenience, be described as Davitt's Bill).

*Chapter I, Section 2.*—The Bill is totally unsuited for the regulation of the relations of those interested in land in the scheduled districts, which will, I presume, be excepted from its operation.

*Section 4.*—It is on general grounds highly desirable that the titles of zemindaries holding under sanads be defined. At present it is absolutely uncertain by what mode of succession any one of the zemindaries devolves. The inevitable contest will be each of them sooner or later, and in turn they will be ruined in due course like Nuzvid.

I have myself been constrained to advise a firm, who proposed to embark upon an enterprise likely to produce enormous benefit to the country, that in a zemindary the zemindar might be an encumbrance for life, but that his position as a successor is dependent upon the caprice of the Government and Courts of the day.

The present Act may have been framed with the object of bringing capital to the land. That object will be served materially by a declaratory statute defining the rights now so ill-defined.

*Chapter II, Section 1.*—The men who now hold the office of Curnam in zemindaries are not possessors. The complete register might of the skill requisite for the conduct of a survey, with any penalty for inaccuracy. This seems insufficiently recognized by the

A register of existing holdings may be required, and their extent may be tested by measurement on the motion of landlord or tenant as provided in the Bill. Applications for waste may describe the grant applied for by landmarks, and the landlord may grant such waste at his pleasure with or without measurement.

Even in zemindaries which do not march with the scheduled districts, the boundaries of villages extend into mountainous jungles and are not always ascertainable.

To require a complete survey with the introduction of the Act would do much to make it unworkable. I would substitute penalties of Rs. 5 and Re. 1 for those provided (Rs. 100 and Rs. 20).

*Chapter III.*—The management of many villages in zemindaries has, I believe, been as follows: a small syndicate of half a dozen of the ryots guarantee the demand, and the villagers distribute the land and apportion its rent amongst themselves.

Are all such systems, devised of old for the joint security of the Government, the landlord and the tenant, to be swept away in an instant?

Here the landlord has expressly declined to accept, in the relation of tenants, the majority of the cultivators.

In my opinion, where such a syndicate have executed works of improvement or reclamation, they should, for a term proportioned to the return already derived by them from their outlay, retain the status of settled raiyat over the whole land.

*Section 12 (1).*—If an Act much resembling the present Bill is to be passed, the liberty of the subject cannot be respected so far as to permit of his entering into contracts. I would, however, deprecate the cancelment of written contracts entered into before 1st January 1884. This note applies to Sections 15-20 and to the Bill generally.

*Section 12 (2).*—I would advocate the provision of limitations to the application of the law of merger, if it apply in India, which seems not quite certain. I would permit the transfer by sale of the status of settled raiyat of a village or estate freely; but would require notice to the landlord with permission to him to bid for and acquire the same by payment of its full cash value; land so bought by the landlord becoming his private land which he may farm through a bailiff or let on warum as he pleases. I can imagine no more profitable investment of a thrifty zemindar's capital than the buying up of lands which may have become settled at pepper prices.

*Section 14 (1).*—I would forbid subletting of the settled holding or of the 'bastu' land held in respect of the holding. Land only let for reclamation or improvement should be excepted and its subletting permitted.

*Section 20 (e) (f).*—I fully adopt Mr. H. L. Harrison's words "The occupancy-right is sacred to the cultivator. To sublet it is an abuse." I desire the application of capital to the land. What larger security can the Mahajan desire? What more can the law give him than the whole saleable interest possessed by the cultivator in his holding? The cultivator will be able to give this, the crops on the ground are held to be hypothecated for the current year's rent and are usually security enough. By allowing subletting, you throw on the land a class of cultivators who have less capital of their own and must therefore borrow more, and you decrease the security the cultivator has to give, by first burdening the land with the weight of every link of the chain of middlemen whom you recognize. Hear Thackeray (page 737, Fifth Report) "all intermediate agents must get a profit, and the more of them there are, the greater sum must be divided among them." (The whole context of the passage must be read and cannot be read too often).

I see no difficulty in providing that the occupancy-title of a ryot disqualified from managing his or her own affairs should reside in his or her guardian who might sublet the same to a cultivator for the period of the disqualification. There are arguments for and against such a provision, but I would give my voice for it, at least in the case of minors; and enact that (in their case) the cultivator should have a lease for the whole term of the minority terminable at its close without compensation except for improvements.

It will be observed that the payment of rent, in full or in part, is not a necessary incident of the period qualifying the settled or occupancy-ryot (by Davitt's Bill) for his high status.

**Section 24 (b).**—The failure to notify his intent to relinquish is entirely the tenant's fault and must, to some extent, damnify the landlord. If the latter lets a tenant may be at a loss of rental; and if he cultivates he cultivates at a great disadvantage. The tenant who fails to give the notice required by law should be held liable for the coming year's rent unless he prove that the landlord has suffered no damage, such profits as he may prove the landlord to have received being considered as a set-off to the latter's claim.

**Section 26.**—It is needful to remember the preamble of the Bill and its declaration of intention of placing zemindari ryots in the position which the Government ryots occupy. The latter cannot require their landlord's assent to any improvement.

A ryot holds field A under landlord X and fields B and C under landlord Z. By forming a reservoir upon A he can irrigate B and C, A being rendered unproductive. This is an extreme case, and the provision of 26 (3) would not apply, whilst that of 20 (a) in its restrictive sense would apply. But many cases might occur where the benefit of one set of holdings can only be secured at the partial cost of another set, and I believe the only safe rule will be to allow compensation to proprietors injured by a work carried out by or at the demand of a ryot, or by a proprietor, to be assessed by a panchayat.

I would provide that, before any work of irrigation be undertaken by proprietor or ryot, a full description thereof shall be published in three issues of the District Gazette; if any proprietor or ryot objects to the work on the ground of the likelihood of its injury to existing rights to water, the Collector shall (sitting with a qualified jurist affecting existing rights to water, the commencement of the proposed work, on engineer as assessor) permit or forbid the commencement and closing Rules for management conditions as to height of dams and waste weirs as he may order. Channels of distribution of flood-gates may be framed and periods of opening and closing may be prescribed by the same authority.

No power to deal with existing easements would be given; an appeal to the Civil Court, if a new easement were created or an old easement affected, would lie if any person were aggrieved.

**Section 29.**—This sudden respect for contracts? The measurement of land can only be desirable from the landlord's point of view if the ryot be holding a larger area than his lease gives him. It is not, however, stated as a justification of enhancement that a ryot may have been found to hold  $x$  plus  $y$  acres on a lease conveying  $x$  acres.

**Section 33 (1).**—Most local measures known to me are measures of capacity applied to land, and their length varies with the quality of the land, if (which seems impossible) length can be indicated of a measure of surface irrespective of its other dimensions.

**Chapter IV.**—The grant to the holders of permanently-settled land conveyed the right to collect the State share of the gross produce of those lands.

In the country from which I now write, the share which was left to the cultivator of the Vizianagar Kings is believed to have been a half of the produce. History forbids us to suppose that Marattas and Muhammadans, Hyder and Tippu, remitted any part of the share of the ryot.

The Behar Rent Law Committee state the shares of the landlord and that of the cultivator to be by custom equal.

Mr. Dampier (a most competent witness) states the landlord's customary share to be nine-sixteenths in Lower Bengal, though his radical colleague, Mr. Mackenzie, thinks half the produce ought to be left to the ryot. The Bengal Rent Law Commission unanimously (Report § 47) deprecate the endeavour to replace existing rents immediately by a new standard.

The "Fifth Report" is a mine of information relating to the period of the grant to their holders of the permanently-settled estates of Madras Presidency. Swatantrams being first deducted, the ryot and the Government seem to have shared alike in many places, *ex. gr.* (376, *sqq.*, Hurdiss on Dindigul, Fifth Report). The report on North Arcot shows the Government share in irrigated land as  $46\frac{1}{4}$  of the gross produce, and the ryot receiving  $53\frac{3}{4}$  and paying the established fees can barely have been receiving an equal proportion for himself. In 1808, the Board (two of whose members were Hodgson and Thackeray) report (page 571, Fifth Report), that when this Government acquired its territories the Circar share was generally received from paddy land in kind at rates varying from 40 to 60 per cent. of the gross produce after certain deductions. In the district from which I write, they report that the assessment there lately settled by Colonel Munro averaged 45 per cent. of gross produce.

**Section 34.**—The five-sixteenth standard set up is made applicable to all lands. It is lower than the customary rates on the best irrigated lands, it is higher than the present rates on the worst soils and on the greater part of the unirrigated land held. In the districts I know best, Ganjam and Vizagapatam, I will cite three proprietors (all good landlords) on whose estates for the best irrigated lands the rent has customarily greatly exceeded five-sixteenths of the gross produce. They are Kallikota, Urlam and Bobbili.

The commutation rate should be a fair average estimate of the price at which ryots sell in their villages at harvest time, and not (like that of the Government settlement department) a minimum to which prices scarce ever fall; by the erection of the false standard proposed, we may force down money rates as compared with grain rates, but we shall be more likely to compel an almost universal return to the division of produce and the receipt of rent in kind.

The Courts which administer such a law as it is proposed to enact may be led by the proposed section to forget that no single standard of the customary or just division of its gross produce can apply to farms—good and bad—irrigated and unirrigated—near home and outlying.

**Section 37.**—Proprietors have very frequently granted lands on favorable terms as regards rent, to persons who have performed in the past, or who may bind themselves to perform in the future, services for them. They have frequently granted lands on favorable terms to persons holding priestly offices. They have frequently granted lands on favorable tenure for terms, stated or indefinite, to persons who have advanced money to them as a bonus on entering or as a fine on renewal of the tenure. It is necessary to save the proprietor's right to the full rent of all land which has been in whole or in part alienated for service due to, but no longer needed by, himself alone; alienated in consideration of an advance which has been repaid by the benefits already enjoyed by him who made the advance; alienated in excess of authority, *ex. gr.*, for a period longer than his life-time by a predecessor who had no more than a life-interest.

**Section 39 (2).**—Custom has sanctioned many additional imposts, and it will be well to provide that none such can be levied in future; the provisions of Section 40 are ample for the purpose. The framers assume that landlords will defy the law unless acts, now (at worst) misdemeanors, are made felonies by statute.

All landlords have not been bad landlords, though a few of them have obtained as much from the cultivators of their estates as our Courts have permitted them to take.

To provide ample security for the cultivator may be the duty of Government, but to grossly insult a class from whose privileges, as now enjoyed, a large part is about to be withdrawn without compensation, for the public good, seems to me as unwise as it is unwarrantable. Gentlemen possessing the limited interest in land left to the Madras zemindar are entitled to protection from such ruffianly attacks. I would strike out also the last clause of 110 and the last clause of 116-A, as well as that of Section 39.

**Section 42 (3).**—After "recovering," insert "in addition to rent."  
**Variations in Rent.**—It is not, but must be, clearly provided that Government may, at any time, carry out such permanent improvements as irrigation works affecting

large areas of permanently-settled land; the effect of such works may be the increase of the gross produce, a share whereof is due to Government; and the Government may accordingly require additional payments from the holders of permanently-settled estates and permit them to collect proportionately enhanced rents from the area affected. It is, in my opinion, desirable to enact that railways made by State aid and an improvement which may be followed by enhancement of rent, on proof of the increased money value of the produce of the soil resulting being afforded.

See my note on Section 72 (c).  
Sections 44—45.—For "produce" read "staple crop." In both sections, it need to be provided that the rent of a parcel of land let at so much per acre, on the holding being proved by measurement to exceed or fall short of the area specified, should be enhanced or diminished proportionately.

Section 46.—Once in thirty years appears to me sufficient for an enhancement of the nature described. The term corresponds to our own present term of *settlement*.

Procedure for varying Rent.—If the Government take powers to enhance *peish* cash, which they must do if they will not levy a water-rate or a railway-rate in permanently-settled estates, they must provide a special procedure.

Section 52.—No oral contract for rent should be enforced. I would advocate that every lease be not only written but registered.

Section 53.—Receipts must be given for all moneys levied under the same sanction as that whereunder rent is collected. All such receipts to be on counterfoam: I regard this last suggested provision as one greatly enlarging the tenant's security.

Section 54 (3).—Unless, I presume, he shall have served a notice for a reduction of rent under Section 48.

Section 61 (1) (i) (a).—Add "its boundaries, extent, classification and the encumbrances attaching thereto;"

(VI).—The apportionment of rent in consequence of the *division* of the interest of the proprietor or of the interest of the ryot.

Section 61 (3).—Why should a Collector refer a point of *fact* to a Civil Court?

Section 65.—The result I should anticipate from this attempt at a short cut would be a plentiful crop of appeals. The settlement of issues puts parties frequently in positions they did not expect to occupy, especially with regard to the burden of proof. Let them have time to look round.

Section 69 (1).—By what process is the Collector to satisfy himself that a man whom the legislature has declared not a free agent to the extent of capacity for contracting is or is not a free agent to the extent of capacity for making admissions?

Section 71 (i).—I would read, for "the amount added to the rent shall be calculated at," "the rent fixed shall be similar in amount to." Perhaps I make no change in the sense, I am doubtful if I rightly understand the sentence as it is printed.

Section 72 (c).—"If it is not proved that the increase has taken place by the agency or at the expense of 'the proprietor or the raiyat or the predecessor in interest of either of them,' (but is due to the expenditure of funds—the proceeds of general taxation by the Imperial Government), 'the proprietor and the ryot shall each be entitled to half the benefit.'"

The enactment of this provision seems to go far in the direction of making rational administration of the empire impossible.

Section 72 (d).—"The enhanced rent" seems to be used in the sense of "the amount added to the rent at any one time;" if not, I fail to understand this provision.

(1)  
Section 72.—There is plenty of land worth under irrigation sixteen times as much as it was worth before it was supplied therewith. There is a five-year limit over which the Collector's Court may spread the increments by which the full rent found to be fair may be attained. The ryot's protection is sufficient.

Section 75 (1) (2).—If a *settled* ryot is directed to pay an enhanced rent for improvements executed by the proprietor to his land and fail, it is presumed that he can be ejected.

Section 80.—Improvements should only be paid for on proof that they are unexhausted, and that, by reason of their having been made, the present letting value of the estate is greater than it would otherwise have been.

Sections 107—108.—If the policy of cutting down the number of middlemen by denying permission to sublet ordinary holdings be carried into effect, the conflict between the rights of superior and inferior landlords will not often arise.

So far on the wording of the Draft Bill and the thoughts suggested by its sections. I will merely add that a large subject is untouched—the mode of dealing with existing arrears. It has been by some considered an excellent characteristic of the tenure under these estates that the rents of bad years were left uncollected to be paid in good years when the tenant's barns should overflow.

The Act with some modifications will no doubt be workable, but not (in my belief) without a Commission to go over the ground and settle this question of arrears. Even when this is laid to rest, the work in such districts as Ganjam, Vizagapatam, Godavari, Nellore, North Arcot and Madara will be far in excess of the power of disposal of the present establishments.

READ—also the following letter from J. STURROCK, Esq., Collector of South Canara, to the Secretary to the Board of Revenue, dated Mangalore, 10th April 1884, No. 888:—

I have the honor to submit the report on the draft Madras Tenancy Bill, called for in Board's Proceedings, dated 11th February 1884, No. 464.

2. Beyond a very short preamble, there is no statement of the objects aimed at or of the reasons for which such objects are deemed desirable, and I am not sure that I quite understand the extent to which landlords and tenants in this district would be affected by the passing of the Bill in the present form. In the North Canara assessment case it is admitted that the ordinary landholder or "Múlavargdar" of Canara is "the proprietor of an ancestral hereditary estate," but notwithstanding some evident mistake in Section 4 (i), (d), it seems abundantly clear that, under the definitions given, he is not a "proprietor" and he owns no "estate."

3. Assuming, however, that a detailed criticism of the language and form of the Bill is not what is wanted when a report is called for from all Collectors, I shall confine myself to a few observations on what seem to me to be the important changes introduced in the Bill as regards the landholders of the district generally.

4. Chapter III.—This chapter refers mainly to raiyats holding "raiya" land, and as "raiya" land is defined to mean "land in an estate," and ordinary "wargs" in Canara are not "estates" as defined in Section 4 (1), the bulk of this chapter evidently does not apply. It is not clear from the definition in Section 4 (IV) whether Section 18, and consequently Section 20, is meant to apply or not. If it is meant to apply, it should be more distinctly stated. The inference from Section 20 generally, and notably from the provision in Section 20 (g) that the interest of an intestate occupancy raiyat shall go to the "proprietor," seems to be that, except when there are proprietors, there are no occupancy raiyats, and I shall therefore submit my remarks on the supposition that Sections 18 and 20 are not applicable to Canara generally.

5. Chapter IV.—Section 34 provides, without saving existing contracts, a limit to the rents payable by raiyats, and fixes it at five-sixteenths of the estimated average annual value of the gross produce.

The questions which arise for consideration in connection with this section are—

- (1) Is it necessary to fix a limit.
- (2) Is five-sixteenths of the gross produce a suitable limit to fix.
- (3) Is it necessary to extend a provision of this kind to existing contracts.

With regard to the first point, I do not think there is any urgency as regards this district, but here and there a tendency to rack-rent appears, and I can easily imagine circumstances arising under which such a measure would be urgently called for. I have therefore no objection to offer to the broad principle of the proposal, but I am not satisfied that five-sixteenths of the gross produce is a good limit to select. I do not know what there is in the nature of things to make eleven-sixteenths of the gross produce expressed in staple crops a suitable amount to be retained by the cultivator whether the holding be large or small, and applicable alike to the case of a man watering 100 cocoanut trees early in the morning and working elsewhere as a cooly all day, and to that of a family raising three crops of rice a year as is done on many lands of this district. The theoretical basis of Harihar Raya's assessment of Canara in 1341 was that eight-sixteenths of the gross produce was the amount necessary for the expenses of the cultivator and the maintenance of his family; so that so far as this district is concerned, it cannot be said that a reservation to him of eleven-sixteenths has the sanction of ancient usage or sentiment. From Section 45 of the report on the Bengal Tenancy Bill in the *Gazette of India* of March 29th, 1884, it appears that the corresponding provision of that Bill (Section 119) has been abandoned, a majority of that committee being of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections were also taken to the principle underlying the proposal. In consideration of the total absence of statistical information in this district as well as on general grounds, I am disposed to agree with the majority of that committee; but I am compelled to confess that I am not prepared with an alternative proposal as already explained in paragraph 20 of my letter recorded with Board's Proceedings, dated 20th March 1884, No. 1002. In the absence of urgency, I do not think that anything should be done so far as Canara is concerned until effect has been given to the recent decision of Government that there shall be a resettlement of this district, or at any rate until the principles of the resettlement have been determined.

Whatever limit may be fixed, I desire to record an emphatic protest against its being extended to existing contracts. The landlords of this district have expended much capital on their land, and there is certainly nothing approaching such a state of suffering from rack-renting as could justify the introduction of a measure to benefit tenants at the expense of rights hitherto peacefully enjoyed by landlords.

6. Section 39.—Here also existing rights should be saved. "Mulgeni" or permanent leases exist under which services have been rendered as part of the consideration for the tenancy from before the beginning of the century. The utmost that should be done with regard to old contracts is to empower the tenant to sue for the commutation of the service to a money-payment.

7. The Head Assistant Collector proposes that Section 52, &c., which provide for annual engagements and receipts should be extended to purely raiyatwari districts, or at any rate that landholders paying revenue directly to Government should not be allowed to sue for arrears or ejection unless they have exchanged annual engagements with their tenants. With these proposals I concur, except that permanent tenants, and tenants on long leases, need not have annual engagements also. As there is not a Curnam for each village, but only for each Magane, the potail should be authorized to attest.

8. Sections 55 to 59.—These provisions seem very satisfactory, and I would extend them to the case of rent payable in kind by providing for the deposit of the market value of the produce deliverable.

9. As Section 61 refers to suits between "proprietary" and raiyats, and as Canara landholders are not "proprietary" under the Act, it seems that Chapter V is not applicable here.

10. Chapter VI.—This chapter very materially limits the right of distraint at present enjoyed by landlords, so much so that it will probably be a dead letter. Theoretically I think that much can be said for the change if we look only to the relations of landlord and tenant; but when, as in this district, a landlord usually holds but a small piece of land and the Government come down summarily upon him under the provisions of Act II of 1864 if he fails to pay his revenue, it seems hard not to give him some summary means of recovering the rent from which that revenue has to be paid. So far as this district is concerned, there has been no such abuse of the provisions of Act VIII of 1865 as to call for any extensive restriction of the powers afforded under that Act.

11. In this district there still remain some temple trustees and others to whom assignments of land-revenue have been made in lieu of money-payments formerly made from the treasury. I think it should be made perfectly clear that these men are not "proprietary" of inam "estates" under the draft Tenancy Bill. They have no rights whatever over the land, and do not stand in the relation of landlord to the "Wargdars;" and as the main object of the present Bill is to replace ryots on estates on the same footing as Government ryots, the greatest care should be taken not to make any more transfers of Government ryots. All assignees of Government revenue were recently offered payments on the "beriz deduction" system, but the liberal allowance which had been made of 12 per cent. for cost of collection, &c., led to several of the assignees refusing to accept the offer. Under these circumstances, there will be no injustice in refusing them any assistance towards the collection of the assigned revenue. It is still open to them to obtain payment of the amount due on the "beriz deduction" system.

READ—also the following letter from J. F. PRICE, Esq., Collector of Chingleput, to the Secretary to the Board of Revenue, dated Saidapet, 7th April 1884, No. 174:—

I have the honor to submit the opinion called for in the Proceedings of the Board of Revenue, No. 464, dated 11th February last, and to forward, at the same time, the remarks of my General-charge Deputy Collector, Mr. Pinto, who is the only officer who has as yet replied to the reference.

2. The Bill is one which professes to have for its main object to place the ryots, in settled estates, on the same footing of security as those of Government estates, and this being the case, I think that it would make matters more simple instead of following the Bengal Tenancy Bill, the system in proprietary estates was assimilated to that of the ordinary ryotwari settlement. I myself do not see the object to be served by creating different classes of ryots. Under Government there is but one, and the plan works well and smoothly. It is distinctly understood by the ryots that they have an occupancy right which cannot pass from them unless they fail to pay the Government dues; there is an assessment which Government engages not to meddle with for a stated and fair period, and the people are beginning to learn that if they make improvements which do not interfere with the interests of other ryots or those of Government, they are allowed to enjoy the full benefit of them. Government certainly does not lose by its bargain, and I do not see why the same system should not work well in zemindaries, &c.

3. Another strong objection which I have to the Bill is that under it the whole of the work, including the hearing of appeals, is thrown upon the shoulders of the Revenue officers. These are all overburdened as it is. For a Revenue officer to be of any use and to govern his charge, whether a division or a district, properly, he must move about and see things for himself. This the Board and Government have of late insisted upon. It is impossible to do this kind of thing when one is hampered with everlasting suits and appeals. To make a progress, with points fixed a month or six weeks beforehand, can be productive of but little good; every one has a long notice and anything unpleasant can be set straight before the censor can pounce upon it. A Revenue officer should be free to move wherever he thinks fit, and he should have no engagements to prevent his, at any time, altering his mind as to his line of country.

Setting this consideration aside, every one who does anything like what the orders of the Board of Revenue and Government demand of a Revenue officer has more than enough to attend to. It is quite a mistake to suppose, as seems often to be the case, that suits under the Rent Recovery Act are "summary." They are anything but and are of a both lengthy and troublesome much more so than an ordinary civil suit. Under the proposed Act suits will be more numerous than they now are, and work will, instead of decreasing, increase. The suits under Act VIII of 1865 are, as far as my experience goes, a source of constant complaint on the part of divisional officers. How they will manage to perform their ordinary duties when the number is doubled or tripled, as it must be if the Tenancy Bill in its present form becomes law, is a matter upon which I have the gravest doubts. I do not see how the work is to be got through without shuffling and hurry, unless Government are prepared to provide a very much larger establishment than at present exists. It appears to me that it would be far better to let Civil Courts take all suits under the Act. I do not see what advantage there is in a Collector's dealing with them. A Civil Court, it seems to me, is just as competent to consider and decide any point which could arise as a Revenue officer would be. The only argument which occurs to me in favor of allowing matters to stand as proposed is that suits would take less time, but I doubt very much whether, when the Revenue officer's files grow heavier, this would be the case.

4. I shall now proceed to remark upon the Bill.

5. Section 4 (i), (d) does not appear to be very clear—*vide* the word "estate" in Sections 14 and 37. (IV) The use of vernacular terms, without explanation, is contrary to the orders of Government, and there are not many persons likely to understand what those which appear here mean. I certainly do not. (V) "Homestead land" is nowhere defined. (VI) This definition would appear not to include land occupied for planting a casuarina tree or growing jungle, even though held, as is often the case, on puttah. The definition would exclude road-cess, village servants' *merahs*, tank *merahs* and water-rate. The first of these certainly can be lawfully imposed. The others have been held by Civil Courts to be leviable, and I do not think that there can be a doubt that they are. They are apparently not claimable "in respect of the use or occupation of land."

6. Section 5.—I do not see why the Carnam should be made responsible; making him so only adds to the Collector's work, as he would have, perhaps, a hundred persons to keep up to the mark instead of one. Why should not the landlord be bound, in all cases, to submit the return as is done as regards land-cess?

7. Section 11.—The word "bastu," in the margin of the section, is not defined. It would be unintelligible in a Tamil district. Who is to decide whether a dwelling house is "suitable" for the ryot and his family or not, and what are to be considered the "necessary out-offices?"

8. Section 21.—What is an "agricultural year?" It is not defined. If by it is meant a "fashi," why not use the word? I consider it objectionable that a resignation should invariably be at the end of an "agricultural year." I think the rule followed in Government villages are more equitable, and would suggest that these should be made legal in settled estates, &c. It seems to me to be a pity to abolish the provision of the existing law that a tenant may, in addition to the formal procedure under which acceptance is compulsory, relinquish his land at any time with the consent of his landlord.

9. Section 25.—This will lead to difficulties, and I do not see the object of it. Say that there is a famine, and that the man can neither cultivate nor pay. He still remains and wishes to remain. How is he to be turned out? Would doing so be just and in accordance with the practice of Government as regards its own ryots?

10. Section 26.—It appears to me that this should be included under the definition at the beginning of the Act. Nothing is said in regard to planting trees, which would seem to be "an improvement." The timber on an estate is, I believe, always taken into consideration when valuing it: an orchard certainly would be.

11. Section 27 (2).—This does not put a tenant in the same position as a Government ryot. The Government does not meddle with its ryots and leaves them to

themselves. I can conceive nothing more irritating or likely to cause quarrels than to allow a landlord to enter upon a holding and do what he may consider "an improvement" and the tenant not. The Bill does not seem to provide for the settlement of any dispute arising from this cause. I do not see why a landlord should have a right to dig a well in his tenant's land when the tenant does not wish it. It is fair enough to lay down that a landlord shall not make an improvement without the ryot's consent, but I would not go further.

12. Section 28 (1).—I do not see the utility of this, when (2) provides that if the landlord does not make an improvement, required in writing, the tenant may make it himself.

13. Section 29.—I do not comprehend the necessity for the proviso to this section. It would seem to tend only to add to correspondence without any resulting benefit to any one.

14. Sections 30 and 31.—Incorrect sections are quoted here.

15. Section 34.—This would seem to exclude the landlord from the right to charge a rate for water or second crop on one-crop lands. Water may be used for dry lands and a second crop may be grown one year and not in another. How is the "average" to be calculated? How many years are to be taken, who is to fix it and how are the prices to be settled? Are they to be the prices in the particular village, or of the nearest market town, or of the head-quarters of the taluk? Claims for water-rate and second crop are a fertile source of quarrel, and I consider that the law should distinctly lay down whether they can be made or not, and if they can, at what rate. The rules on this point, as regards Government ryots, are distinct and workable.

16. Section 37.—This, if I read it correctly, amounts to fixing a money-rate for ever in the case of a "settled ryot." Doing this seems rather hard on the landlord. Government have retained to themselves the right to enhance the assessment, if they see fit, within a fixed period.

17. Section 38 (2).—No manner of publishing appears to be prescribed.

18. Section 39 (1).—Land-cess, village servants' *merahs*, &c., are "impositions in addition to the actual rent." Who should prosecute? Who should impose the fine mentioned in (2), and how should it be levied? The word "abwab" is used in the margin of the section without a translation. It appears to me to be contrary to the maxims of law that a man should be twice punished for the same offence: (2) provides for two distinct punishments for one and the same act.

19. Section 42.—*Váram* is here spelt "warum."

20. Section 44 (1).—I think that the law ought to provide that a money-rent is not to be increased or decreased within a fixed period. That in force as regards Government settlements seems to be too long. Ten years would, I think, be fair. If there is not something of this kind, there will be constant bickering and quarrels. With *váram* there would be no difficulty, as it is a division of produce.

21. Section 46.—Who is to determine the market-value of the land? This section, on a reference to Section 14, appears to apply to "homestead land," which is not defined.

22. Section 47.—I think that the period or periods at which the encroachment may be made should be distinctly specified. The Government takes to itself no such power in the case of ryots holding under it.

23. Section 49.—I do not see why, if a landlord agrees, there should be any legal proceedings regarding the document under which he does this.

24. Section 50.—The Bill does not define the term "tenure-holder."

25. Section 52.—It would be advisable (*vide* Section 4, XII) to insert under (c) the instalments of the rent payable; (e) may be meant to convey this information, but it is not distinct. (e) I do not see how the "quantity and description of produce to be delivered" can be shown beforehand. "*Váram*," as I understand it, is a share of the produce, and one cannot very well tell how much that will be or of what kind. The substitution of the word "share" would make matters more intelligible.

26. *Section 53 (1).*—I would suggest the insertion after "proprietor" of the words "or of some person duly authorized by him."

27. *Section 54.*—I do not see why a proprietor alone should be fined by the Collector for not delivering a putta and the tenant, who will not execute a muchilika, be tried and fined by a Magistrate. It seems but just that they should both be on the same footing.

28. *Section 55 (1).*—I do not see the necessity for this section. It will give an infinity of trouble without corresponding advantage. (2) How is the fee to be payable, in cash or in Court-fee stamps?

29. *Section 57.*—Who is to pay the charge for postage? Is it to be met from the fee referred to in *Section 55 (2)*?

30. *Section 59.*—Saying that no claim is preferred by the depositor and that no payment is made, what must be done with the money?

31. *Section 62.*—Why should only a "gumastah" be deemed to be the recognized agent of a landlord? It would prevent trouble and delay if any one holding a power-of-attorney from the landlord was regarded the recognized agent.

32. *Section 72 (d).*—This appears to be opposed to the provisions of *Section 34*.

33. *Section 91 (1).*—In the margin there appears the entry "appeals to District Court." In the section itself it is stated that the appeal is to the Collector. (3) Nothing is said in the Bill of the power of a District Judge to pass any decree or order on appeal. The only sections in which, as far as I can see, reference is made to a Civil Court are 58 and 59.

34. *Section 92.*—There seems to be here some typographical error, for no sense can be made out of the portion containing the words "and no landlord." The section, as it stands, is incomprehensible.

35. *Section 96 (1).*—This is contrary to the practice with Government ryots. The demand has to be shown first, and then, if it is not satisfied, the attachment follows. (3) I do not see why the ordinary rules in regard to the service of demands should not be adhered to.

36. *Section 97.*—The necessity for this provision is not apparent. It seems eminently calculated to produce a plentiful crop of quarrels and magisterial complaints. Why not adhere to the law as laid down in *Act II of 1864*?

37. *Section 107 (2).*—Before whom should the suit be brought?

38. *Section 111.*—Why not make this simply abatement of criminal trespass?

39. *Section 119.*—Bill does not provide for how parties, not being landlords, may appear in suits brought under it. This places the tenant at a disadvantage for, in a suit, a landlord may appear by gumastah, whereas the tenant must, apparently, either conduct his case in person, or through a vakil competent to practice in Civil Courts, and who would make him pay for his services.

40. *Section 120.*—This seems to me to be, as it now stands, a dangerous section. I consider that the cases in which the Act should apply should be distinctly and clearly specified.

41. I would invite attention to the fact that the Bill under consideration apparently cuts away the ground from under the feet of renters of other than "land-revenue from Government." *Section 86, Act VIII of 1865* now protects these, and *Section 11, Act III of 1864*, which it is not proposed to abolish, provides for the collection of their dues by abkari renters, but it must be remembered that the Tenancy Bill, when it became law, would govern the procedure to be followed, and that it takes away the power of distraint by the landlord, who has, excepting in the case provided for by the unintelligible *Section 92* of the Bill, to go through the lengthy process of suing the defaulter at a great waste of time and trouble. Why the power of distraint by a landlord should have been taken away, I cannot imagine. Mr. Pinto, in paragraph 17 of his letter, gives figures which show how very little danger there really is in leaving this authority in the hands of landlords. These are

the figures of a district, litigious in extreme, and it would probably be on examination found that a large proportion of the 78 suits referred to by the Deputy Collector were decided against the plaintiffs. Why either Collectors or Civil Courts, whichever it is finally decided shall try causes under the coming Act, should be hampered, quite unnecessarily, with a flood of suits for the recovery of rent, is a question which calls for serious consideration. What is the utility of such a cumbrous and elaborate system; what real benefit does it confer upon any one; has there ever been any really valid complaint of the present mode of collecting arrears of rent (excepting the arrest of the defaulter, of which I disapprove)? How can the General-charge Deputy Collector, for instance, get through, in addition to what he already has, over 600 suits per annum, and how can he be expected to itinerate? Why should the Government ryot be liable, without a suit, to have his goods and chattels attached and sold for arrears of revenue, whilst this process can be applied to the Zemin ryot only after the full formalities of a Civil Court?

42. I would, with all deference to the accomplished and experienced framer of the Bill, submit that, provided that the exchange of proper puttass and muchilikas is rigorously insisted upon, proprietors may safely be left to collect the rents due to them in the same manner as the Government does its revenue. If, however, it is considered that proprietors of estates should now, when education and western civilization have gained ground in the country, and when the mass of the people know that there is such a thing as law and are not slow to avail themselves of it, be deprived of powers which they have held and exercised for the major portion of a century. I would suggest that a staff of Government servants, to be paid from fees to be levied as the Government process fees are, should be maintained, that proprietors should be bound to put in, whenever a claim for rent arises, a statement such as that described in *Section 93* of the Bill, and that, on this being admitted, the arrear should be collected by the special establishment in the same manner as provided for the collection of arrears of revenue, the tenant having of course, as he now has, the right to bring a suit to set the distraint aside.

43. It appears to me that the Bill is far too elaborate, that it provides for matters which call for no provision, that it abolishes much which is useful in the existing law, that it is in advance of the times, and that it is weak in the very important point of definitions. How the ryots are to understand it, I cannot imagine. *Act VIII of 1865* is bad enough, but the Tenancy Bill is a much more bewildering piece of legislation.

#### ENCLOSURE No. 1.

From A. PINTO, Esq., Deputy Collector, General duties, Chingleput, to the Collector of Chingleput, dated Oothoocottay, 29th March 1884, No. 247.

With reference to your No. 1097, dated 1<sup>st</sup> March 1884, I have the honor to submit the following remarks on the draft Tenancy Bill. For want of time I have not been able to go into the matter more deeply than I have done.

1. *Chapter II.*—Lands are classed as private and rayati, but nothing is said of (1) land reserved for common purposes of the village, or of (2) those enjoyed rent free.

2. In respect of these items, questions frequently arise, for instance, (1) reserved lands are cultivated, assessed and entered in a putta, and (2) rent free or inam lands, when dry, are irrigated from the proprietor's irrigation source, or when single crop wet are cultivated with a second crop by means of such irrigation. A single crop wet inam is also liable to the charge of village officers' merrahs. Provision has to be made for assessment and collection of these items by the proprietor.

3. The Curnam is to prepare a register of private and rayati land, but there is nothing to induce him to prepare a correct one, or to deter him from preparing an incorrect one. What if he includes porambokes under rayati and so forth?

4. *Chapter VII.*—Ryots are classed into (1) settled ryots, (2) occupancy ryots, and (3) ordinary ryots, and these are to have various rights.

5. One of the objects of this Bill, as indicated by its preamble, is to place the rights and interests of these ryots on the same footing of security as those of the Government ryots. The

Government ryots as such have interests alike, and these do not vary according to the number of years one has owned a puttah. An ordinary ryot under this Bill is to have rights inferior to those of an occupancy ryot; is liable to be ejected simply for not paying rent—*vide* Section 79 (1); he cannot improve his holding—*vide* Section 23 (1); and forfeits it if he leaves it uncultivated and the rent unpaid for one year—*vide* Section 25. This is not placing him on the same footing as a Government ryot.

6. In order to keep to the professed object of the Bill, a distinction should not be created between an occupancy ryot and an ordinary ryot. The real distinction between them is innate and does not require legislative authority; the land of the former would be more favorably situated, more thoroughly broken up, manured and improved and more valuable; that of the latter would be inferior in all these respects, which would make all the difference.

7. Sections 24 and 25.—As to surrender and abandonment of land, the rules might be the same as those in force in Government villages, *viz.*, that a ryot may be permitted to resign land within a fixed date every year, such date being the same as that in force in Government villages. Section 24 (2) is a wholesome provision; the date of presentation of application to the Collector might be declared to be the date of resignation. Section 25 is in excess of the rules in force in Government villages, and would open a door to much evasion and litigation, the weaker party always going to the wall.

8. Sections 27 and 28.—The provisions as to "improvements on ryots' holdings" in Sections 27 and 28 are not likely to result in practical good. Nothing affords a greater impetus to improvement than security of tenure. If the ryot is assured that his holding is secure to him as long as he has his puttah in his hands and he is not liable to be interfered with, he is sure to make his holding worth having. But once he knows that his landlord can pounce upon him, enter upon and meddle with his property on one plea or another, his action is paralyzed. The terms "reasonable time" in Sections 27 (2) and 28 (2) would lead to evasion and litigation.

9. It would be more wholesome to provide that where a proprietor intends to carry out general improvements in his estate he can be allowed to acquire the land necessary for such improvements under the same rules as are applicable to the acquisition of land by Government for a public purpose and under their orders.

10. Chapter IV.—The definition of rent given in Section 4 is not precise and exhaustive. It says that "rent means whatever is payable or deliverable in money or kind in respect of the use or occupation of land." It is customary to collect tank merais and village officers' merais with the rent payable to the landlord. I think the words "to the landlord" should be inserted between "deliverable" and "in money," and the words "and include tank and village officers' merais and nothing else" should be added to the definition. This would prevent the landlord from claiming temple merais, Coopatan and Padoochelavoo (fees that it has been customary in the villages to collect from time immemorial).

11. Prescribing different rules for enhancement of rent of land held by different classes of ryots is not consistent with the professed object of the Bill, and will not place the ryots of proprietary villages on the same footing as Government ryots as already remarked.

12. Sections 52 to 54.—As regards puttahs, they need not be annual, unless there is any alteration or addition to make; this would save much litigation and waste of time.

13. Sections 51 (3) provides that if a ryot refuses to deliver a muchilika, he is to be criminally punished. Supposing he did refuse because the puttah was incorrect, is he liable to be punished? The puttah may be incorrect in many particulars. The words "without reasonable grounds" might be interposed between "refuses" and "to deliver."

14. Chapter V.—This chapter throws the disposal of the whole litigation between landlord and tenant exclusively on the shoulders of Revenue officers; and, to add to their burthen, entirely abolishes the present practice of distraint and sale of moveable and immoveable property on the proprietor's own responsibility. The result will be that the number of suits for recovery of rent will increase by the number of distraints (if not more) which at present average about 659 a year in this division.

15. At present ryots know that, if they won't pay, the landlord can attach their property as well as crop, and they have therefore the inducement to pay and save their property. If these summary powers were taken away from the landlord, and the tenants could not be touched except after obtaining a decree, all inducement to pay would be gone, and they would withhold payment until the last moment.

16. In such circumstances the suits for recovery of rent will increase, and all these suits as well as the ordinary suits will have to be disposed of by the Revenue authorities. This it would be impossible to do with the present establishment.

17. There are, in my division, 170 proprietary estates, and the number of distraints (659, \* of which only 78, are contested) is by no means alarming. This shows that the present summary powers exercised by proprietors, at all events in this division, are not misused to any great extent. No flagrant instance came to my notice. Until, therefore, the Government can see

\* Average of four years 1880—83.

their way to increasing their Revenue establishment where proprietary estates are numerous, there seems no harm to continue the summary powers of distraint to proprietors as hitherto.

18. Section 62.—Section 62 provides that every gumastah of a landlord empowered by a written authority under his hand shall be deemed to be his (landlord's) authorized agent. Is the written authority to be stamped or not? If it is to be stamped, how does it differ from an ordinary power-of-attorney? If it is not to be stamped, it would be as well to state so. These remarks also apply to the same terms used in Section 119. There is no provision for a conveyer agent for a tenant which would be placing him at a disadvantage.

19. Section 91 (1).—In Section 91 (1) the last words "High Court" are perhaps a clerical error for "District Court."

20. Chapter VI.—The words "and no landlord" in Section 92 are not intelligible.

21. This chapter deals with the procedure for distraining crops. These distraints are to be made through the Collector. Before the formalities are gone through and an officer is appointed and sent out to distraint, the produce in nine cases out of ten will disappear. These provisions too would be simply unworkable unless the Revenue establishments are greatly increased.

22. There is no provision for stopping or cancelling the distraint if it appears that the application was made without lawful ground or fraudulently.

23. I think it would be simpler to recognize only the puttah ryots and no others, and to otherwise assimilate the provisions of this Bill to the provision of the law for the acquiring and holding of land under, and recovery of revenue by, Government, provision being of course made for the acquisition of puttah under rules similar to the Durkhash Rules applicable to Government villages. The puttah once granted should be declared to be irrevocable, except as regards rates of rent which should be allowed to be enhanced or reduced periodically under the same rules as are applicable to Government villages.

24. A non-puttah ryot under such provisions can be allowed to apply for a puttah for land let to him for cultivation or for hitherto untouched land under certain rules, and to sue the proprietor with that view, if necessary; but, if he does not choose to have a puttah, he should content himself with holding as a tenant-at-will. Similarly, the proprietor can be allowed to grant him a puttah or to compel him by a suit to accept it; but if the proprietor would have him as a non-puttah ryot, he (proprietor) should not be allowed to have recourse to the Tenancy Act for the recovery of rent due by him. These provisions will maintain the equilibrium between the landlord and tenant. It is enough if the law puts the means into the power of either.

25. The present Rent Recovery Act provides for suing for a puttah, but the Durkhash Rules or something like them are not embodied in it, and this makes the difference between a Government ryot and proprietary ryot.

Read—also the following letter from J. F. PRICE, Esq., Collector of the Chingleput District, to the Secretary to the Board of Revenue, dated Saidapet, 16th April 1884, No. 199.

I have the honor, in continuation of my letter, No. 174, dated 7th instant, to forward a copy of the remarks of the Acting Sub-Collector on the draft Tenancy Bill.

ENCLOSURE No. 1.

From R. SEWELL, Esq., Acting Sub-Collector, to the Collector of the Chingleput District, dated Chingleput, 8th April 1884, No. 471.

I have the honor to report on the Madras Tenancy Bill, as directed in your docket, No. 1097, dated 11th March 1884.

2. I regret the delay, which has been caused by the pressure of jamabandi and the large quantity of daily work thrown on me in this office.

3. I need not go into the general principles of the Bill and its fundamental changes in the status of landlord and tenant. Plenty of other gentlemen will do this, and it is to be supposed that the Government have definitely made up their minds that some such changes are necessary before they embarked on the Bill at all. But I think it very desirable that a very clear and definite statement of objects and reasons should be invariably circulated along with such draft Bills as this, pointing out the changes introduced and the necessity for their introduction, together with the general principles of the "new departure." It wastes a great deal of valuable time for each officer called on to report being himself compelled to search the Bill and

ascertain for himself what the changes are that will be produced by it. As many officers are called on to report, many valuable hours are thus wasted throughout the presidency.

4. I do not look forward with any pleasure to the introduction of this Bill as it stands. The general principles as regards the ensuring fixity of tenure and the rights of the respective parties are excellent, but in the method of working them out I think much improvement might be made. I fear that the Bill, as it stands, will tend enormously to increase litigation, and that the Divisional Officers' Courts in some districts will be almost hopelessly overwhelmed with work. In this division another official would be required solely for the purpose of settling these cases. Already under Act VIII of 1865 I have had filed in my court for hearing in the first three months of this year 311 suits, and I shudder to think of the number that will be filed under this new Act if it comes into force.

5. I can see no possible reason for throwing the burden of hearing and deciding these rent suits on the Revenue officials. It is a move in the right direction to do away with the farce of calling these suits "summary." They now stand as regular civil suits, and the Code of Civil Procedure is to be fully adopted. There is thus no difference between the procedure in these rent suits and that in any other class of civil suits. Then why should they not be adjudicated on the regular Civil Courts? I can see no difference whatever between a suit for the recovery of rent of land, and a suit for the recovery of rent of a house. It is absurd to say that the Collectors and their Assistants are better able to judge and decide rent suits than the Civil Courts, on the ground of their familiarity, or supposed familiarity, with the country and the customs thereof because in a regular civil suit such as these are, every custom and fact must be proved by evidence and cannot be adjudicated upon without proof. Besides which, I have no hesitation in saying that an average District Munsif would, as a rule, know more about the customs of a particular tract than an average Revenue Divisional Officer, since, as a rule, the former is longer in the country than the Divisional Officer, whose charge is constantly being changed. The rapid changes in the personnel of a District Revenue establishment are proverbial, and it is flying in the face of known facts to legislate on the assumption that an average Divisional Officer, as he stands, is minutely acquainted with all the villages, tenures, customs and habits of the tracts in his charge.

6. I therefore strongly deprecate the present intention of converting Revenue Divisional Offices into complete Civil Courts for all purposes connected with rent suits. I have no objection to the practical working of the Act taking place through the Collector and his subordinates, but all suits should lie to the recognized Civil Courts. The constant change of officers in the Revenue Department, the constant necessity for going on circuit, the constant pressure in some divisions of heavy miscellaneous work and magisterial duties, will, I have not the slightest doubt, result in practically far greater delay and uncertainty in the matter of suits, than would be experienced if the law caused them all to be filed in the Civil Courts of the district. It will be a great misfortune if the present proposals are carried into effect in this direction.

7. With this by way of preliminary I proceed to details.

8. Section 4 "Estate" (d).—Between the words "any" and "Renters" add "lands held by"

"Proprietor," "Landlord."—The assignees, mortgagees, heirs, &c., of the principals should be included in the definition, so as to suit the terms of such sections as 21, 23, 25, 38, &c.

"Seri, Khas, Pannai."—These words should be defined.

"Raiyat."—The word "holds" is indefinite. A man may hold a putta for a piece of land and not cultivate, or he may hold as a cultivator and not hold the putta. Again, in this district is a Sukhavasi a "Raiyat?" or only a Mirassidar? To whom, for instance, under Section 52 should a putta be given? To a Mirassidar or a Sukhavasi, when both claim it? This will lead to confusion if not settled. It would seem wise to institute some such rules as the durkhast rules in Government villages, or the "usage of the country" should be respected as in Section 11, Clause 4 of the present Act (VIII of 1865).

"Warum" or "Varum" (Sections 35, 42), with the spelling fixed once for all, should be defined.

Section 5.—To be of value in evidence the accuracy of the Curnam's register must somehow be rendered unimpeachable.

(Sub-section 2).—The fines are unnecessarily severe. Reduced to a twentieth part of the sums named, they would be equally effective.

Section 16 (Sub-section 1).—A raiyat ought not to be allowed to acquire occupancy right quite so easily. "Holding" ought to be more guarded. Under this, rights might be obtained by an unauthorized cultivation of waste, or wrongful possession of land properly belonging to another.

Section 17.—I think there ought to be some limitation as in the Government Durkhast rules. Else a lessee for a term, who during that term is "proprietor" for all purposes of this Act, might, to injure the actual proprietor, introduce at his pleasure a lot of outsiders,—creatures of his own, sworn to his own interests and bent on injuring the real proprietor,—which outsiders would acquire indefeasible occupancy rights for all time.

Section 18.—A private contract to the contrary ought to be respected; else the proprietor is much at a disadvantage, and he will never allow a raiyat to occupy his lands for a period of twelve years. The section as it stands will give rise to inconvenience.

Section 22.—It seems to me that an ordinary raiyat will have, or ought to have, all the incidents of occupancy right defined in Section 20, except (6).

He has (a) by common usage and law; (e) by virtue of his holding; (a) do, and specially by Section 23 of the Act; (e), (f), (g) he ought, I think, to have by virtue of his having a real tangible interest in the land, which is capable of bearing a value.

Section 26 [Sub-section 2 (f)].—This is badly worded. As it stands the erection of a dwelling-house alone without "all necessary out-offices" is not an improvement!

Section 29.—What is the "General Register of Revenue-free lands"? Who is it kept by?

Section 35 (compare spelling of "Warum" in Section 42) "payable" (see also Sections 41, 42).—This requires definition thus—"payable by an express contract or a contract implied by local custom and usage."

Section 39.—I would erase Sub-section (2) as useless. Section 40 provides for punishment, and all that is necessary is to add to Section 40 a proviso that nothing shall be held to prevent the landlord from being prosecuted for extortion under the Penal Code. If Sub-section (2) is retained, it must be clearly stated how and by what authority the fine is leviable.

Section 42 (Sub-section (2)) "entitled to recover"—How? and what? Rent in kind I presume is meant. This should be stated; also how the landlord is to recover under Sub-section (3).

Section 44.—There is only one sub-section, so the number "(1)" should be erased, and the three grounds for enhancement of rent should be lettered "(a)," "(b)," "(c)."

For "in the absence of a contract to the contrary," I would read "notwithstanding any contract to the contrary," so as to be perfectly just to all parties (see Section 45). Contracts may be implied, and prescriptive right may be assumed by courts to have been acquired by long holding at lower rates which would absolutely bar all possible enhancements on any grounds by the landlord.

(1) "Prevailing rate." The expression is, I think, vague.

(3) I think this clause, as it stands, will give rise to perpetual attempts at harassing enhancements by unscrupulous landlords. It would be difficult to decide when a rise in prices is only temporary or casual.

Section 45 (a).—I do not see why the raiyat should not be allowed the benefit of a clause similar to the first of the preceding section. Why should he not be entitled to a reduction (just as the landlord is entitled to an enhancement) when the rate of rent paid by him is above the "prevailing rate, &c."

Section 46.—"Homestead" land is nowhere defined in the Bill (see Section 14), nor whether any rent is leviable for it except by custom.

Section 49.—Why should an executed agreement (which should be duly registered) not be held to be effective till made the subject of a suit?—vide Section 69 (2). A proviso, meeting cases of non-agreement, should be inserted in Section 49.

Headings to Section 50.—Definition of "Tenure-holder" required. Also of "under-raiyats." Presumably sub-tenants are meant by the latter expression.

Section 51 (1).—I doubt the advisability of retaining this sub-section. It might be attempted to be shown that due consideration had not been given by the Board to the question of instalments, and thus that the whole of their order was illegal. It is difficult to say to what length litigious parties, assisted by pleaders versed in legal chicanery, will not go when it is sought to upset some order that injures the party. The Board's order should be absolute. There is no reason to suppose that they will not use due consideration before passing it.

Section 52.—The most powerful engine under Act VIII of 1865 in upsetting all the relations between landlord and tenant is the putta. Landlords have been repeatedly put out of court by the fact that some clause or expression, or even one figure in the putta, is useless, or defective, or inaccurate. A single mistake has been held to vitiate the putta, and to render all action under it illegal. Therefore it should be most carefully determined what a putta ought to contain, and if it is considered that the contents (a) to (e) are sufficient, there should be a clause added to the section stating that the putta "shall contain nothing else." Then landlords would know how to frame their puttass properly. I should like to see appended to the Bill forms of puttass, muchilkas and other documents issued for the guidance of landlords and tenants, beyond which they would step at their peril, but within the limits of which they would be safe.

I do not see the use of annual puttass in every instance. Why should the parties not be left to contract for a term of years? The annual system will annually raise up all the pains and penalties of Section 54 and give rise to most harassing and constant litigation. Issue of

putta may be delayed by causes beyond the control of either party, as when *bond fide* doubt exists, &c. The doubt may be as to the rate, or as to the charge being made at all (for instance when land has been relinquished late in the previous fasli), or as to which of two claimants, one a *Mirassidar*, the other a *Sukhavasi*, should have the putta. It would be very unfair in such cases that Section 54 should be put in force.

(Clause 3).—It must be expressly stated that a raiyat need not accept an improper putta or execute muchilka therefor.

This section leaves all the present difficulties exactly where they now are. The law would never compel a raiyat to accept an improper putta, and it is under this that so many raiyats in this district shelter themselves and refuse, first, to execute muchilka, and finally, as the hostility between the parties increases or is fomented, withholds altogether payment of any rent whatever, all turns on the putta being a proper putta, and this should be very strictly provided for in the Act.

Section 53 [Sub-section (2) (b)].—This clause ought to be split up.

(c) The payer's name should be added.

(g) The entry should explicitly state the fact if no declaration is made by the raiyat.

(Sub-section 4).—This is unintelligible to me. Does it mean that, even though a receipt should be defective in all the particulars required by Sub-section (2), nevertheless it shall be held to be an acquittance in full? Then what is the use of the word "shall" in the phrase, "the receipt shall specify" in Sub-section (2)? Should "no" be substituted for "every"?

Section 54.—These clauses should be very carefully gone over before their form is finally decided on, for it is just such clauses as these that pleaders fix on in attempting to vitiate proceedings taken.

(Sub-section 2), last line, after "raiya" I would insert the words "on the land in question."

(Sub-section 3).—I do not see why a raiyat should be driven before a *Magistrate* and a landlord before the *Collector* for similar misdeeds.

Section 55 [Sub-section (1) (a)].—I think this is too elastic, and that the *Collector* would be too often called on to ascertain whether the belief was *reasonable*, a very difficult thing to determine.

Section 58 (2).—If the *Collector* pays the wrong man, where is the right man's remedy?

Section 59.—Granted that the tenant is bound to pay rent, and has used the land and got his profit out of it, why should his payments be refunded to him? why should it not be credited to Government in part-payment of the landlord's *peishkash* or *kist*?

Section 61. Suits to be before the *Collector* (see introductory remarks). I demur to this *in toto*. They ought to go to the Civil Courts.

Sub-section (3).—If a *Collector* can refer any question of fact to a Civil Court, what shall prevent him from referring all the points at issue for the decision of a Civil Court, and thus avoiding trial of the case altogether? It is presumed that the Civil Court is bound to settle all points so raised and record a finding. What is the effect of such finding? Is it final or appealable?

No limitation is laid down for presentation of suits under this section. This must be distinctly done. Also whether suits can be instituted by a plaint sent by *post*, and not presented in person or by authorized agent.

Section 64.—Is a plaint to be thrown out if it does not contain "situation" and "boundaries" of land? These are often omitted now.

After the words "tenant" add "in respect of which the suit is brought." This is important.

Section 65.—After the words "such suit" add "distinctly specify that it is," and erase the word "be."

Section 66.—Before the word "defendant" add "plaintiff or"

Section 67.—Why not?

Sections 65—67 might be omitted as the Code of Civil Procedure provides for the points in questions.

Section 68.—I understand that before institution of a suit, the *Collector* must hold a preliminary inquiry. Is this necessary?

Section 69.—I think the proviso should be omitted. If fraud or force have been used, then each party has his own remedy in the customary exercise of his legal rights. The proviso only encourages litigation.

Sub-section 2.—This ought to form part of Section 48.

Section 70 (2).—For "it shall be in the discretion of the *Collector* to fix." I would read "the *Collector* shall fix," if the *Collector* has anything to do with it.

Section 71 (ii).—This clause is not very well worded, and is liable to lead to litigation as it now stands, seeing that "previously payable" is not defined a landlord may have made some special temporary reduction or concession the previous year. This ought not to affect the question.

Section 72 (1) (c).—"One half." This is not fair, in my opinion. The shares of benefit ought to be proportionate to the shares of gross profit of the lands; similar shares to those mentioned in Section 71 (ii) or five-sixteenths and seven-sixteenths when the rent is at a maximum.

(Sub-section 2).—Why not more than double? Supposing the benefit has quadrupled the outturn or value thereof, why should the tenant get a large amount of the benefit?

Section 73.—This section is merciful, but I think the concession rather far fetched. If there is hardship, it implies *ipso facto* that the enhancement ought not to take place.

Section 75 (1).—Blanks to be filled up. Presumably 69 (2) is referred to.

Section 76 (2).—After the word "paid" should, I presume, be entered "to the *Collector*" (see Section 55).

Section 79 (1).—Erase "(a)" after the word "entertained."

(2.) If paid, the *Collector* should, I presume, deal with the payment under Section 56.

Section 80 (2).—To the end of this clause add "if paid, the *Collector* shall pay over that amount to the raiyat."

Sub-section (4).—This will, I think, lead to litigation. Since the landlord has obtained the benefit of the improvement, I would leave out all the passage from "unless" to end.

Section 81 So many number of—Bad Grammar.

Section 82 (2).—To the end of the clause add "and the *Collector* shall therefore give effect to each agreement."

Section 83 (b).—The words "shall be void" at the end do not belong to the head (b) and should be printed in a line by themselves.

Section 84 (a), last line but one.—For the "crops" read "such crops" in both instances.

Section 86.—After "claims" insert the word "raised."

Section 87 (1).—Why eject at all under such circumstances? The tenant ought by right to remain in possession.

Section 91 (1).—There is a confusion here (see margin). Is the appeal to *Collector* of the District or to the District Court? I presume the latter since the second appeal is to the High Court.

Section 92, heading—"Under-raiyats" are nowhere defined.

Line 2.—The words "and no landlord" are meaningless. Printer's error?

"Other remedy"—What other remedy?

(b) "Store-house."—This does not, I presume, include private house. Then where is the landlord's remedy if the grain has been stored in a private house?

Section 94.—What is the effect of rejection of such an application? Can it be renewed? or is there an appeal? If by the time the landlord satisfies the *Collector* that a *prima facie* case exists, the crop has been made away with by the tenant, what is the landlord's remedy?

Sub-section (2) "Payable"—under Court Fees Act? This should be stated.

Sub-section (3).—The whole of the last clause of five lines is useless, because provided for by the Penal Code. If it is necessary it should be added also to Section 64.

Section 95, Proviso, line 1.—For "does" read "do."

Section 96 (Sub-section 3).—Is not notice also to be fixed upon some prominent place on the land itself?

Section 97 (3).—To the end of the clause add "and a receipt shall be given by the distraining officer to the defaulter, to the landlord, and to the *Collector*."

Section 98 (Sub-section 2).—Is this sufficient? The proclamation ought, I think, to be made as public as possible by beat of tom-tom, or in other way best suited to ensure due publicity.

Section 101-A.—Instead of only one day, I would give a week.

Section 102.—Is no partial payment or deposit of part payment to be allowed?

Section 104 (Sub-section 1).—Who is the "applicant" referred to? The applicant for the distraint apparently.

Section 106 (Sub-section 1) "before the sale"—even one minute before? And what is "sale"? The final knocking down? or the commencement of the bidding? To the end of this first sub-section add "and the order for the sale cancelled."

Section 107 (Sub-section 1)—Here is a new term used for the first time "inferior tenant." Why not stick to one phrase all through? "Sub-tenant" or "under-raiyat"?

Section 107 (Sub-section 2) "to institute a suit"—where? In what Court?

Section 115 (Sub-section 2) "the Collector shall consider." Is this inserted to compel the unfortunate over-worked Collector personally to "consider" or weigh the merits of every appraisal in every estate throughout his district or division? Can he now proceed, as now and delegate his power of examining the appraisal notices to his Head Clerk, whose business it is to examine and check them? The whole of this change if brought into actual work and held to apply personally to the Collector himself will in this division, be positively impossible.

Section 116 (a).—There is no provision made in this Bill for clandestine removal of crop by a tenant as in Section 83, Act VIII of 1865. Is this deliberate on the ground that the Penal Code supplies sufficient remedy? or is it an omission?

Section 119.—Tenants should also be allowed to employ Naibs or Gumastahs or authorized agents to appear for them.

READ—also the following letter from G. D. LEMAN, Esq., Collector of Coimbatore, the Secretary to the Board of Revenue, dated 16th April 1881, No. 275:—  
I have the honor, with reference to Board's Proceedings, dated 11th February last No. 464, to forward herewith a memorandum reporting on the Madras Tenancy Bill. I regret the delay in the submission of my report.

#### ENCLOSURE No. 1.

#### Memorandum on the Madras Tenancy Bill.

The preamble says it is necessary to place the rights, &c., of the ryots of other than Government ryotwary villages on the same footing as those of the ryots of Government ryotwary villages. But there seems a danger that this Bill would, while securing the ryot's putta, ryot from enhancement of rent, put him in a different position with regard to subletting, and cultivating by other than his own hands, of his puttah land. A Government puttadar is bound to pay the assessment to Government, and as long as he does so, he may make any arrangement with his tenant, collect any rent in excess of the Government assessment that he can get any body to give him as rent, & he may make yearly agreements with any one in the village to cultivate his land with any crop he pleases and to pay him any share, however large, he may bind himself to deliver. By this Bill the puttadar holding direct from the proprietor dare not, as far as I understand the definition of the term "ryot," sublet his land, lest he the value of a staple crop and lest he lose all control over the cropping of his land; and I am not sure that he will be safe in an agreement with a village ryot to cultivate his land yearly for the same reason, and it seems certain he cannot demand more than five-sixteenths of a staple crop unless there is a *varam* system in the village. The custom in this district is to pay money of what is called "guttakai" (a fixed amount of the produce—not a share) for wet cultivation. The kind of payment is not noticed in the Bill.

For dry lands there is "guttakai," "varam" and money rent. But there is no fixity of rent, and one year it is a share, another money, another "guttakai," while at times the claim is on the crop and varies from share to money in the year's arrangement. In regard to the Bill itself—

Section 4 (i) (c).—This should, I think, be "any whole village" held as shrotriem or inam area of villages. The petty inamdar who has leased his land will be in many cases ruined if his rent is to be limited to five-sixteenths of the value of a staple crop.

(i) (d).—Requires correction. "A renter of land" cannot be an "estate."

(iv).—Technical terms in the vernacular of Bengal would be better translated. Is it not possible to retain the old spelling of a household word like "ryot?"

(vi).—The spelling "Raiyat" seems absolutely wrong. It is not the correct spelling of the Telugu word రాయ (Rayatu) and the Tamil word is ரை (rai). I do not know what the word "holds" in this means. The whole Act turns upon it, and I think the word "Raiyat" requires a plainer definition. Is the person who cultivates the holder? e.g., the Pallan who cultivates for the Brahmin (a) for a given crop (b) for the season (c) for the year. He is a tenant by definition.

because he is bound to pay rent. Is he also a ryot? Does the man who makes over his land to another for cultivation or leases the cultivation of his land for a period, long or short, cease to be the holder of that land and a ryot in respect of that land?

(xii).—I should prefer "at" or "after" to "before" sunset.

Chapter II, Section 5.—It is nowhere explained what an estate specified by Government is, or how the specification is to be made.

Unless petty inams are excluded as proposed above, should not the wording be "comprized in or contained in" any estate?

Chapter III, Section 14.—*Bastu* is perhaps a mistake for *Basti*. Would not an English word or Telugu or Tamil word at all events be better? I presume village-site—gramanattam—is intended.

Section 14 (2).—"Any land in a village" should, I imagine, be "any homestead land in a village."

Section 15.—It is not apparent under what circumstances any one can be ejected from homestead lands. Section 79 refers to such suits but is limited to "tenancy holdings," i.e., those subject to the payment of rent. Homestead lands, i.e., village-site lands, have always been rent-free, were excluded from the assets of the zemindar in fixing the peishoush, and there is nothing in this Bill to show how, if they are now to be made liable to rent, such rent is to be fixed.

Section 17.—I presume the proprietor may sell an occupancy-right as well as grant it. Would it not be well to say so?

Section 18.—The words at the commencement of this section seem to require amendment, and the section itself would introduce quite a new state of things unless there be a very careful definition of the words "holding" and "held" as a ryot. It is to be noted that, if the proprietor wants to keep his own lands in his own management, he must eject his tenants once in every eleven years, lest they secure occupancy-rights in the land they have been cultivating for him.

Section 20 (d).—Why a "decree of ejectment"? A ryot can be ejected on a decree for arrears of rent if it be not satisfied according to the Bill.

Section 21.—Here again a plainer definition of the term "holding as a raiyat" is most necessary. I presume the section is not intended to have retrospective effect in any way whatsoever. If it be not so, a proprietor who has actually invested money in purchasing out a tenant, i.e., in buying the right to cultivate, may find that he has spent his money in vain, if some one else is cultivating and so holding the land for him.

Section 24.—By this a ryot may surrender his holding. May he not surrender part of it? It is usual here for a ryot, when he does take a putta from a proprietor, to have his lands, wheresoever situated in the village, entered in the one and only putta. Must he surrender all or none?

In regard to the liability for rent, I think the claim for rent, if made against the surrenderer, should be made within a month after the agricultural year has commenced, and that if the rent is paid, the surrenderer should be allowed to withdraw his surrender and cultivate if he chooses.

Section 26, Sub-section (2) (f).—A ryot holds land for horticulture, agriculture, &c. This clause allows him to build over it, and the land may be spoiled for the purposes of the tenancy and still the ryot may be able to claim compensation. I would make him get the proprietor's permission to build if he desires subsequently to claim compensation.

Section 29.—It is not quite clear why the proprietor should be forbidden to measure revenue-free lands or what revenue-free lands are.

Section 30.—The reference to Section 28 seems to be an error for Section 29.

Section 31, Sub-sections (2) and (3).—I do not understand why action on the part of the Collector should be optional. Should not the word "may" where it occurs be "shall?"

Chapter IV, Section 34.—I think it will be better if all contracts existing when the Act comes into force, provided the term of them is not more than a year, should be allowed to stand. It is not apparent why five-sixteenths is chosen. This may be fair in the case of large proprietors who represent the Government, pay a fixed peishoush and are capable of increasing their income by extending the area of their tenants' holdings, but very unfair in the case of petty inamdar whose lands are (as far as I understand the Bill) liable to it. The small inamdars should have full liberty to make what they can out of their little holdings, and such liberty should be curtailed no more than that of an ordinary ryot holding under a Government putta. "Estimated average annual value."—How is it possible any estimate can be made or any decision, when the estimates, as they most certainly will do, differ? How many years' average is to be taken and are fallows to be allowed or not? There is no record of past years' harvests. No reliance could be placed in the recollection of any but the cultivator of the previous year, and he most likely, will not tell the truth.

Again why is the staple crop to be taken? I can give instances of inam lands which produce turmeric, value Rs. 150 an acre, the cultivators of which have agreed to pay Rs. 75 rent for the land, while the crop is on the ground, according to custom.

Five-sixteenths of the value of the staple crop would be Rs. 20, and the land up to now (by purchase and otherwise) has changed hands on no understanding that the rent might be in future limited to Rs. 20 an acre and no more.

All garden lands in the district, not only the garden lands that would be liable under this Bill, pay far more than five-sixteenths of the value of the staple crop to any landlord other than the Government.

Section 36.—Is not some definition of the "agricultural year" advisable?

Section 37.—I think the exact meaning of the word "previously" should be defined. Can a landlord be allowed no power to keep out a person obnoxious to himself?

Section 39 (1).—What are impositions? I presume mazzers offered are not, or subscriptions to a marriage, &c., though such are frequently solicited and paid in consequence of solicitation. Is customary labor to repair irrigation works, to plough the proprietor's land and the like, an imposition? I think there should be some clear definition.

Sub-section (2).—I do not think this section can stand. If there is extortion as defined by the Penal Code, it is punishable as such, and nothing in this Bill can make it anything else. If what is done by the landlord does not amount to extortion as defined in the Penal Code, it is not punishable under the Code, the Bill notwithstanding. Further it is not said who is to inflict the fine of Rs. 500 or after what procedure.

Section 42 (1).—It would seem that the words "certain share" and "warum" are intended to mean the same thing.

I presume "warum" should be "váram" which means a share, i.e., any share but not a specific share.

Sub-section (2).—"At such rates"—Does this mean money or share or either at the Collector's option.

Section 44 (1).—Why "payable" and why "by the same class of raiyats;" surely it should be "paid for land."

Sub-section (2).—This will be very difficult to work.

Sub-section (3).—The rental of the poligars in this district was fixed in 1801, when the prices prevailing were less than one-half what they now are. Prices have increased by no act of the ryot or the poligar.

The general rate of the district was not raised at the recent settlement and the Government ryots and the poligars' ryots are now paying at about one and the same rates. Yet by this section and Section 73, the poligar can immediately raise his rent 50 (25%) per cent.

Section 46.—This section does not seem to me in any way applicable to this presidency.

Is Section 14 a mistake for 12? As I have already said, homestead land or grammanattam or village-site is rent-free. It is excluded from the assets of our poligars and they have no right to rent for it.

Section 47.—The poligar's ryots have never paid more than the old paimaish rates. Why should the poligar now enhance them? and the enhancement will be very great.

Section 50.—The poligar's kistbundy here ends in June. It is a pity this should continue. June is far too late for everybody's convenience, and the last kist should be in April as in the case of Government kists.

Section 52.—The fasli commences July, the 1st. The agricultural year may be said to begin in April or Chittrai, and agricultural operations are in considerable progress by the commencement of the fasli. I should say the putta should be tendered before the beginning of the agricultural year and not six months after it has commenced. To postpone the offer of putta till September is to leave the ryot in doubt as to what may happen to him and to his land and to the labor that he expends on his land for six months out of the year to which the putta refers.

Section 52, Sub-section (3).—What punishment attaches to refusal or neglect to attest puttas by the Curnam?

Section 52 (1) (b).—The putta is to contain the name of the person (if any) registered as ryot. I cannot understand the use of this "if any."

(c). Should not some mention be made of cesses, e.g., road-cess, water-cess where Government water is taken and the like?

Section 54.—A proprietor is not generally a business man, and this would frequently put him out very much. Could he not be permitted to give a temporary receipt to be replaced by a receipt as described within a week? And why should the ryot be allowed six months to bring a suit? Fifteen to thirty days should be ample.

Sub-section (2).—Again here six months is far too long, tending to confusion and the fabricating of false cases. Fifteen to thirty days should be ample.

Sub-section (3).—Why is a Magistrate suddenly drawn into the Bill and what procedure will be necessary?

Section 55.—It may be necessary that this deposit of rent be allowed, but it will lead to very great trouble and extra work in the Collector's office. In all cases of petty disputes between ryot and ryot and proprietor in regard to the liability to pay rent, the Collector will become the depository of the rent.

Section 56 (1).—I should say that "entitled" is not the proper word to use in this section.

Section 61 (1) (i) (b).—As before said, it is an entire innovation to make anybody pay for homestead or village-site land, and I cannot find how, if this innovation is intended, the rent is to be calculated.

Section 69 (1).—Surely the proviso is unnecessary. How can a person coming into Court to make an admission be supposed to be anything but a free agent, and how is the Collector to discover if he is not?

(2).—Why is the Collector's action permissive? Surely it should be "shall" and not "may."

Section 70.—Sixteen months is a very long delay for a decree.

Section 72 (2).—From this it would appear, that if the proprietor conveys, at his own expense, irrigation to a putta of dry fields, paying him, say, Re. 1 an acre, he can only claim the old rent plus Re. 1 an acre for the improvement, let he should more than double the rent previously paid. The advantage by usual estimate is Rs. 5 an acre.

Section 76 (3).—The word "payment" should be "deposit" I imagine. At all events, it would avoid confusion.

Section 77.—This seems a suggestion to the proprietor to refuse receipt of rent that he may get the more hereafter, and it also seems likely to incite all ryots to come and deposit their rents under Section 55 to the great discomfort of the Collector and increase of his work. I imagine, if there were not such frequent opportunities to go to the Collector, that the proprietor and his tenants would be less likely to disagree.

Section 79.—This is a very puzzling section. The margin does not agree with the section, but it seems to provide that nobody is to be ejected except for misuse of the land and non-payment of arrears. If this is all it means, there is no objection to it.

Section 92.—The words "and no landlord" seems to be a printer's error.

Section 93.—It should be brought to notice that there will be an enormous increase of work thrown on the Collector's office in districts where proprietary lands abound.

Section 95.—The proviso of twenty days, or any absolutely fixed number of days, seems to render it a very precarious business for the Collector to distrain.

Section 97 (1).—Why "any person" should be allowed to reap a distrained crop is unintelligible. Does it mean any person entitled? And why should not the distrainer be responsible for what he distrains?

Sub-section (2).—Who is to decide whether a person proposing to reap is entitled or not? Is that to be the business of the distrainer or Amin? It would be well that both he and the Collector should be protected.

Section 102.—I think there should be some limit. Payment should be made not later than the day after the sale, and delivery of property should be forbidden and be made inoperative unless payment has first been made in full.

Section 106.—No payment to the Collector should be allowed, or to anybody but the distraining officer, lest confusion arise from the disarming officers and salesmen in one place not knowing that the arrear, for which sale has been advertized and may be in progress, has been paid at some other place or at the Huzur or the Collector's office. Again the Collector has no cash-chest and it would be a great annoyance if he had to receive these moneys.

Section 110.—The direction that anybody for any act done should be deemed to have committed criminal trespass within the meaning of the Indian Penal Code cannot have any force. It is only when the act done satisfies the definition, that a person can be punished for an offence defined by the Penal Code.

Section 112.—Section 93 is perhaps a misprint for Section 92.

Section 113.—This appears very loose. The proper time for making a division is entirely a matter of opinion. Should not some time be fixed, or some better definition of what is intended be made?

Section 16-A.—States that if a person does a certain thing he shall be deemed to have committed criminal trespass. This cannot stand I believe.

READ—also the following letter from H. J. STOKES, Esq., C. S., to the Secretary to the Board of Revenue, dated Palladam, 20th June 1884, No. 445.

I have the honor to forward a Memorandum on the Madras Tenancy Bill, 1884, and to be, &c.

## ENCLOSURE No. 1.

## MEMORANDUM ON Draft Tenancy Bill for Madras.

This Bill is a careless copy of parts of the Bengal Tenancy Bill of 1883. I say "careless" because of the number of mistakes which have been made in it as will appear below. As the Bengal Bill of 1883 has been succeeded by the Bill of 1884 in which numerous alterations, additions and omissions, some of great importance, have been made, the best commentary on the Madras Bill is this Bill of 1884 with the report of the Select Committee who drew it up. Indeed, it seems almost waste of time to criticise the Madras Bill minutely, as that has been done to so large an extent by the Select Committee in Bengal.

2. The Bengal Bill of 1883 contains 230 sections, while there are but 120 in the Madras Bill. The omitted portions are Chapters I, II, III, and IV which deal with matters preliminary, and with Khamar land and Tenures; Chapters XI and XII, about settlement of rents and preparation of a record of rights by a Revenue officer, and Chapter XVI on limitation. Of these it will probably be found necessary to re-admit the sections, or frame corresponding provisions dealing with tenures and private land, and providing for settlement of rent and a record of rights.

In Chapter V of the Bengal Bill of 1883 the landlord's rights in case of sale, foreclosure of mortgage, gift or bequest of occupancy holdings are provided for, but no notice is taken of them in the Madras Bill.

Section 82 of the Bengal Bill, giving a tenant paying rent in kind a right to sue for commutation to money-rent, has been omitted. This section might be of great benefit in this presidency.

Sections 142 to 150 of Chapter 10 dealing with the appointment of a Manager on behalf of co-owners of an estate on tenure have been omitted, although they would probably be found useful.

3. The only original parts of the Madras Bill are Sections 5, 35, 61, 68, 69, 91, 117, 118. Section 5 is obviously unworkable. It is not to be expected that a Zemindari Curnam, who is notoriously one of the most incompetent and least trustworthy officer in the whole official hierarchy, could perform such a delicate piece of work as the preparation of a register of the private and raiyati lands on an estate. It is absurd to threaten to fine him heavily, who, as a rule, has no ostensible means; and it can hardly be seriously proposed in default of a Curnam to deem the proprietor to be a Curnam for the purposes of this section.

4. If the lands not occupied by the ryots are to be finally distinguished as private lands, a survey will be necessary; and no returns by either Curnam or landlord can be of the slightest use except perhaps to start an inquiry on.

5. In Section 35 the "established rate" of the village is spoken of, but what, or by whom established does not appear. *Farum* (which is not defined) means a share of the crop and not an established rate. The words "the Government" seem out of place.

6. By Section 61 (3) the Collector is allowed to refer any point of law or fact (whatever that may be) to a Civil Court. If he can refer questions of law or fact he can refer the whole case, which I do not suppose is intended.

7. Section 68 refers back to Section 48 which I shall show below to be in considerable need of correction, although only partly original.

8. Section 69 enacts a strange procedure. Under Section 48 the plaintiff has to give notice to the opposite party requiring him to execute a written agreement, which written agreement is supposed always to be executed, for I find no provision for a case where a written agreement is refused to execute it. If the execution is admitted, and a further agreement (which seems unnecessary) entered into on the same matter, the admission or agreement (which (which seems properly) recorded as a decree; but if defendant does not appear, or appearingly not both?) is to do what he has already agreed to do, the Collector (instead of trying a case of breach of contract) is to settle the rent. This seems to be a most confused arrangement.

9. The next purely Madras Section is 91, of which the marginal note "appeal to District Court" does not agree with the section, for the latter contains no allusion to appeals to District Court. It is not clear as to what the final word of Clause (2) "thereto" can appeal to a Clause (3) decrees and orders passed by a District Judge on appeal are alluded to, although none such are possible under the Bill.

10. Sections 117 and 118 are the only other original sections. They deal with matters of routine, and on them I have no remarks to make. The phrase "so many number of a lessors" in Section 81 is new and original; and the sentence "and no landlord" in Section 92 means nothing whatever.

11. I will now go through the Bill from the beginning. In the preamble it is proposed to put the rights and interests of the estate ryots on the same footing of security as those of the Government ryots. But the legal rights of the Government ryots have not, as far as I know, ever been declared by the legislature. I do not know what "the object" spoken of is. There must have been more than one; the interests of the revenue of the landlord, and of the cultivator.

vator had always to be considered. The British Government means, I suppose, the Government of Madras. Is it necessary to declare what has always been its aim? The chief aim of the permanent settlement in Bengal was, I believe, to establish a class of landlords like those in England. The Madras permanent settlement was a copy of the policy followed in Bengal. The rights of the actual cultivators passed away "*sub silentio*" in Bengal, and have never been placed on a firm basis in Madras. Is this the object alluded to?

12. Section 4 (1).—Estate is defined as "an" renters of land revenue under Government." What can this mean? Take it with the next clause. A "village" includes any part of any renters of land revenue under Government! Renters probably stands for farmers; but the absurdity remains.

IV.—Seri and Khas are Bengal words.

(a) Holding should be defined as meaning a parcel or parcels of land as in the Bengal Bill of 1884, and the words "under one lease," which are in the original, should be restored.

XII.—This has been spoiled in the copying. The original is "which is not paid before sunset." This is not good, though it is plain that it means "has not been paid," and that the sum payable does not become an arrear till after sunset. But according to our Bill every instalment is an arrear before it is payable; for it remains unpaid before sunset of the day on which it is payable. "Remains" is not an improvement on "is." "Before" probably means "after." In the Bengal Bill of 1884 this definition has been dropped. It is unnecessary.

XIV.—Sale "involuntary" This means an execution of a decree; but it would include a sale under duress.

XVI.—Why should not a person be allowed to stamp even if he can write his name? He can do so under Section 3 (19) of the Bengal Bill of 1883, from which this is copied.

13. CHAPTER II.—I have already pointed out in paragraph 3 that this chapter is impracticable. The register is apparently final to be accepted without cavil, for no one has power to correct it. I suppose that this and other matters are to be provided as indicated by the asterisks under this section; so that it need not be further discussed. In Bengal (Bill of 1884, Sections 135 to 137) it is proposed to give the Government power to order survey and record of private lands to be made by a Revenue officer; and power to a Revenue officer on application of either landlord or tenant to ascertain and record whether land is or is not private. Rules also are provided for determining what is private land.

14. CHAPTER III.—Section 12 (1).—The words "wholly or partly" after "whether" are added in Bengal Bill of 1884 and are necessary. In the same Bill a rebuttable presumption in favor of settlement is introduced in Section 26 (2).

This section (12) might, as it stands, apply to Government as well as estate lands; so of Sections 13, 14, 15.

15. Section 14.—Bastu is a Bengal term. This provision of the Bengal Bill of 1883 has been dropped in the Bill of 1884. The Select Committee (paragraph 4 of Report) say:—"It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class (*i.e.*, homestead), but at present we have not before us the information requisite for dealing with the questions involved. It is proposed, therefore, to leave the incidents of such tenure to be regulated by local custom" (paragraph 96).

In Madras also we are without the necessary information, but in a matter of such great importance no time should be lost in seeking it. There is little doubt that great oppression can be practised on tenants where the landlord claims a right to evict from the homestead; but in this presidency, as far as I know, the landlord has "no ownership in the soil of the village-site or grama" (nattam), and has not pretended to any such, except perhaps in unoccupied sites, where it has been disputed. This is one of those points that ought certainly to be dealt with in any Act purporting to define the relations between landlords and tenants. It has not been legislatively settled yet. It will be a great pity if it is allowed to drop. At any moment it may be raised by an encroaching landlord, and he may be instigated by the fact that Section 15 actually recognizes a right to eject from such land. This shows how little care has been taken to adapt the Bengal Bill to our presidency. If the landlord's suggested right in "Bastu" land be expressly denied, we can get rid altogether of the "settled" ryot.

16. Section 16 (1).—Does this apply to Government villages?

Section 17 has been omitted in Bengal Tenancy Bill of 1884. In paragraph 16 of the report no reason is given for the omission. I can see none. There have been many cases of lessees and putta-holders of Zemindars being turned out of their holdings on the demise of lessor, it being held that Zemindars had only a life-interest in the estate. If they could sell the occupancy right it would not injure their successors, and would enable them to give a good title, which they cannot do now. This remark applies particularly to lands on hills fit for coffee cultivation.

17. Section 18 has been varied considerably in Section 30, Bengal Tenancy Bill of 1884, which provides that no right of occupancy can be acquired in private lands where such are held under a lease for a term of years or under a lease from year to year—see paragraph 16 of report of Select Committee.

18. *Section 19.*—This is omitted in Bengal Tenancy Bill of 1884 as the object seemed to be sufficiently secured by Section 26 (4) which corresponds to our Section 12 (2).

19. *Section 20 (c).*—Here is a most important variation from the Bengal Bill. The rent is made a charge on the tenant's interest in the land instead of on the holding itself. How then is the landlord to know against whom to proceed? The ostensible tenant may have sold his interest, and the purchaser sold again; or his interest may be so small as not to suffice to satisfy the rent. Safety can lie only in making the rent a charge on the holding, and the registered Puttadar liable.

The provision of the Bengal Bill [Section 125 (2)] making landlord first payable in case of interest being sold in execution has been omitted—wrongly, I think.

20. *Section 21* has been omitted from the Bill of 1884, owing to the great objection raised to it (paragraph 23, Report of Select Committee). It does not seem fair to the landlord nor necessary for the protection of the tenant. This section, the "bastu," Section (14), and that limiting the rent to five-sixteenths of the value (34), which are three of the most startling sections of our Bill and of the Bengal Tenancy Bill of 1883, have all been dropped in the Bengal Bill of 1884, which will probably lead to their abandonment here also.

21. *Section 22 (1).*—The term "ordinary" has been rejected as a misnomer by the Select Committee in Bengal, who have substituted "non-occupancy" for it (paragraph 4, Report of Select Committee). As by far the larger portion of the tenants are believed to be occupancy tenants, the misnomer is obvious. Other tenants are extraordinary.

*Section 22 (2).*—The Section 24 here alluded to means probably Section 34, which corresponds to Section 119, Bengal Tenancy Bill of 1883, which has been abandoned in Bengal.

22. *Section 23 (a) and (b)* refer to the same Section 79; it would be simpler to make one clause and say only "under Section 79."

23. *Section 24.*—This section is an unadvisable one. It is taken *verbatim* from the Bengal Bill and does not correspond to the circumstances of our tenancies. In Bengal the right to the soil was believed to be vested in the landlord. In Madras the proprietary right (whatever this may be) was vested in the Zemindars, but a tenant right has always been recognized in the cultivator. Hence as Mr. Campbell's paper (printed with the 5th Report, Higginbotham and Co.) points out many of the evils which have arisen in Bengal may have been avoided here. But this section recognizes a right in the landlord to have land cultivated, instead of one merely to a share of the results if cultivated. I believe it will be a new thing if a cultivator in this presidency may not leave his holding without notice and without further liability. Under Section 12 of our Act VIII of 1865 he can always surrender by a writing at the end of the revenue year. But as far as I know he has never been held liable if he abandons the land without a writing; nor do I believe is there any such custom. He may perhaps lose his title to the land, but he does not remain liable for the rent. If the proposed rule is introduced it will rarely happen that a man will be able to leave his land without paying a year's rent fine.

The corresponding sections of the Bill of 1884 adds rules favoring presumption of notice.

24. *Section 25.*—The corresponding section in Bengal Tenancy Bill of 1883 as a proviso that the abandonment be not owing to inundation or other accident, and a suit for recovery is given in the Bill of 1884.

25. *Section 28.*—I do not understand why an "ordinary" ryot should not be allowed to make an improvement on the same terms as a occupancy ryot. There seems no reason for it. He is less likely to do it, it is true; but this is a reason for encouraging rather than obstructing him. If it is an improvement, it will increase the value of the property and the landlord's rent as a first charge on it [Section 22 (2)].

26. *Section 29.*—These difficulties about measurement which have been prominent in Bengal have not, as far as I know, been much felt in Madras. I don't suppose the landlord's right to make the Curnam measure has ever been questioned here. In Bengal, measurement was (and perhaps is) a common mode of oppression and extortion.

The words "except land entered in the general register of revenue-free lands" refer to the Bengal Land Registration Act VII of 1876, and have no meaning whatever here. They have been left in by mistake.

27. *Section 30.*—"Under Section 28," a mistake for 29. So in next section; for 28 and 29 read 29 and 30.

In the Bengal Bill of 1884 the landlord cannot directly require the tenant to attend but can get an order from the Court requiring him to do so. This is an improvement.

28. *Section 33.*—This is rather summary. The corresponding section of the Bill of 1883 provides an appeal, and the matter is dropped in the Bill of 1884.

29. CHAPTER IV.—*Section 34.*—This section has been abandoned in Bengal with respect to occupancy and non-occupancy tenants (see paragraph 35, Report of Select Committee on Bill of 1884). "The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops; and weighty objections have also been taken to the principle underlying the proposal." Compensation have however been provided as to amounts of enhancement on certain grounds, and above all

provision has been made that a Court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable.

This last provision, which gives the Court power to a certain extent to fix a fair rent, ought certainly to find a place in our Bill.

In copying the section the words *before or* have been introduced, the effect of which, making as they do the rule retrospective, might be to open up numerous contracts. This would be undesirable. If the average annual value is to be taken, it will be necessary to determine for how many years; and what are staple crops in various localities. Does it, for instance, mean staple grain crops?

30. *Section 39 (2).*—It would be enough to make him punishable for extortion under the Indian Penal Code.

Abwab is a Bengal word.

31. *Section 40.*—Money ought not to be *erac'ed* under an enactment.

32. *Section 42.*—If this is to be the law, it will be necessary immediately to institute inquiries to ascertain and record the *varam*. The limit has been abandoned in Bengal (paragraph 43 of Report of Select Committee on Bill of 1884).

If the occupancy tenant pays less than the *varam* what will be the effect of this section? It seems to contemplate only contracts to pay more.

33. *Section 43.*—This is more suited to Bengal where alluvion and diluvion cases are frequent, owing to the great rivers than to the estates of this presidency.

34. *Section 44.*—This section I should strike out altogether. In Bengal the interests of the cultivators were culpably neglected and sacrificed to the Zemindars. Hence it has become necessary for Government to sanction the practice of enhancement which time and neglect had been allowed to convert from a wrong into a right. We have no such state of things here; we have never recognized by law the right of a permanently-settled estate-holder to enhance the rents of his tenants, except in consequence of improvements made by himself or by Government, accompanied by demand of additional revenue. In either case the Collector's sanction was necessary (Act VIII of 1865, Madras, Section 11). It is true that the High Court have ruled in a few cases that the power to enhance exists; but that is only because it has not been expressly denied by the legislature, and in the particular cases a contrary custom was not established. But this does not make the law, or declare a general right; but is in truth only a reason for legislating. The question has not, I believe, been agitated to any extent in the Southern Districts, but in some estates of the Northern part of this Presidency, I have heard that it has lately come into prominence. I think there can be no doubt that a landlord of a permanently-settled estate has no right to enhance, except when the enhancement represents a due return on an improvement effected by himself, and so corresponds to the compensation for improvements allowed to a tenant. This is the only ground on which enhancement can be justly claimed, as long as the revenue payable to Government remains the same. I know of no other on which the claim can be based. The Zemindar was never acknowledged as owner of the soil before Regulation XXV of 1802, and it is doubtful what the State then acknowledged; but even if he is owner the right to enhance does not follow (see Regulation XXV of 1802, Section 2); and I can hardly think that the proposal to introduce this portion of the Bengal law is deliberate. As to clause (2) it is vain to expect a comparison to be drawn between the present productive powers of a field which can hardly be known and those of the same field at the time the rent was fixed; which it would be impossible to discover. This difficulty is fully recognized by the Select Committee on the Bengal Bill of 1884. In paragraph 32 of their report they observe that no general method had been discovered for placing before the Courts the necessary information with regard to the productive powers of the land, and that the provision for enhancement on this ground had only been retained at the instance of the Zemindars; a reason for retention which is, to say the least, suspicious. As to (3), prices vary very largely even within the year; and if they go up, they go down again. I do not see why the landlord should reap the benefit. He has done no more than the tenant to raise them.

35. Where rent payable in kind has been commuted to money-rent arrangements might be made for periodical adjustment of the commutation rate, so as to keep it at a level fair to both parties; but other power of tampering with rates of rent will only lead to confusion and disorder. We have not lately heard much of agrarian disturbance in Bengal; and this is owing largely, I believe, to the fact that the provisions for enhancement in Act X of 1859 have been found to be unworkable—see paragraphs 45 and 46, Statement of Objects and Reasons, Bengal Tenancy Bill of 1883.

36. *Section 46.*—This section is omitted in Bengal Tenancy Bill of 1884. From what I have said in paragraph 13 in my remarks on Section 14 it results that I consider this section altogether inapplicable to this presidency uncalled for and likely to be mischievous.

37. This section seems superfluous, as it has already been provided in Section 22 (2) that the ordinary ryot is to pay such rent as may be agreed on from time to time; whether any limit should be fixed is a very difficult question. I would suggest rather compensation for disturbance, which with compensations for improvements should be a sufficient safeguard against eviction either capricious or for the purpose of exacting an unduly enhanced rent. If there is to

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be a he it, the settlement rate for similar land in the same taluk might be taken as beyond which the Courts should not decree, leaving the parties as long as they kept to make what arrangements they pleased.

38. Section 48.—I have made the remarks on this strange section in paragraph when instalments of rent are to be paid. In para. 78 of the Statement of Reasons of the Bengal Tenancy Bill of 1881, it is pointed out that the power of the Revenue to fix instalments is only of importance in the case of others than tenants; the former are subjected to harassment from multiplication of instalments. I never heard any such complaint here; but on the contrary a frequent complaint of Government ryots that the instalments fixed are too low.

The proviso to this section has been dropped in Bengal Tenancy Bill of 1883 as unnecessary and somewhat complicated (see paragraph 51, Report of Select Committee). The ryot in the marginal note should have been omitted.

40. Section 52.—The marginal note of the Bengal section has been allowed unchanged. In Bengal puttas have been abandoned because the occupant-holders generally averse to receive them, and because a provision was made that to put the ryots to legalize subsequent proceedings. For these reasons the actual exchange of muchilka in Bengal has fallen into disuse. They have therefore adopted a statement account at the close of the year, instead of a deed at the beginning. This statement will in most cases vary each year with the sun paid and outstanding is necessarily required under Act VIII of 1865, Malwa. Only yesterday I was conversing with a who has 300 tenants. All have puttas he says, but each year he has only to issue five new ones to such tenants as have enlarged or diminished their holdings, such bought, &c. The reason why landlords have hitherto given puttas in our pres because no suit brought and no legal proceedings taken to enforce the terms of a putta—Section 7, Act VIII of 1865. This statutory provision has been dropped out Bill, and the exchange of puttas and muchilka has been exchanged, or there had been a conviction before a Magistrate, which will involve imprisonment for default. This is most unwise and harsh proposal. Under the present Act a tenant who refuses to accept and give a muchilka exposes himself only to a summary suit to enforce acceptance, or words to settle his rent. Clause (b) "Registered" where? In setting forth the content putta no mention is made of the dates of instalments.

Sub-section (3).—What has been the use of Curman's attestation?

41. Section 53.—I don't see why the landlord should be directed by law to keep a copy of the receipt. In the Bengal Tenancy Bill of 1881 this has been changed to a counter-don't know why the law need insist on either.

42. Section 60.—In Bengal Tenancy Bill of 1881 the word "single" is put before the and the words "from the expiration of the agricultural year, to the institution of the added. I think 12 per cent. excessive, especially as there is a provision for damages in c rent is withheld without reasonable cause (Section 77).

43. CHAPTER V.—An attempt has been made in the Bengal Bill to divide the sun inquiries into two categories, one fit to be disposed of by a Judicial and the other by an Executive officer. I think the example might be followed here with advantage.

44. I have remarked on Sections 68, 69 above—paragraphs 7 and 8.

45. What I have said above as to enhancement is enough to show why I think that Sections 71 to 74 are useless and mischievous.

46. Section 77.—A proviso that interest at 12 per cent. (Section 61) shall not be decreed where damages are given finds a place here in Bengal Tenancy Bill of 1881, Section 109. Why has it been omitted? and what need is there for immediate execution of such a decree? This is a case, I should say, pre-eminently for an appeal.

47. Section 78 has been omitted in Bengal Tenancy Bill of 1881.

48. Section 79.—The marginal note of Bengal Tenancy Bill of 1883, Section 202, has been retained, but all reference to relief against forfeitures has been omitted in the text. Our section is made up of parts of two, viz., 111 and 202, of the Bengal Bill, and the result is not successful. By Section 23, an ordinary ryot can be ejected, (1) for arrears; (2) in execution of a decree for ejectment passed in accordance with the Act (which can only refer to ejectment for arrears rendered the land unfit for the purposes of the tenancy); and (3) for refusing to agree to enhancement, that is, on three separate grounds; under Section 79 he can only be ejected on the The last half of the section directly contradicts its first half, and it repeals part of Section 23.

49. Section 203 in marginal note refers to the Bengal Bill. Similarly the long marginal note to Section 90 has no relation to that section.

The procedure part of the Bill will have to be very closely considered, when its main principles are established. The procedure is at present very sketchy.

50. Section 91.—Whether this section contemplates appeals to the District Judge or High Court from the Collector of the district, it would be hard to determine.

51. So far as Chapter VI restricts the right of distraint to crops and its exercise to an officer deputed by the Collector, I think it is an improvement. But distraint will probably be little resorted to. Its continued existence is the result of a compromise—see paragraph 109, Statement of Objects and Reasons, Bengal Tenancy Bill of 1883.

The expression "provided that crops which from their nature does not admit of being stored" which occurs in Section 95 is a variation on the Bengal Bill of the same kind as the "so many number of assessors" in Section 81.

The objects of a Tenancy Bill ought to be to ensure the payment of a fair rent on the one hand and security of tenure on the other. If these objects are not attained, there certainly results a disorder. In this presidency, in all the settled estates with which I am acquainted, we have a customary rent, and all that is wanted is to ascertain and record it. Hitherto no general attempt has been made by the Zemindars to exceed it, and things may be said to have gone on very smoothly in Madras when we compare the record of our estates with the constantly recurring troubles which have been experienced in Bengal. There the landlord was armed with power to enhance and evict, and the cultivator was forgotten. It is to correct the results of this long neglect that a vigorous effort is now being made. But seeing that our circumstances have been so different, it is most improbable that an enactment framed specially to meet those of Bengal could be copied in our presidency without great danger. Taking the prime objects of a Tenancy Act to be as stated above, it is worthwhile inquiring how this Bill proposes to deal with each of them—

First, as to the payment of rent. The landlord security under the Bill is a first charge for the rent on the tenant's interest in a transferable holding. At present the landlord has a first charge on the crops and on the saleable interest of the tenant—Sections 32 and 40, Act VIII of 1865. Under the Bill his security is cut down. It is true that if under Section 89 the landlord sells under a decree for arrears, he is first to be paid; but if the holding has been heavily mortgaged or wholly or partly sold, the tenant's interest in it may be worth nothing, and the rent will be either lost or recovered only after renewed litigation. Again, if a Civil Court sells the crops and the landlord then first hears of it, he will be too late to claim his rent out of the proceeds, for he has no first charge on the crops but only on improvements. Indeed, until he has obtained an order for distraint (Chapter VI, Sections 104, 109), his priority is not recognised. At present also he has further remedies. His power of distraint is much greater than the Bill gives, extending to all the moveables of the defaulter; he can eject and he can arrest and imprison. It results that under the Bill the payment of rent is not secured at all so well as under the existing law.

Next, as to the fairness of rent. I have stated above that in the Zemindaris the rents are settled by custom, and hitherto there have been no general attempts to enhance them. Under this Bill landlords are invited to enhance (a) if the rate paid is below the prevailing rate, (b) if the productive power of the soil has increased, and (c) if there has been a rise in prices. The very vagueness and difficulty of ascertainment of these conditions will lead to oppression by the stronger of the weaker, by threats of litigation and suits. A fair rent has in most cases at present settled itself. This Bill can only lead to unsettlement. Lastly, as security of tenure depends so much on fixity and fairness of rents, the provision as to enhancement will weaken that security. Thus in these three capital points the Bill would place us in a worse position than that which we now occupy, and it would be hard to say whether it would injure landlords or tenants more. If we are to have a mere copy of the Bengal law as our Tenancy Act, we had better wait till it is determined what that law is to be; and if we are to have a real law of our own, no time could be lost in collecting the information which can alone make such a law possible.

I append a list showing the corresponding sections of the three Bills.

*Read*—also the following letter from C. A. BIRD, Esq., Acting Collector of Cuddapah, to the Secretary to the Board of Revenue, dated Kadiri, 25th April 1884; No. 242.

2. I regret that it was not received in time to send within the time fixed by the Board. The Sub-Collector is the only officer in the district who has submitted any views on the Bill; the Head Assistant Collector has sent no reply, and the two Deputy Collectors replied that they had no remarks to offer.

4. With these remarks I submit the letter for the consideration of the Board without delaying to go into its details.

ENCLOSURE NO. 1.  
From H. R. FARMER, Esq., Acting Sub-Collector, to the Acting Collector of Cuddapah  
dated Chinnaguttigulu, 19th April 1884, No. 172.  
... No. 531, dated the 28th February

I have the honor to submit my reply to your foot-note, No. 531, dated the 28th February 1884, directing me to call attention to any points in the Draft Tenancy Bill circulated with Board's Proceedings, No. 464, of 11th February 1884.

2. I must apologize for being obliged to treat this (all-important subject) with meagreness and incompleteness. I beg to mention, by way of explanation for the defects, one or two facts—

- (1) The memorandum on this draft, by the [redacted] communicated.
  - (2) There are no rent cases in this division, and I have no records to refer to, as what private notes and books I possess on the subject are stowed away at head-quarters.
  - (3) I am now engaged in the settlement of a taluk, where the work requires all the time which can be spared for it.
  - (4) A reply has to be sent before this work can be completed.
  - (5) My office is short-handed and consists chiefly of new men. My time is thus taken up with details, which ministerial officers generally attend to.
- that legislation is needed, and that the proposed legislation is in

3. I think few will doubt that legislation is needed, and that the proposed legislation is in the right direction, viz., in favor of the *raiyats*.

After reading what the originator of the draft wrote when the Act, which it supersedes was under consideration, it seems to me to be very unlikely that I should be able to suggest any general principles or leading modifications which have not already been considered by Mr. Carmichael.

Certainly I should be sorry to hazard any suggestion which implied a defective knowledge, on the part of the originator of the Bill, of the practical working of the present law of landlord and tenant or of the rules, which, for the sake of clearness and perspicuity, are generally recognized as binding on a draftsman employed to put a measure of this kind into shape. But as the draft contains apparently one or two mistakes in English, which it may safely be said that Mr. Carmichael could never have passed if he had seen them, I have ventured to presume that he is answerable for the general outline only of the work, and that it will not be presumptuous in answer to your call, to make suggestions which imply defects in logical arrangements, or on practical knowledge of the subject, on the part of Mr. Carmichael's amanuensis. If I had time to think these matters out, I might not improbably find that the draft was right and that I was wrong; but under the circumstances already detailed, I can only note, in the form of queries or suggestions, what occurs to me on a cursory perusal of the draft.

| ENCLOSURE No. 2.           |                      |                       |                            |                      |                            |                       |                      |                            |                       |                       |                       |
|----------------------------|----------------------|-----------------------|----------------------------|----------------------|----------------------------|-----------------------|----------------------|----------------------------|-----------------------|-----------------------|-----------------------|
| Madras<br>Tenancy<br>Bill. | Bengal<br>Bill, 1883 | Bengal<br>Bill, 1884. | Madras<br>Tenancy<br>Bill. | Bengal<br>Bill, 1883 | Madras<br>Tenancy<br>Bill. | Bengal<br>Bill, 1884. | Bengal<br>Bill, 1883 | Madras<br>Tenancy<br>Bill. | Bengal<br>Bill, 1884. | Bengal<br>Bill, 1883. | Bengal<br>Bill, 1884. |
| 5                          | 7 13                 | 135                   | 29                         | 133                  | 53                         | 99                    | 100                  | 76                         | 199                   | 170                   | 161                   |
| 12                         | 45                   | 26                    | 30                         | 134                  | 54                         | 100                   | 102                  | 77 (1)                     | 109                   | 171                   | 227                   |
| 13                         | 46                   | ..                    | 31                         | 135                  | 55                         | 100                   | 103                  | 77 (2)                     | 110                   | 172                   | ..                    |
| 14                         | 85                   | 216                   | 31 (a)                     | 136                  | 56                         | 100 (2)               | 104                  | 78                         | 200                   | 173                   | ..                    |
| 15                         | 86                   | Omitted.              | 32 (1)                     | 137 (1)              | 57                         | 101 (1)               | 105                  | 79 (1)                     | 111                   | 174                   | ..                    |
| 16                         | 47                   | 25                    | 32 (2)                     | 137 (2)              | 58                         | 101 (2)               | 106                  | 79 (2)                     | 111 (2)               | 175                   | ..                    |
| 17                         | 48                   | Omitted.              | 33                         | 138                  | 59                         | Omitted.              | 107                  | 80 (1)                     | 129 (1)               | 176                   | ..                    |
| 18                         | 49                   | 30                    | 34                         | 119                  | 60                         | Abandoned.            | 108                  | 80 (2)                     | 129 (2)               | 177                   | ..                    |
| 19                         | 57                   | Omitted               | 35                         | 120                  | 62                         | 65                    | 153                  | 81                         | 130                   | 178                   | ..                    |
| 20                         | 45 (2)               | ..                    | 37                         | 61                   | 63                         | 42                    | 190                  | 82                         | 131                   | 179                   | ..                    |
| 21                         | 60                   | 31                    | 38                         | 121                  | 64                         | 84                    | 192                  | 83                         | 132                   | 180                   | ..                    |
| 22                         | 125                  | 77                    | 39 (1)                     | 123                  | 65                         | 85                    | 193                  | 84                         | 203                   | 181                   | ..                    |
| 23                         | 56                   | Omitted.              | 40                         | 124                  | 66                         | 86                    | 194                  | 85                         | 204                   | 182                   | ..                    |
| 24                         | 88                   | 55 56                 | 41                         | 58                   | 67                         | 39                    | 195                  | 86                         | 205                   | 183                   | ..                    |
| 25                         | 89                   | 57                    | 42                         | 81                   | Omitted.                   | Omitted.              | 59                   | 87                         | 206 (1)               | 184                   | ..                    |
| 26                         | 90                   | 58                    | 43                         | 96                   | 68                         | 66                    | 201                  | 88                         | 209                   | 185                   | ..                    |
| 27                         | 132                  | 95                    | 44                         | 74                   | 71                         | 43                    | 74 1                 | 89                         | 215                   | 186                   | ..                    |
| 28                         | 140                  | 96                    | 45                         | 79                   | 72 (1)                     | 81                    | 75                   | 90                         | 217                   | 187                   | ..                    |
| 29                         | 126                  | 87                    | 46                         | 87                   | 72 (2)                     | Omitted.              | 76                   | 91                         | ..                    | 112                   | ..                    |
| 30                         | 127                  | 89                    | 47                         | 89                   | 73                         | 56                    | 77                   | 92                         | 166                   | 113                   | ..                    |
| 31                         | 127 (2)              | 89                    | 48                         | 91 92                | 74                         | 59 60                 | 78                   | 93                         | 167                   | 115                   | ..                    |
| 32                         | 128 (1)              | 90 (1)                | 50                         | 97 98                | 75 (1)                     | 67                    | 93 (1)               | 94                         | 168                   | 116                   | ..                    |
| 33                         | 128 (2)              | 90 (2)                | 51                         | 99                   | 76                         | 68                    | 94                   | 95                         | 169                   | 117                   | ..                    |

4. The leading features of the proposed legislation comprise, I believe, the following modifications of the present law, made with the avowed intention of placing "the rights and interests of the raiyats of other than Government raiyatwari villages on the same footing of security as those of the raiyats of Government raiyatwari villages"—

- (1) No raiyat to pay a rent more than five-sixteenths of the value of the produce he raises (Section 31).
- (2) An enhancement of rent by a landlord is only possible after observing the safe-guards prescribed in the tenant's interest by this Bill, which requires, amongst other things, that the Collector shall first approve of the enhancement after hearing the tenant (Sections 36, 41, 48, 49, 68 to 70).
- (3) Certain superiorities are vested in raiyats who have held land in a village for twelve years (Section 20) and may be obtained by other raiyats by gift from the landlord or purchase of such rights for those who have acquired them (Sections 18 and 19).

The chief privileges now created in favor of this superior class of raiyats are (a) freedom from summary ejectment to which he was liable under Sections 40 and 44, Act VIII of 1865, or even for ejectment for suits except for injuring the land, and (b) freedom from liability to enhanced rent on account of improvements, even though he may purport to have contracted himself out of his right to hold at the same rates as before improvement; Sections 41 to 45 seem to provide for this, but it is not very distinctly stated. If an ordinary raiyat, on the contrary, agrees to let the landlord reap part of the benefit of his (the raiyat's) improvement, he must abide by the agreement [Sections 47 and 22 (2)], and he may be ejected by suit for non-payment of arrears, though he has not injured the land (Section 79).

- (4) Instead of the process of summary ejectment and imprisonment provided by Sections 38—46, Act VIII of 1865, rent can now be received (when crops are not attached under Chapter VI) only like any other debt, viz., by obtaining a decree and an order for its execution, under the provisions of the Civil Procedure Code (Section 88).
- (5) A raiyatwari puttadar in Government raiyatwari village is no longer a proprietor entitled to proceed against his sub-tenant under the law for the recovery of the rent [Section 4 (i and iii)].
- (6) The Board of Revenue may fix instalments and dates of payment of rent.
- (7) When a tenant is at a loss to know who is his landlord, the Collector can receive the money and thus relieve the tenant from responsibility (Sections 55—59).
- (8) Suits regarding tenancy are no longer cognizable by the Civil Courts.
- (9) Suits for rent are no longer summary, Section 61 (4).

5. If I had had the advantage of reading Mr. Carmichael's memorandum, I should be able to say whether the impression that the above or some of the most essential changes in the existing law is correct. Supposing, however, that these are some of the chief provisions which Mr. Carmichael wished to see introduced into the new law, with the view to restore the raiyat to his rightful position, which, owing to our past action or inaction, he has lost, I would venture strongly to support them. I do not suppose that it was thought that these provisions would completely achieve the object contemplated by the preamble of the draft, but I think my further remarks as regards modifications may be confined to the following points:—

- (1) Removal of practical difficulties which must present themselves and defeat the object of the preamble, as long as the machinery, by which it is contemplated that the objects may be attained, remains what it is now proposed to be.
- (2) Removal of defects in drafting the Act which seem likely to interfere with the objects contemplated by its originator.
- (3) Other proposals for modifying the present system with a view to bring the raiyats a little nearer to the position which they have lost, than the present proposals seem likely to do.

6. With these preliminary remarks, I propose to take the draft in the order of its sections and to offer such remarks as strike me in reading through them.

Section 3 (2).—Should not Madras Act II of 1871 (an Act to declare the meaning of Chapter 4, Section II, of Madras Act VIII of 1865) be repealed, as well as Act VIII of 1865 itself?

Section 4 (i).—"Estate means and includes . . . any renters of land revenue." I do not mean that estate means and includes any land the Government revenue from which is forborne by renters of land revenue?

Was it intended to give the holder of a petty personal inam, measuring a few cents, the powers and privileges which are not conceded to large raiyatwari puttadars who have small tenants on hundreds of acres, and who, unlike the petty inamdars, have to pay the Government revenue out of the rents, which they collect?

Section 4 (iii).—I think the word proprietor is fairly open to objection. It begs an open question. I would use the words assignee of revenue. He may or may not be a proprietor of land.

Section 4 (iv).—"Private land" includes *Seri, Khas, Pannai*, &c. Is this definition or rather is the use of these three foreign and local phrases necessary or expedient? First, as regards defining the words "private lands," there is what is called by the Act "Raiyati land" and the person who holds this has a certain status afterwards defined. Why not allow the landlord to acquire raiyati as well as landlord's rights in any piece of land. The register of lands prescribed by Section 5 would then show under raiyati's name, the name of the landlord, in cases where the land was what is now called "private."

I imagine that this would simplify matters and make the position more intelligible and clear. As regards the words *Seri, Khas* and *Pannai*, I believe they are likely to create rather than remove the confusion which definitions are intended to obviate. There are a number of other words much better known among the people, such as *Kamatam*, which are used in this sense. *Khas* was used in the old days for raiyatwari as opposed to zemindari. I would not only dispense with these words, but I would go further. I should wish to see all such foreign patoms (*sic*) removed from an English draft—e.g., *Hastu* in Section 14, *Izaradar* in Section 16, *Aliwah*, in Section 39, *Waram* in Sections 35 and 42, *Naibs* and *Gumastahs* in Sections 62 and 119, and even the word raiyat itself, notwithstanding what is stated in Board's Proceedings, No. 7743,\*

\* I have been unable to verify this reference.

dated 2nd December 1864. The great distinction is between the cultivator, who owns the cattle and seed and supplies the labor, and the non-cultivator, who, without supplying either, takes half the produce or the rent. The latter is often a "raiayat"; but it is not his position, but that of the man, who by his industry creates the wealth of the country, which the Government are, I believe, anxious to secure. The real points are lost sight of under the haze of doubtful Oriental appellatives which are of very dubious advantage to any but those who wish to filch first the name and then the dues of persons to whom these terms properly belong. "Raiyati land" is said to include homestead land; this, I suppose, means homestead land of the tenant or raiyat, not of the proprietor.

Section 4 (vi).—It seems awkward to include the proprietor under the term raiyat; I should prefer to hear of an assignee of revenue with occupancy or other rights in the land from which the revenue is due.

Section 4 (x and xi).—I should like to see the differences between landlord and proprietor, tenant and raiyat, defined so as to explain the necessity for this double pair of terms with meanings liable to be confused.

Section 4 (xii).—Is not an arrear an instalment unpaid after sunset on the day on which it is payable?

Might not the words "Collector" and "Collector of the district" be defined, and would it not be a better arrangement to put all the definitions, e.g., the definition of "an improvement" in Section 26, in Chapter I instead of scattering through the Act. The word "public servant" might have been defined in the Penal Code in the chapter referring to public servants, but it more suitably finds a place amongst the other definitions in the beginning of the code.

Section 5 (1).—I do not see why the register should not as heretofore include minor inams and common (*Puramboku*).

Section 5.—Unless some effectual check of such registers is established, they are more likely to help and perpetuate unfair dealings against the raiyats, than to secure the objects contemplated by the preamble of the draft. I shall speak hereafter of what appears advisable in this direction.

Section 12.—I do not see that the words "settled raiyat" are appropriate when used to express the tenant with a right to occupancy and building site or homestead-holding (c.f., Section 61 (1) (i) (b)).

Section 12 (1) and Section 13.—Do these sections read together mean that if a raiyat ceases to hold land for eleven months, only at several different periods in the twelve years he shall be considered to have held land continuously for twelve years?

I should be inclined to leave more to discussion and equity and less to rules, the spirit of which may be evaded while the letter is observed.

Section 14 (1).—I think a scale for free house-sites similar to the scale in force in raiyatwari villages and regulated by the area of the raiyat's holding should, under the orders of the Revenue Board, be prescribed for each district instead of the somewhat vague provision in Section 14.

Section 14 (2).—I do not see why he should not pay rent for his house-site, if he ceased to hold land.

Section 15 (1).—The section seems superfluous. It contains certain provisions regarding a settled raiyat, but every settled raiyat is an occupancy raiyat (Section 16), and an occupancy raiyat is given by Section 20 (a) the right conferred by Section 15 on a settled raiyat. It would seem sufficient to say that a settled raiyat holds his house-site on the same condition as he does his other land.

Section 16 (2).—Does *Izaradar* or farmer of revenue mean farmer of revenue direct from Government?

**Section 18 (1).**—If a raiyat holds a "private" land for twelve years, does that land become raiyati land?

If so, I think the terms as used are likely to create confusion; as already stated, I think all cultivable land should be called *raiya*, and that the proprietor should be able to acquire the raiyati right just like any one else.

It is a question whether the tenant should not be enabled to acquire the landlord's right.

**Section 19.**—Is the special mention of intestate succession intended to exclude the acquirement of occupancy rights by other kinds of succession?

If not, it would appear well to provide against the possibility of such a construction being put on the words as they now stand.

**Sections 12—23 inclusive.**—These sections treat of the three classes of raiyat. They begin with the raiyat holding the most extensive rights, then go on to raiyat with less right, and last come to the ordinary raiyat with least rights. I think it would be well to adhere to this order throughout the Bill, but in Sections 43—47 the order is changed, the occupancy raiyat coming before the settled raiyat. I think it would make the matter much clearer if the rights and liabilities of the lowest class of raiyat, or ordinary raiyat, were specified first; then the additional rights of the occupancy right, and lastly, the additional and distinctive right of the settled raiyat. This is the system adopted in classing Magistrates in Schedule III of the Criminal Procedure Code, and it seems to be a clear and practical system of classification, which might be well applied in the case of raiyats.

**Section 24 (1).**—Section 24 provides for the relinquishment of land by a raiyat, and places the raiyat in a non-raiyatwari village in somewhat the same position as a raiyat in a raiyatwari village. Why should not the non-raiyatwari raiyat (the terminology of the Bill leads to this apparent contradiction in terms) be placed as regards acquiring land (*durkhast*) in the same position as his raiyatwari brother?

The *durkhast* rules, or a modification thereof, might fairly be applied to cultivators in non-raiyatwari villages.

**Section 25.**—I think the hard and fast rule embodied in this section is hardly wise. I would give discretion to the Collector to make equitable exceptions.

**Section 33 (1).**—I don't understand what the numeral (1) means in this and various other sections, e.g., Section 15, 43, 57, &c.

I do not see why a mistake made by a Collector regarding a local measure should be irremediable. In these days of constant changes amongst Collectors, I would allow an appeal to the Board. It is noticeable that the word "Collector" and not "Collector of the district" is used, so virtually an Assistant of a couple of years' standing is apparently pronounced infallible.

**Section 34.**—I fail to see the force of the words "contract made before or after the second day of March 1884." Every contract not made on that day is made before or after it, and why landlords should be allowed one day in the century to get executed an agreement which is unlawful on every other day, it is not easy to understand. I think the Board of Revenue should be given power to settle what are to be taken as "staple crops" for any given local area.

**Section 37.**—I do not know what effect it is expected that this section will have, but one effect will be that landlords will not let settled raiyats take land which has become tenantless unless clear *durkhast* rules confer a right to take up such land on settled raiyats. Between the words "that raiyat shall not" and the words "be bound," I would insert the words "merely by reason of a change of occupant."

**Section 38 (1).**—For the words "notice of the transfer," I would substitute a few words, "previous notice of the date of transfer."

**Section 39.**—This section and Section 120 ought, I think, to come together, so as to contrast what can and what cannot be legally recovered besides simple land-rent.

I would not only make the levy of illegal imposts punishable, but I would similarly treat the entry of such irregular demands in puttas. The practice is very common and works great injustice.

**Section 41.**—This section speaks of a "money-rent shown to be payable." It may be asked how shown? In the margin the phrase existing money-rents is given as the equivalent.

**Section 42.**—It is very necessary that the "waram" in all local areas or estates should be once for all authoritatively settled. Does it include grain only or straw as well? Is it to be delivered at the threshing floor or where? Must the grain be threshed? Is it intended that advances, &c., should be recovered by regular civil suit or by a suit or process under the Tenancy Act?

**Section 44.**—Is it not intended that no other grounds than those enumerated should justify an enhancement of rent? If so, this might be stated.

**Section 46.**—In Raiyatwari villages, house-sites are rent-free. This Act is intended to restrict non-raiyatwari raiyats to the position of raiyatwari raiyats, but Section 46 seems to restrict the holding of a free house-site to an exceptional and comparatively rare class of privileged raiyats.

**Section 42.**—The manner of serving the notice should be defined. I would have it served through the Collector. It might also be laid down that the notice must be served not less than, say, six months before the date from which the enhancement is to take place. The notice should indicate to the raiyat his remedy if he objected to the proposed enhancement, and should state the effect of execution and of the non-execution of the proposed agreement.

**Section 50.**—The terms "tenure-holders," "under-raiyats" "under-tenants" (Section 107), "superior landlord" and "inferior landlord" (Section 108), might, I think, with advantage be defined, if it is found necessary to use them.

**Section 52.**—The word "putta" is not defined, but in the margin the words "statement of account" is given apparently as an equivalent. If a putta is not intended to be a muniment of title, I think it would be well distinctly to state this, and to state what is a muniment of title which will prove the holder to be an occupancy raiyat, &c.

**Section 52.**—It is stated that the putta need not be given until the close of the year. If so, I think that until it is given, the landlord should not be entitled to recover in excess of the putta of the previous year, less the rent of relinquished land and temporary charges for water, &c.

**Section 56.**—Is the fee of eight annas to be paid in cash or stamp?

**Sections 56 and 58.**—The sub-divisions of Section 55 are spoken as "cases" in Section 56, and as "clauses" in Section 58. Uniformity would seem advisable.

**Section 58.**—Cases may occur in which persons may refuse to receive the deposit which the Collector is ordered to pay them. Such cases might be provided for.

**Section 59.**—After the word "depositor," the words "his heir or assignee" might be inserted, and provision might be made for disposing of the deposit if unclaimed.

**Section 62 (3).**—If Collector includes an Assistant Collector, it seems doubtful whether such an officer should be given the power of shifting all his work on to the shoulder of the District Munsif.

**Section 67.**—The object and justification of the provision contained in Section 67 might be stated.

**Section 68.**—The best way of proving that the provisions of Section 48 have been complied with would be to entrust the Collector with the duty of serving the notice of enhancement on the tenant.

**Section 75.**—Before the words "ordinary raiyat," insert (iii).

**Section 79.**—I do not see why (a) has been inserted here.

**Section 83.**—The provisions of this section should, I think, be noticed in the form of a proviso to Section 69. I would also suggest for consideration whether a stipulation by which the landlord seeks to secure to himself the benefits, or part of the benefits, of the improvement to which the tenant is entitled, should not be declared void.

**Section 91(i).**—In the body of the section the appeal is said to be to the Collector of the district, but in the margin the District Court is mentioned, and in Section 91(3) the District Judge is spoken of as the officer for whom the second appeal lies.

**Section 92.**—I do not quite understand the words "and no landlord."

**Section 95 "Proviso."**—The word "does" seems to be a mistake for "do."

**Section 101.**—The officer conducting the sale will probably, as heretofore, be a Revenue Inspector. I think it would be convenient to assign the duty of fixing the lots to a more responsible officer.

**Section 103.**—The form of certificate should be given in a schedule of forms, and ought, I think, to be signed by an officer above the grade of a Revenue Inspector.

**Sections 107 and 108.**—I gather from the terms here used that the same person can be both landlord and tenant of the same land, that is, entitled to collect rent from the cultivating raiyat, and bound to pay it to the proprietor or his assignee.

**Section 119.**—It should be laid down that a landlord may delegate any of his rights to an agent, but that this agent must be registered in the office of the Collector, and that the tenants should have due notice as to the person entitled to exercise the rights. Where a landlord has once delegated certain rights to an agent, he should not have the power to exercise those rights. If he does, the tenants may be subject to double annoyance.

**Section 120.**—Instead of this section, I would insert a section empowering the local Government, on sufficient cause shown, to declare the provisions of the Act applicable to such arrears due by a tenant to his landlord other than arrears of land-rent as may seem reasonable, provided that the non-raiyatwari tenant is not thereby placed in a less desirable position than a Government raiyat is in respect of similar arrears. It appears to me that the greatest caution is necessary in extending the provisions of the Act to arrears other than pure and simple land-rent arrears.

Having thus crudely recorded such observation as has occurred to me on a cursory perusal of the bill at such spare moments as I could avail myself of, I beg that it may be remembered that if I had had time to consider the matter, I should probably have struck out a great deal of

what I have written and might have modified a great deal more. I will now state the general result. The object of this bill, as stated in the preamble, seems to be one of the most important and desirable that has come before the Madras Legislature for years. The general principles, for which alone (paragraph 4 *supra*) I have taken it that Mr. Carmichael is responsible, seem to my humble judgment to be sound.

The draft in which these principles have been embodied seems to be very far from perfect. The machinery which it is relied in the bill to effect the object of the bill, I shall attempt to show ineffectual. To remedy these defects, I think a committee should be appointed, with power to visit some of the chief zemindaris. This committee should be called upon to recast the bill and to adopt a practical test to show whether there was reason to suppose that its object, as stated in the preamble, would be accomplished by the machinery provided for its accomplishment. Ample time should be allowed to do the work satisfactorily, and it would be well if the Commission, before sending in its report, were enabled to see the shape finally taken by the rent legislation now under consideration in Bengal. I have not yet said anything about the machinery which it is proposed to employ. By machinery, I mean the forces which are to be put in action to restore the raiyat to the position which our past policy has unfairly deprived him of. As far as I can see, the raiyat is supposed—if I may be permitted to use the phrase—to work out his own salvation with the help of the register which Section 5 provides that the Curnam should keep. As far as my experience goes, I have no hesitation in saying, that as long as the Curnam alone is responsible for the correctness of the registers, they will be useless. The Curnam is, as the bill shows, sometimes the landlord, and very often a tool in the landlord's hands. An efficient check on his work is required. It would be about as reasonable to allow public servants to draw their own pay without any check from the Account Department as to allow Curnams to prepare their registers without an efficient check in the interest of the raiyat. But it is not only in securing a correct register that Government must, I believe, if they wish to make any appreciable progress in the direction indicated by the preamble, take the initiative. After the register is prepared, scrutinized and verified, a copy safely deposited amongst the Collector's records so as to form a record of rights for the raiyats, steps must, I submit, be taken by Government to see that, in the first instance, each raiyat receives such a putta as he is entitled to. It was once thought that to give the raiyat power to demand a proper putta would be sufficient. This entirely failed to prevent the gradual expropriation of raiyats. Again, it was supposed that landlords would see that their own interests pointed to the necessity of improving the raiyat's status. This idea, too, has, I believe, been long exploded. The landlord or his agent has, as a rule, but one object, and that is to leave the raiyat as little of the fruits of his labor as possible, and to get as much of it as possible for himself. In fact, when it is a case between the raiyat and the landlord of "pull baker and pull devil," the result is a foregone conclusion. The weaker goes to the wall; and the raiyat is the weaker. Government is responsible for the raiyat being placed in this position of disadvantage, and if Government wish to make amends for past ill-treatment, something more than an Act and fair promises is necessary. Something in the nature of a "settlement" of each estate is necessary. Government must, in fact, see the suits for puttas fairly settled without leaving it to the raiyat, who has neither the means nor ability to assert his rights. If this is doubted, it would be easy to produce some of the puttas which zemindari and other tenants within a few miles of Madras have consented to accept. If these puttas are compared with the puttas of Government raiyats, the iniquity of the present arrangement will be apparent. The raiyat is put into a hole, and when he asks for a ladder to get out, he is told to find one for himself. This he is unable to do, so he remains in the hole. Unless Government undertake to prepare a record of rights, and to see puttas issued accordingly by a department or commission acting somewhat as the Settlement Department now does, I fear that little practical improvement will result. A few educated persons who happen still to remain tenants may gain here and there something by a new Act, but, as a rule, it will be the landlords who will study it and work those provisions only which strengthen their position. Though this is the case, I have no doubt that these landlords will raise almost as great clamour against the present bill, as if it were one likely to secure their tenants their just dues. This seems another reason for seeing that what the Government desire to accomplish is really accomplished. It appears to me to be very desirable that the Revenue Board should prescribe forms of puttas, notices, &c., just as they have prescribed them under the Revenue Recovery Act. A section may provide for this. At present, each Divisional officer and each zemindar prescribes his own form.

I would also make provisions for tenants paying in kind commuting such payments for money payments.

In conclusion, I beg to be allowed the indulgence of recapitulating the results of these hasty and disjointed remarks by using a figure which seems to make my meaning clearer. The Draft Bill reminds me of a piece of statuary of which the conception and outlines are admissible, but which is marred by the faulty execution of details and disfigured by the use of inappropriate drapery. While, then, leaving the preamble and general principles unaltered, I would hand over the duty of remodelling and rehabilitating the bill to competent workmen, who should be allowed time commensurate with the great importance of the Act. If they rectify the confusing terminology, adopt a logical arrangement and provide efficient machinery for securing the object aimed at by Government, we may then hope to see the execution of the work worthy of the conception of its originator, and the results will be substantial instead of illusory.

READ—also the following letter from J. G. EORSFALL, Esq., Collector of Ganjam, to the Secretary to the Board of Revenue, dated Chatrapur, 1st April 1884, No. 869:—

I have the honor to submit my views upon the Madras Tenancy Bill.

2. The object of the bill appears to be to secure to the cultivating raiyat fixity of tenure, fixed rents and power to transfer. It limits and restricts the powers and rights that landlords have hitherto possessed, and is to a great extent subversive of their rights and cannot but be obnoxious in the extreme to zemindars and other proprietors throughout the northern districts of this presidency.

3. The bill, as it now stands, is intricate and almost unintelligible except to persons who have had a legal training. It will, I apprehend, give rise to endless disputes between landlord and tenant, and the Collector's Court and those of his divisional officers will, should it become law, be simply swamped with the innumerable suits that are likely to arise under it.

4. I am of opinion that it would be preferable to amend Act VIII of 1865, which has been in force for nearly twenty years and the provisions of which are well known, to passing an entirely new Act bristling, as this does, with novelties and intricacies.

5. I would especially notice the absence of all reference to the relations between a zemindar or landlord and his renter. This question of intermediate tenure is of the utmost importance, for as a rule the zemindars of these northern districts do not deal directly with their cultivating raiyats, but intermediately through renters of one or more villages. Are the relations of the intermediate holder, with the person under whom he holds, to be governed by the provisions of the bill and to be adjudicated by the Revenue Courts, or are they to be left to be dealt with by the Civil Courts? My Senior Assistant Collector, Mr. Thompson, suggests that the intermediate holder or renter above the actual cultivating raiyat should be regarded as the assignee of the person of whom he holds, that is, that the renter under the zemindar or landlord should be considered the landlord for the purposes of the bill, and all questions arising between him and the cultivating ryot dealt with accordingly, but that disputes between the renter and his landlord should be left for adjudication by the Civil Courts. Whatever view be taken, it is imperatively necessary that the status of the renter should be recognized and clearly defined, both as regards his landlord and as regards his cultivating raiyat.

6. *Chapter I.*—The bill sometimes speaks of landlord and tenant and sometimes of proprietor and raiyat; the former terms alone should be used.

Under definition of raiyat, the words "and includes a proprietor in respect of private land" are not intelligible and might be omitted.

Landlord—Renters of land revenue under Government should be inserted here instead of under Estate.

The term "homestead land" is obscure; I would substitute building site.

7. *Section 5.*—The register to be prepared by the Curnam should be made of legal validity, and should contain the fullest information as to the extent of both wet and dry lands and the occupancy of each one of the raiyats. It should also register all cultivable waste and recognized poramboke, and should in short form a complete register of the village. The difficulty will be in getting such a register correctly prepared by the zemindari curnam, who holds by hereditary title and is more frequently than not thoroughly incapable.

8. *Chapter III.*—"Settled raiyat" and "occupancy raiyat" would appear to be intended to represent distinct classes, but virtually the two are identical, and it would be better to use one term only—"occupancy raiyat"—for the two.

The term "bastu" should be replaced by some other expression.

*Section 21.*—Should be omitted. It is not clear what the object and meaning is.

*Section 25.*—This seems an arbitrary and harsh rule. The rule does not exist with regard to ryotwari lands held under Government. Mere non-cultivation and

non-payment of rent for a period of one year should not terminate a tenancy until the tenant be ejected by suit under the provisions of the Act.

*Section 27.*—This, again, is very arbitrary. It would be monstrous to debar a landlord from improving his estate merely because some recalcitrant ryot may object thereto. The landlord may wish to inaugurate some large irrigation work which would benefit one or more villages of his estate. Is he to be debarred therefrom simply because one of his tenants whose interest is purely fractional objects thereto?

*Sections 29 to 33.*—Impose unnecessary restrictions and should be omitted altogether. I do not understand why a landlord should be prohibited from having his lands measured whenever he thinks it advisable to do so.

*Chapter IV—Section 34.*—The money rent calculated at five-sixteenths of the value of the gross annual produce is far below the usual rate prevailing in these districts, and would amount to simple confiscation of a large portion of the landlord's present income. It is, I believe, lower than what is actually demanded from the raiyat holding directly under Government.

The term "staple crops" is somewhat vague and likely to give room for dispute. As to this, I would retain the existing law, under which in the absence of a contract, if the landlord and tenant cannot agree as to the money rent for any year, either party may require the rent to be paid according to the "varum" or customary share of the produce of the village. This varies in different estates and in different villages of the same estate, but is universally, I believe, higher than that now proposed, viz., five-sixteenths.

*Sections 44, 45 and 46.*—Should be omitted. They are practically unworkable and will lead to endless litigation. Any increase or decrease in the productive power of land or in the prices of the produce would be met by adopting the "varum" as the standard of rent. Section 44 (1) is especially vague and unsatisfactory.

*Sections 50 and 51.*—Should be omitted. They are unnecessary and restrictive of the freedom of contract. In this district, the number of instalments in zemindaries is usually six, and this is a detail that should, I think, certainly be left to the convenience of the parties interested, and not restricted by a hard-and-fast rule that might, or might not, be convenient.

*Section 52.*—Should expressly provide that failure to exchange puttah and muchilika should bar any legal proceedings.

*Section 53.*—Contains unnecessary details. It would be sufficient for the receipt to show the name of the tenant, the amount paid, the instalment to which it appertains, and the holding for which it is paid.

*Section 54.*—This seems very objectionable. It makes a penal offence what has hitherto been considered merely matter for a civil suit.

*Sections 55 to 59.*—Are new and unnecessary.

*Section 61 (3).*—Referring suits under the Tenancy Act to the Civil Courts on points of law or fact is an unnecessary procedure. The suit should be disposed of on its merits in the Original and Appellate Courts.

*Section 62.*—The term "gumastah" is open to objection. I would read "authorized agent."

*Section 67.*—I do not understand the objection to a written statement being filed.

*Section 77.*—I see no more reason for imposing an additional penalty upon the unsuccessful party in a rent suit than there is for doing so in any other civil suit.

*Section 78.*—The object of this is not apparent.

*10. Chapter VI.*—The landlord has always heretofore possessed the right of distraining his tenant's property for arrears of rent upon his own responsibility, and no good and sufficient reason exists for depriving him of this privilege.

*Section 92.*—If the produce to be distrained is concealed in the house of the defaulter or is in possession of some party other than the defaulter, it would apparently escape distraint.

READ—also the following letter from W. A. HAPPELL, Esq., Acting Collector of Godáviri, to the Secretary to the Board of Revenue, dated Cocanada, 16th April 1884, No. 137:—

I have the honor to submit my remarks on the Draft Tenancy Bill.

2. On the whole I approve of the principle of the Bill, but it requires amendment in many of its details, and treats the landlord, I think, with unnecessary harshness.

3. It seems to me a mistake to apply the same law to all landlords, whatever their tenure may be. Zemindars and other owners of entire villages may, perhaps, be properly considered as mere assignees of the Government revenue. Their tenants are so much more numerous than themselves that every curtailment of their powers is likely to produce benefit to so great a number of people as to overbalance and render of small account any harm suffered. But this is not the case in regard to minor Inams. Most of these are held by single tenants, and every new advantage secured to the tenant will cause equivalent loss to an equal number of persons. Besides, it must not be forgotten that the Inam Title-Deeds convey the land to the Inamdars in freehold. In this district, at least, tenants of Minor Inams, except those assigned as compensation for lands taken up for public purposes, have no pretensions to occupancy-rights. They are, indeed, seldom disturbed, being for the most part substantial ryots holding land under Government or Zemindars. Great numbers of them are mortgagees. Minor Inams belong mostly to Brahmins. Many let their lands and engage in other and more congenial occupations, but it is surely contrary to good policy to make it impossible for them to resume possession when they wish to engage in agriculture as an occupation. Still greater numbers raise loans on the security of the land, and make it over to the lender for a fixed term of years, so calculated that by the end of the term the rent will have extinguished the loan with interest. Some of the contracts are pure mortgages, but most of them partake of the nature of leases as well. The term for which such so-called leases are held often exceeds twelve years. By the end of the lease the tenant or mortgagee has recouped himself for his advances and probably made a good profit by the transaction. It would cause much loss to the Inamdar to declare him entitled to sit for ever, and would be of no advantage to the public that I can discover.

4. The Inamdar to whom a whole village has been granted has precisely the same title to his land as the small holder, but inasmuch as the actual cultivation of such estates must be carried on by a number of tenants who—whether by law or custom, are not regarded as mere tenants-at-will and whose well-being on account of their numbers is of great importance to the State, it does not seem inequitable to confine their powers within the same limits as those of the great Zemindars.

5. There is another class of small Inams in which the rent only, or rather the Government assessment, has been assigned. The present state of the law affords but little protection to the actual cultivators of such lands, although they are in reality the owners. Provision should be made for securing their rights. In such cases the rent should not be liable to enhancement, except when a general revision of the Government assessment of the district is made, and the benefit of all improvements should go to the cultivator.

6. For these reasons I would divide landbrds into three classes—

- (1) All owners of whole villages or aggregations of whole villages including joint holders even when the property has been sub-divided.
- (2) All minor Inamdars to whom the land has been granted.
- (3) All minor Inamdars to whom the land revenue only has been assigned.

7. I doubt whether it is desirable in this presidency to follow the Bengal Bill so closely. In the northern districts, the system of tenure, and the abuses which have sprung up, are no doubt very similar to the customs and abuses of Bengal. But in the southern districts, the distinction between the *melvaram* and the *kudivaram* is still well preserved and understood, and I think it would be a sounder basis for legislation than the theories or practice of Bengal. The *warum*, or customary rent, is a high, but when stripped of all extra cesses and exactions, not an excessive, rent.

8. The kudivaram right, as it is constantly called in the south, is well understood and appreciated by the people. It carries with it as one of its incidents fixity of tenure and has held its own by the powerful sanction of ancient custom in spite of Act VIII of 1865 and the monstrous case law of the High Court. It is constantly bought and sold, and the purchaser is not, as in this Bill, liable to be deprived of his property by retaining a tenant for twelve years. Taking this custom as a starting point, I would enact that the tenants of all landlords of the first class should be held to have a permanent right to the cultivator's share of the produce, that is to say, the whole produce *minus* the customary rent and legal cesses. The legal cesses should be confined to such as are imposed by the legislature, and the fees customarily paid to village servants. All other cesses which the landlord, with or without the support of legal decisions has been levying should be absolutely and unconditionally abolished. If this is done it will be quite unnecessary to import new descriptions of occupancy-rights from Bengal.

9. At the permanent settlement, the unoccupied waste was made over in full property to the zemindar. I can see no equity in now invading this right. It will be sufficient if tenants who have at their own expense cleared and brought waste land under cultivation are declared to have kudivaram or occupancy-rights in it. All contracts with regard to waste land, in regard to which the proprietor has acquired the kudivaram right in a legitimate manner, should be enforced.

10. The provisions of the Bengal Bill in regard to tenure-holders have been omitted. Some provisions of the kind seem necessary. The whole of the subsequent Inams in Zemindaries, as well as the lands granted for maintenance to members of the Proprietor's family, might properly be dealt with. It might be enacted that the fixed assessment payable to the Zemindar on all such grants should not be less than the proportionate peishcush. The Zemindar might then be held responsible for the peishcush, and sub-divisions would be unnecessary. The tenants of such tenure-holders should be placed in all respects on the same footing as those of Zemindars.

11. *Section 2.*—The tenure of the Bhadrachalam estate is peculiar. The Act as a whole should not be extended to the scheduled Districts, at present, but power should be reserved to the Governor in Council to extend it in whole or in part to the whole or any part of the scheduled Districts.

12. (IV).—I would include in private land all unoccupied waste in proprietary villages, and all lands of which the Proprietor had acquired the tenant-right by legal means.

13. Some of the definitions require to be revised. The best plan would be to adopt those of the Bengal Bill as revised by the Select Committee so far as applicable.

14. *Section 5.*—Provision should be made for the renewal of the Register once in every five years, for alterations in the Register under orders of the Collector, and for a suit for the declaration of any land as private land.

15. *Section 12.*—I would restrict the definition of settled ryot to those who hold land other than private, that is to say, land in regard to which the tenant-right has not been acquired by the landlord in a legal manner.

16. The definition of the word tenant should exclude usufructuary mortgagee even though he is the actual cultivator of the land.

17. *Section 15 (1).*—No remedy has been provided against unlawful ejectment except compensation. The ryot ejected should be empowered to bring a suit for reinstatement.

18. *Section 16 (2).*—Add also mortgagee.

19. *Section 17 (1).*—The proprietor should be permitted to attach conditions to the grant, provided that no rent in excess of the maximum provided by this Act should be recoverable.

20. *Section 18 (1).*—It seems to me simple robbery to hand over private land to a tenant without compensation. If it is considered good policy to grant tenant-right to the occupier of private land for twelve years he should at least be required to pay the proprietor the value of the right of which he was deprived.

21. *Section 19.*—I do not see why any distinction should be made between intestate succession to occupancy-right and succession by will. An occupancy-right is a valuable property which should devolve in accordance with the ordinary rules of law in regard to succession on transfer. The proviso seems to conflict with Section 16 and should be omitted.

22. *Section 21.*—I do not see why Section 21 is wanted. There does not appear to me to be any reason why the tenant of land in which some former tenant once had the occupancy-right, and in which the Proprietor has himself acquired the occupancy-right, should necessarily be anything more than an ordinary tenant. The framer of the Bill had, I suppose, some reason for introducing this section, but in the absence of a statement of object and reasons, I cannot see what the reason is. I think the section might be struck out.

23. I would strike out the provision about ordinary ryots and give every holder of raiyati land fixity of tenure.

24. *Section 23.*—"Agricultural year" should be defined as "the year commencing on the first day of June, or on such other date as the Governor in Council may, in the case of any specified area, from time to time, by notification in the official Gazette, appoint."

25. *Section 24.*—Is it intended to prohibit a ryot from surrendering a portion of his holding and retaining the rest. I think he should be allowed to surrender any portion of his holding on which rent has been separately assessed.

26. *Section 25.*—I would amend it thus: "Any ordinary ryot who leaves his holding uncultivated for a period of one agricultural year shall, if the rent of it is unpaid after the expiration of that period, be deemed to have surrendered the holding."

27. *Section 27 (1).*—I would omit the second portion.

28. (2).—These provisions if made law would render it almost impossible for a Proprietor to make irrigation works or other improvements on a large scale.

29. In regard to improvements, I would give every ryot of whatever description a right to improve the land by the application of manure, and to recover the value of unexhausted manure when deprived of his holding in any way whatever.

30. *Section 34.*—This is a provision which I think is very necessary. There is nothing which more imperatively requires to be stopped than the custom of rack-renting, which prevails in many Zemindari and Proprietary Estates. It is, however, questionable whether the limit fixed by the Bill is not too low. I am of opinion that rent might well exceed five-sixteenths of the average gross produce without being excessive. The following statement shows that the settlement rates in the district often nominally exceed this proportion. I say nominally as the prices taken are much below the average:—

## First-class Villages.

| Class. | Sort. | Value of the gross produce per acre as ascertained by the Revenue Settlement Department in this district | Settlement rates of assessment per acre | Five-sixteenths of the value of gross produce. |
|--------|-------|----------------------------------------------------------------------------------------------------------|-----------------------------------------|------------------------------------------------|
| II     | 1     | 22½                                                                                                      | 8                                       | 7                                              |
|        | 2     | 18½                                                                                                      | 7                                       | 5½                                             |
| III    | 1     | 20                                                                                                       | 7½                                      | 6½                                             |
|        | 2     | 15                                                                                                       | 6                                       | 4½                                             |
|        | 3     | 11½                                                                                                      | 4                                       | 3½                                             |
| IV     | 1     | 22½                                                                                                      | 8                                       | 7                                              |
|        | 2     | 18½                                                                                                      | 7                                       | 5½                                             |
|        | 3     | 15                                                                                                       | 5                                       | 4½                                             |
| V      | 1     | 17½                                                                                                      | 6                                       | 5½                                             |
|        | 2     | 13½                                                                                                      | 5                                       | 4½                                             |
|        | 3     | 10                                                                                                       | 3                                       | 3½                                             |
| VI     | 1     | 17½                                                                                                      | 6                                       | 5½                                             |
|        | 2     | 13½                                                                                                      | 5                                       | 4½                                             |
| VII    | 1     | 20                                                                                                       | 7                                       | 6½                                             |
|        | 2     | 15                                                                                                       | 6                                       | 4½                                             |
|        | 3     | 12½                                                                                                      | 5                                       | 3½                                             |
| VIII   | 1     | 15                                                                                                       | 6                                       | 4½                                             |
|        | 2     | 12½                                                                                                      | 5                                       | 3½                                             |
|        | 3     | 10                                                                                                       | 3½                                      | 3½                                             |
| XII    | 1     | ...                                                                                                      | ...                                     | ...                                            |
|        | 2     | ...                                                                                                      | ...                                     | ...                                            |
| XIII   | 1     | ...                                                                                                      | ...                                     | ...                                            |
|        | 2     | ...                                                                                                      | ...                                     | ...                                            |
| XIV    | 1     | ...                                                                                                      | ...                                     | ...                                            |
|        | 2     | ...                                                                                                      | ...                                     | ...                                            |

## Second-class Villages.

| Class. | Sort. | Value of the gross produce per acre as ascertained by the Revenue Settlement Department in this district. | Settlement rates of assessment per acre. | Five-sixteenths of the value of gross produce. |
|--------|-------|-----------------------------------------------------------------------------------------------------------|------------------------------------------|------------------------------------------------|
| II     | 1     | 20                                                                                                        | 7                                        | 6½                                             |
|        | 2     | 15                                                                                                        | 6                                        | 4½                                             |
| III    | 1     | 17½                                                                                                       | 6½                                       | 5½                                             |
|        | 2     | 13½                                                                                                       | 5½                                       | 4½                                             |
|        | 3     | 10                                                                                                        | 3½                                       | 3½                                             |
| IV     | 1     | 20                                                                                                        | 7                                        | 6½                                             |
|        | 2     | 16½                                                                                                       | 6                                        | 5                                              |
|        | 3     | 12½                                                                                                       | 4                                        | 3½                                             |
| V      | 1     | 13½                                                                                                       | 5                                        | 4½                                             |
|        | 2     | 11½                                                                                                       | 4                                        | 3½                                             |
|        | 3     | 8½                                                                                                        | 2½                                       | 2½                                             |
| VI     | 1     | 17½                                                                                                       | 6                                        | 5½                                             |
|        | 2     | 13½                                                                                                       | 5                                        | 4½                                             |
| VII    | 1     | 20                                                                                                        | 7                                        | 6½                                             |
|        | 2     | 15                                                                                                        | 6                                        | 4½                                             |
|        | 3     | 12½                                                                                                       | 5                                        | 3½                                             |
| VIII   | 1     | 15                                                                                                        | 6                                        | 4½                                             |
|        | 2     | 12½                                                                                                       | 5                                        | 3½                                             |
|        | 3     | 10                                                                                                        | 3½                                       | 3½                                             |
| XII    | 1     | 15                                                                                                        | 5½                                       | 4½                                             |
|        | 2     | 12½                                                                                                       | 4½                                       | 3½                                             |
| XIII   | 1     | 11½                                                                                                       | 4½                                       | 3½                                             |
|        | 2     | 10                                                                                                        | 4                                        | 3½                                             |
| XIV    | 1     | 10                                                                                                        | 4                                        | 3½                                             |
|        | 2     | 8½                                                                                                        | 3½                                       | 2½                                             |

31. The Zemindary Karnams Bill provides that certain Kurnicam Service Inams should be confirmed at the full settlement rates. In that case, the Inamdar will have to pay Government more than he is entitled to claim from the tenant. So also in the case of excess discovered in Service Inams enfranchised in Government ryotwari villages.

32. Although I approve of a maximum being fixed, I think it should be done by a Commission after investigating the circumstances of each village. Good land will bear a rent of half the produce where bad land will not bear one-third. The cost of cultivating bad land is not only a higher proportion of the produce but greater in actual amount than the cost of cultivating good land, because the crop in bad land does not grow with sufficient rapidity and closeness to keep down the weeds. I wish particularly to insist upon this elementary fact known to every farmer, because some of the work of the Madras Settlement Department has been done on the assumption that the expenses of cultivation bear a fixed proportion to the outturn of the crop. But in as much as it is intended that the maximum rent claimable under the Act should be something less than the full rent as determined by competition, there need be no great difficulty in fixing a maximum which would be fair to both parties.

33. I think that contracts made before the 1st January 1884 should stand, the ryots being allowed to claim a reduction on proof that the rent exceeded the maximum allowed by the Act.

34. Section 39 (1).—In addition to the actual rent, power should be given to the proprietor to collect water-rate, local cess or any other cess imposed by law.

35. Section 48.—The mode of serving the notice should be prescribed.

36. Section 52 (3).—Such puttass and muchilkas shall be attested by the Curnam of the village. Does this only impose a duty on the Curnam or would puttass and muchilkas be not valid if they are not so attested? How is the duty to be enforced?

37. A settlement of account is certainly necessary, but I do not see the necessity of annual renewal of puttass and muchilkas. The rights of the tenants are defined. No enhancement or reduction of rent can be made without a decree and the tenant cannot be ejected without a decree; will it not answer the contemplated purpose if it is enacted that a decree of the Collector enhancing or reducing the rent should also direct an amendment of the puttass and muchilka, and that the puttass and muchilkas once exchanged should, subject to the alterations made under the orders of the Collector, hold good till the relationship of the landlord and tenant ceases.

38. Section 53 (4).—This provision seems too harsh. A clerical error or the fraud of a clerk might cause the landlord serious loss.

39. Section 54 (1).—Section 54 does not seem to me to be an improvement on the existing law. It is also not very clear. When does the cause of action arise in suits instituted under 54 (1) and 54 (2)? After the words "refuses or neglects" should be added, I think, "for three months" in (2), and "for one week" in (1), and why should a ryot be prosecuted before a Magistrate if he does not give a muchilka. I prefer Act VIII of 1865 here.

40. Six months is unnecessarily long to enable a ryot to bring a suit to recover from the proprietor penalty for refusing or neglecting to give receipt. Three months ought to be ample for it, as well as in the case of refusal to grant a puttah.

41. Section 59.—In case any co-sharer appears and claims the rent, it should be paid on his giving an indemnity bond and sufficient security. A Collector should not be liable to be sued for making such payment.

42. Section 60.—I would omit "in the absence of any written contract to the contrary," and reduce the rate of interest to 9 per cent.

43. Section 61.—I approve of the jurisdiction of Civil Courts being excluded in all Revenue suits, but as the number of suits under the Act, especially at first, will be large, Tahsildars and Deputy Tahsildars should be given jurisdiction to try suits relating to (a), the determination of the land held by the ryot, and (c) (ii) in which agreements are filed, and suits for rent up to Rs. 50.

44. Collectors should also be empowered to refer suits to the Tahsildars for investigation, and to give their decision on the evidence recorded by them. Some less cumbrous procedure than that laid down in the Civil Procedure Code should also be prescribed.

45. *Section 61 (3).*—Collectors are given power to refer questions of law or fact to the Civil Courts. This provision is so badly laid down that it is tantamount to making the Civil Court subordinate to the Collector. It is not improbable that a Collector might take advantage of the clause to refer all suits coming before him under the Act to Civil Courts. At the same time, the application of the clause might cause friction between the Judicial and Revenue Departments.

46. The Collector may be authorized to refer points of law to the High Court for authoritative rulings, and there should be no reference on points of fact.

47. *Section 70.*—The equity of this section is questionable. It would be better to say that in both cases the decree should come into effect in the agricultural year next following it.

48. *Section 77.*—When interest is provided, the damage which the landlord sustains by the ryot withholding the rent would only be nominal. The section may be omitted.

49. *Section 79.*—The provision that an occupancy-tenant cannot be ejected except in execution of a decree for ejectment passed under Section 79 on the ground that he has used the land in such a manner as to render it unfit for the purposes of the tenancy, is a good one. If he owes arrears of rent and his landlord has obtained a decree, so much of his holding may be sold as it is necessary to sell in order to discharge the arrear. Section 20 (c) and Section 88 provide for this, and nothing more is, I think, required. In this respect, the Bill is, in my opinion, an improvement on Act VIII of 1865.

50. *Section 80.*—Section 80 is a good one, but I would omit Clause 4.

51. *Remarks on Original Suits.*—The provisions of Act VIII of 1865 regarding appearance by a representative might be retained.

52. *Section 91.*—The provisions of Section 91 regarding appeals is unintelligible as the section is drafted. If appeals and secondary appeals are allowed in every case, the most stringent provisions for the protection of the tenant will be of no avail. The cost of unsuccessful litigation in single cases is of no consequence to the proprietor of an extensive estate, but it is ruinous to a ryot. The risk will deter ryots from resorting to the Revenue Courts for protection, except in a few cases in which all the ryots of an estate form a combination to resist the landlord. I would propose that no appeal be allowed in suits for rent or damages not exceeding Rs. 50 in amount, and that in all other suits an appeal should lie to the Collector of the district and the District Judge sitting together.

53. Instead of allowing secondary appeals on a point of law, the District Appellate Court should be authorized to refer any point of law for decision to the High Court.

54. The Collector of the district should, as a general rule, try no original suits; but he might be allowed to exercise his discretion in trying suits of unusual value or importance. In such cases, the first appeal might lie to the High Court. In the event of the District Judge and Collector differing in opinion, they should be empowered to call in the next senior Revenue officer to assist them.

55. *Section 92.*—In regard to Section 92, Mr. Power, the Head Assistant Collector, writes—“The provision that the landlord shall not be able to distrain the tenant's property for arrears of rent, but that the Collector may, on the landlord's application, distrain the tenant's crops, will probably give the Collector and his subordinates a good deal more work than they have at present, but at the same time it is one of which I approve. I think there is hardly any power which is more abused than the power which the present law gives to the landlord of distraining his tenant's moveable property, and there is hardly anything more difficult to prove than the abuse. So far as my experience goes, appeals against distraint are the commonest class of suits under Act VIII of 1865, and of all suits under that Act they are the most

difficult to decide. I do not know of any other class of rent suits in which it is so hard to get at the truth. If the distraint is made by officers of Government under section 95 of the Bill, the tenant will be much better off than he is now, and I do not think that the landlord will have anything to complain of. I think that it is right that crops should be the only moveable property liable to distraint for arrears of rent. I have never been able to see why a man's household furniture or his cattle or his personal ornaments or any property, not the actual produce of the land held by him as tenant, should be liable to be seized in satisfaction of a debt owed by him in respect of the land. It is easy to see the propriety of making the crop grown on the land liable to distraint for arrears of rent owed for the land, but the landlord should, I think, have no more power to distrain other property than any other creditor has.” In these remarks I concur.

56. *Section 92, Clauses (2) and (3).*—Section 92, Clauses (2) and (3), seem to me unnecessarily harsh on the landlord. Who is to pay the court-fee finally? It is not *prima facie* the landlord's fault that the tenant falls into arrears. If it is intended that the court-fee shall be eventually recovered from the person in fault, who will be in a vast majority of cases the tenant, the ultimate effect of the provision must be to carry wholesale ruin into every proprietary village in the country.

57. There is no provision in the Bill by which the proprietor can recover the value of the Court-fee. In the vast majority of cases, he will prefer to bring a suit since, in the event of gaining his cause, he will be able to recover costs, but the costs of a suit, especially if appealed against, far exceed even those of a distraint under Chapter VI. The tenant, if his failure to pay is not merely wilful, must necessarily be ruined. The power of distraint was originally given to the landholders to place them in a position to meet the demands of Government on them. It is not equitable that they should be deprived of these powers while Government retains them.

58. I think distraint might safely be made without further formalities, on the verified application of the proprietor or his agent—if to every over demand a penalty equal to the amount over-demanded was attached. Half of the penalty should be given to the tenant.

59. *Section 97 (1).*—A tenant should be required to give due notice to the distraining officer before reaping and storing the distrained produce.

60. *Section 106.*—It does not clearly appear from the Bill how the legality of a distraint is to be contested. Section 106 mentions the institution of a suit for this purpose, but it does not say before whom the suit is to be instituted. I suppose it should be instituted before the Collector, but it does not appear to be one of the suits specified in Section 61. Similarly, it is not clear before whom a suit by an inferior tenant under Section 107 (2) is to be instituted.

61. *Section 118 (1).*—I would say “for all, or any of the purposes of this Act.”

62. *Section 118 (2).*—A Collector should also be empowered to refer any suit from his own file to the court of a subordinate for disposal.

63. *Section 119.*—For “Naib or Gumastah” say “duly authorized attorney or agent.”

64. *Section 120.*—Add water-rate and any cess imposed by law.

65. No provision is made for the recovery of arrears due by sub-tenure holders, such as subsequent Inamdars. A Rent Recovery Act can hardly be considered complete unless it makes provision for the recovery of such dues also.

66. As this Draft Bill appears to have been copied almost *verbatim* from the first draft of the Bengal Rent Bill, I would suggest that it be carefully compared with the draft as amended by the Committee of the Legislative Council lately published in the *Gazette of India*.

67. The word ryot has been long a good English word freely used by good authors such as the two Mills and Macaulay. There seems no obvious advantage to be gained by spelling it raiyat. The word raiyati was never before heard of in this part of the country and seems hardly worth importation. The use of either is unnecessary. Tenant is better than ryot, and tenant-right exactly expresses the kudivaram right with which every Tamil man is familiar.

READ—also the following letter from W. P. AUSTIN, Esq., Acting Collector of Kistna, to the Secretary to the Board of Revenue, dated Masulipatam, 8th April 1884, No. 988:—

With reference to the Resolution of the Board of Revenue, dated 11th February 1884, No. 464, I have the honor to offer a few remarks on the Draft Tenancy Bill. I regret it is not possible for me to go more fully into the subject; but the Board's Resolution only reached me on the 23rd February last, and the latest report from my Divisional Officers (whose opinions on the subject had been called for) was received by me on the 2nd instant, at a time when I was very busily engaged in the settlement of the Gudivada Taluk, and I am obliged to submit this without further delay, so as to reach the Board's office, if possible, by the 10th instant.

2. I will now proceed to comment briefly on each chapter *seriatim*.

3. Chapter I.—It is not clear under what head Government land held on ordinary ryotwary tenure comes. It does not fall under the definition of "Estate" nor of "Private" nor of "Raiyati" land. Under what head does it fall?

Clause XII.—"Before" sunset is I presume a clerical error for "after" sunset. Rent cannot become an "arrear" before the expiry of the last day on which it is due.

This chapter deals with definitions, and definitions of the following terms used in subsequent sections of the Act should find a place here:—

- |                        |                     |
|------------------------|---------------------|
| (1) Superior tenant.   | (5) Under-raiyat.   |
| (2) Inferior "         | (6) Homestead land. |
| (3) Superior landlord. | (7) Staple crops.   |
| (4) Inferior "         |                     |

4. Chapter II, Section 5, Clause (2).—The penalty attaching to non-compliance by a Karnam to furnish the register described in Clause (1) seems to me unnecessarily harsh. Liability to dismissal or suspension would, I think, be a more fitting mode of punishment.

5. Chapter III, Section 13.—I would extend the period of "one year" to two years. The latter would probably cover a time of famine or similar visitation.

6. Chapter IV, Section 37.—What is there to show that the previous tenant has been paying a fair rent? This would not be invariably the case.

Section 38.—Issue of notice by transferee should be compulsory unless the transfer has been made by order of a competent Court.

Section 42, Clause (3).—How is a landlord to recover the value of any seed, labor, &c., he may have contributed to the production of the crop? A procedure should be laid down, whether by summary suit before the Collector or how.

Section 54, Clause (2).—This clause gives a right to the tenant to sue his landlord for neglecting or refusing to give his putta. But suppose putta is neither tendered by landlord nor demanded by raiyat. In such a case, does the landlord lose his right to sue his tenant under this Act, say for ejectment? This, I think, should be distinctly laid down. Under the present Act, no suit can be brought unless putta has at least been tendered. Further, it should, I think, be made law that tender of putta through post by registered letter be held a valid tender.

Clause (3).—The distinction in this clause between landlord and raiyat I consider invidious. They should be liable both to the same punishment, i. e., a penalty to be awarded by the Collector (not Magistrate) on summary suit being instituted, not exceeding double the value of the patta of that year.

Section 55, Clause (1) (a).—The raiyat should be bound to show that he had tendered the rent and it had been refused.

7. Chapter V.—In the heading of this chapter, after the words "to be instituted before the Collector," I would add "or other officer exercising the powers of a Collector" or I would give a definition of "Collector" in Chapter I.

Section 61, Clause (3).—I would strike out the words "or fact." Surely a Revenue Court is as competent to determine a question of fact as a Civil Court can be. I would also suggest that the reference on a point of law be to the District Court only.

It would be, I think, *infra dig.* for a Collector to consult a District Munsif on a point of law.

Section 69, Clause (2).—The words "after holding such inquiry as he may deem fit" render the procedure of such inquiry too vague. The procedure of the Collector in such cases should be more distinctly defined.

Section 77, Clause (3).—For "oral" I would substitute "written." This would afford the other party a better opportunity of knowing what was going on.

Section 91, Clause (3).—In this clause reference is made to appeals to the District Judge, but the Act does not seem to contemplate an appeal to that officer, but only provides for appeals from Divisional Officers to the Collector and from the Collector to the High Court. Probably "High Court" is an *erratum* for "District Judge," and this would seem to be the natural course of appeal.

8. Chapter VI, Section 92.—This gives the landlord authority to distrain the crops of his tenant under certain circumstances. Why limit the right of distraint to crops only and not extend it to other moveable property? The landlord's remedy should, I think, be firstly the attachment of crops, secondly of other moveable property and lastly of the land itself. It might very well happen that no crops were available for attachment. What is the landlord to do then?

The words "and no landlord" are unintelligible.

Section 95.—It would seem that the burden of distraining is in every case to fall on the Revenue Department. Why should not the landlord be authorized to make the distraint himself at his own risk, and why should a limit of twenty days before the time that crops are fit for reaping or gathering be fixed? I think no such arbitrary limit of time should be assigned.

Section 101.—This section fails to provide for commission charges. *Vide* Section 33 of the present Act.

Section 102.—The second sale should be at the risk of the defaulter. This should be added.

9. Chapter VII, Section 120.—The words at the end of this section "and the like" are too vague. It should be distinctly stated what is meant to be included.

10. The Bill on the whole does not impress me very favorably. A statement of reasons should have been given and the object of the Bill specified in fuller detail. It contains many novel features, notably in fixing a maximum limit of money-rent and the division of raiyats into classes with their respective rights. In some ways it favors the landlords unduly, in others the tenants. Its tendency, it seems to me, is to ignore ancient and existing tenures to a great extent and to substitute arbitrary rights. The use of the terms in various sections of "Proprietor and Cultivator," "Proprietor and Raiyat," "Landlord and Cultivator," "Landlord and Raiyat," are confusing. It would be better to use throughout the Bill the simple terms landlord and tenant.

11. It is to be hoped that, before an Act of so sweeping a nature becomes law, further opportunity of criticism will be given.

From the Collector of Kurnool, dated 17th April 1884, No. 145.

From the Collector of Madras, dated 16th April 1884, No. 106.

READ—also the following letter from C. S. CROLE, Esq., Collector of Madura, to the Secretary to the Board of Revenue, dated 10th April 1884, No. 180:—

The "Madras Tenancy Bill."

2. The origin of this Bill appears to have been in certain recommendations of the Famine Commission, to secure the occupancy rights of zemindari ryots, which have

been effaced by the decision of the Madras High Court in Special Appeal, No. 9 of 1870.

3. The present draft seeks, according to the preamble, to place the rights of such cultivators on the same footing as those of Government ryots. But it does a great deal more. It creates entirely new and extremely complicated tenures. Besides this, it re-casts the existing Rent Law (Act VIII of 1865). The result is 120 sections of fat feeding for lawyers. At least, so I fear.

4. Knowing the illustrious foster paternity of the draft, I venture with some trepidation, perhaps, the following criticism on its general scope. The care, labor and ingenuity which have been bestowed on it shine through its lines at every chink. But I am bound, in honest conviction, to say that, with all that, it is unnecessary, inconsistent, inappropriate and unjust.

5. Nothing but absolute and direst necessity could justify interference with the Rent Law now in force. But there is not within my reach a single document to support a plea, which is negated by experience. Neither is any statement appended to the Bill.

6. The contrast between the promise of the preamble and its fulfilment in the body of the Bill, in regard to the assimilation of Zemindari and Government ryots—its main declared purpose—results in an inconsistency so glaring as to be explicable only on the assumption that the author's attention was so concentrated on working out details, as to cause him to overlook the digression of performance from purpose.

7. Again, there is a strong, foreign, Bengali flavour about the measure, which may not improbably have failed to strike those principally interested in our Northern Circars. It is clearly discernible by the nostrils of others, albeit not super-sensitive to scent out or resent the intrusion of heresies, so-called. I am compelled distinctly to assert, with all humility, that the tenure provisions of the Bill do not, in any way, represent common law and ancient custom in the Madras Presidency, to which, I submit, they are exquisitely inappropriate. In point of fact, the frame, and even the very wording of the Bill before me, indicate a scarcely disguised attempt to flood the Presidency of Madras with the miserable disputes and complications which it is the main purpose of the Bengal Tenancy Bill, now before the Supreme Council, to settle. It has passed through the trial with surprisingly small damage. The fable of the fox surely teaches the propriety of resisting an attempt at mutilation, the only reason for which appears to be that the Bengal ryot unfortunately happens to be tailless.

8. The ryots are threatened with a great injustice. They are, in truth, the proprietors of their holdings. No cultivator, new or old, from the most ancient times down to the present moment, has been anything less in the Government tracts. He acquires this perfect title on the very instant of his first cultivation of the soil, yet, instead of declaring this already existing, and, by Zemindars, even often recognised right—instead of exactly assimilating Zemindari and Government ryotwar tenures—as the preamble set out to do, the Bill has developed into a project for sweeping deprivation, which bodes ill to the interests of material progress and accumulated agricultural wealth.

9. Personally, I have some doubts whether any legislation is at present necessary—whether, in fact, the above decision of the Madras High Court, the *fons et origo mali*, would be taken as a precedent in a fully-argued case. But the Government has decided that it is. Some prolixity is unavoidable in dealing with the question of land tenures in estates in Southern India, as I now proceed to do. For the sake of convenience, I have used the words "Zemindari," &c., as including all estates and persons affected by the proposed measure.

10. Out of 8,401 square miles constituting the Madura District, 4,805 square miles are occupied by permanently-settled estates. The question is, therefore, of very big importance here, and there is ample material for estimating the necessity for, and the probable effect of, the measure.

11. The High Court has, in the decision above noted, judicially decided the cultivators of lands, other than those belonging to Government, to be tenants-at-will.

It arrived at this decision purely by interpreting the written law, as it was bound to do. The law was passed by the Government of the day (1802) under a complete misapprehension of the common law of India touching rights in the soil. Act VIII of 1865 silently acquiesced in the error. I shall presently notice this point, but I undertake to prove it, and, if I do so prove the assertion, it must be conceded that the charge of confiscation, which is sure to be brought against the Government for doing a piece of very tardy justice, is not of serious moment. I would go further. The condition of the cultivating classes on proprietary estates is most unsatisfactory. They are not advancing in proper relation to the general progress of the country. The misconduct of proprietors, and their total unfitness, almost without exception, to comprehend the responsibilities of their position, are the main causes of this. Even granting, therefore, that there might be some doubt as to the ancient right in the soil, the time has arrived for placing it on a sound and indisputable basis. The prosperity of the whole community is involved in the state of agriculture and property in land in India. Moreover, the protection of individual interests, unable to defend themselves, is an original duty of civilised government.

12. None of the former Governments have, as far as I know, ever laid claim to property in the soil, except in the most theoretical and shadowy way. Their rights have been restricted to a certain share of the produce, which varied with the beneficence of the rulers of the day, or was governed by their rapacity or necessities. They did not even recognize individuals, but made their arrangements for the payment of the share due to the State with the *village* elders representing the village community, which was the unit of fiscal government, and which, as representing the shareholders, possessed a complete and indefeasible property in the soil. This was the *status quo* even after the assumption of British rule in the south, and, admitting that the sharp simplicity of definition was lost in haze, and blurred by rapine, conquest and misrule further north, no student of land tenure now denies that the soil of the south of India was originally vested in the cultivators.

13. It is not intended that the above condensed statement should be accepted as the mere assertive opinion of the writer, or even as an unprovable axiom. The Institutes of Manu (880 B.C.), the Vidyār Aniya Sinriti of Mādhavāchāri (1336 A.D.), the writings of Sir Thomas Munro, the Institutes of Teimūr, the oft-quoted firmān of Aurungzebe, the admirable description of the constitution of village communities contained in Wilks' Mysore, the work on that subject by Sir H. Maine, and the testimony of all the early British Revenue notables, such as Place, Lushington, Hodgson, F. H. Ellis, or B. Sankarāchāriyār, form a body of testimony which raises the opinion, expressed by me not for the first time, into the position of a *dictum* judicially proved.

14. That the State was not the proprietor of the soil is proved by the following lines from Manu:—"Cultivated land is the property of the man who cuts away the wood, or who first cleared and tilled it:" and by the distribution of the half of the produce, assigned away from the farmer under that code, viz.—

|                                |                               |
|--------------------------------|-------------------------------|
| One-sixth to the Government.   | One-fourth to the Proprietor. |
| One-twentieth to the Brahmins. | One-thirtieth to the Gods.    |

15. I shall not waste time by tracing the "proprietor" of these ancient times as distinct from the "Government" to his present development, under the British system of individual holdings, as the ryot holding under an engagement with the Government, or its assignee the Zemindar. The point would never have been obscure, but for the hurried conclusions of Lord Cornwallis and Sir John Shore, represented in Madras by the manifesto of the Madras Government of 1796, which confiscated the undoubted proprietary rights residing in the Madras ryot, in the attempt to engraft the entirely alien system of landholding obtaining in feudal countries on the revenue system of Madras. The policy was futile. The sense of those concerned rebelled against it from the first. From 1802 until 1871, no one ventured to assert the right of spoliation involved in making the ryot a tenant-at-will. The ancient common law of the country vindicated the rights of the ryot against a policy which would have rendered the land a wilderness and have produced a revolution.

16. But here are the words of the Government. There is no mistake about them:—

"The first feature in all the Governments of India is that the sovereign, whether he be a Mussalman or Hindu, is lord of the soil; hence it is that no alienation of lands from the property of the circar, or rather no possession of land whatever, is valid without an instrument from the superior lord. The inhabitants of each village can establish no more rights of inheritance in respect to the soil than the tenantry of an estate in England can establish a right to the land by hereditary residence."

17. The injury, then, which has been done, has been committed by Government, and if, owing to increased value of land and the advance of population, the zemindars, who have slept so long over rights improperly granted to them at the permanent settlement, find that it suits their purpose now to assert them, it is not for them to denounce remedial measures as spoliation. It remains for Government, in the interests of the country at large, to decide in what manner the position of the ryot-proprietary of the country may most effectively be vindicated, and the correct legal status of the cultivator be settled and declared once for all.

18. The question is—Does the present Bill do this? I humbly think not.

19. Nothing short of a legislative declaration, exactly assimilating the tenure of land in "estates" to that obtaining in Government tracts, will ever secure the well-being of ryots in the former.

20. This course involves no invasion of private property. If the position laid down above be accepted, it must be admitted that it was not in the power of Government at the permanent settlement to assign to zemindars and others a jot or tittle more than the Government itself was, in truth and verity, possessed of at that time. The proprietary right in the soil was not theirs to grant. That belonged, and still does belong, under the common law, to the ryot.

21. Persons of the zemindar class have, in the interval, most fortunately for the country, been, as a rule, more conspicuous for ignorance, extravagance and vice, than for even that lowest form of enlightenment, the pursuit of self-interest. Here and there, transient exceptions have occurred of zemindars who have pursued a policy of aggrandisement. This rarely lasted beyond a particular life; but, so long as it did so last, the invariable course pursued has been to devise measures for ruining the ryot, and thus obtain possession of his holding (or kudivaram) right, for the purpose of a rack-renting re-arrangement of the share of the produce immemorially due from his land. This tendency is sure to increase in the future. Many ancient estates are, in one way or other, falling into the hands of speculators, and the property of the ryot is no longer safe in any. The neglect of the irrigation works, refusal to grant remissions in times of drought, the creation of extortionate and illegal debts, the acknowledgment of which is obtained either from the ryots' ignorance or his grievous necessity—these, and such like, are the weapons, placed by our complicated judicial machinery in the hands of unscrupulous men, for the destruction of proprietary right in the soil and the metamorphosis of the ryot into a tenant-at-will.

22. After close attention paid to this subject for years, I confess to seeing no remedy, except by declaring the "proprietor of an estate" incapacitated henceforth to hold private lands in it, above and beyond such extent of land as he may cultivate directly through his own servants (not sub-tenants) as a home farm. In respect of such lands, or of any private lands now in the possession of the zemindar, his name should appear on the accounts of the estate as a ryot. Under the present Bill, the proprietor would thus be unable to apply its provisions for the collection of rent. A provision might be inserted with advantage enabling the actual cultivator, on application to the Collector, to expropriate the zemindar's rights in such lands by payment of a sum equivalent to the value of twenty times the amount of the annual rent leviable from him (the cultivator), in five annual instalments.

23. Such provisions would not be in discord with ancient law and custom. They cut the Gordian knot of complicated tenures, which is endangering the prosperity of the country. It is required for the secure enjoyment of property in the soil on the part of the inhabitants of estates.

24. Now what is that property? It has been briefly described above, and references have been given to authorities in support of the position. It is the most beautifully simple and perfect title to be found in any country. The status of Zemindari and of Government ryots were, originally, precisely the same. The land of the country belongs absolutely to the cultivator of it, subject only to a rent-charge payable to the State or its assignee, the Zemindar, Inamdar, or whatever he may be called.

25. As long as this charge is met, the ryot cannot be interfered with; and there is no possibility of getting rid of him, even then—in justice and in law—except by selling his land, in the way which the law of the land has, following immemorial custom, empowered his superior lord to do—and by that means only.

26. Instead, then, of the ryot's position being improved under the present Bill, a grave attack is contemplated on his property by the creation of three tenures in place of one. The danger is none the less great because it is covert and disguised, under the plea of protection of his interests. In point of fact, it is really the ryot, and not the zemindar, who is threatened with confiscation, although the former, being allowed no voice in such matters, will not be heard amidst the din of discussion, while the latter will pose as a much injured man inwardly rejoicing the while.

27. Again, the ejectment provisions are altogether alien to, and incompatible with, the ryotwari tenure. I am perfectly well aware of the plea regarding "untenant-like behaviour," which will be urged in support of granting the power. To this I reply, firstly, that the ryot is in no sense a tenant—that the word is a misnomer; and secondly, that it were much better to incur the risk of some infinitesimally minute portion of a zemindari being rendered unfit for future cultivation, owing, for instance, to the ryot letting it out for a gravel pit, than to sap the foundation of the rights of property. In this connection, it must be remembered that, while the "peishcush" fixed at the permanent settlement of 1802 stands still as a fixed sum, the incomes derived by the zemindars have doubled and trebled in the interval. So the loss, such as it is, can well be afforded. I subjoin a table giving the figures for twenty-four estates in the Madura District:—

| Estates.          | Peishcush. | Assets on which Peishcush was fixed. | Beriz of Fasli 1292. | Beriz of Fasli 1290. |
|-------------------|------------|--------------------------------------|----------------------|----------------------|
|                   | RS.        | RS.                                  | RS.                  | RS.                  |
| Ramnad...         | 3,31,566   | 4,97,350                             | 6,17,828             | 6,15,959             |
| Sivaganga         | 2,62,500   | 4,39,691                             | 6,78,120             | 6,91,342             |
| Kannivadi         | 38,129     | 54,486                               | 1,21,177             | 1,14,364             |
| Ayakudi...        | 16,785     | 23,979                               | 33,177               | 33,809               |
| Bodinayakanur...  | 15,347     | 21,925                               | 61,756               | 56,487               |
| Ammayanayakanur   | 13,668     | 19,957                               | 49,055               | 50,783               |
| Gandamanayakanur  | 13,414     | 19,164                               | 60,829               | 49,491               |
| Palayanpati, &c.  | 13,544     | }                                    | 50,330               | 46,943               |
| Pandalkudi        | 11,136     |                                      |                      |                      |
| Retayambadi       | 11,978     |                                      | 38,404               | 37,146               |
| Peraiyur...       | 11,857     |                                      | 21,522               | 21,488               |
| Velur             | 10,568     |                                      | 22,055               | 22,446               |
| Saptur            | 8,813      |                                      | 34,424               | 30,689               |
| Idaiyankota       | 7,000      | 14,666                               | 15,534               | 15,112               |
| Sandaiyur         | 3,697      |                                      | 9,865                | 9,390                |
| Elumalai          | 3,612      |                                      | 9,231                | 8,713                |
| Uthapanayakanur   | 2,583      | 3,691                                | 7,502                | 8,289                |
| Velliyakundam     | 2,183      | 3,120                                | 4,455                | 4,456                |
| Doddappanayakanur | 2,179      | 3,113                                | 7,344                | 7,232                |
| Erasakanayakanur  | 2,061      | 2,936                                | 13,222               | 13,608               |
| Puliyangulam      | 1,981      |                                      | 3,745                | 3,904                |
| Mambarai          | 1,500      | 3,221                                | 5,279                | 5,279                |
| Tevaram...        | 1,100      | 1,573                                | 13,740               | 13,313               |
| Jothilanayakanur  | 1,070      | 1,529                                | 2,044                | 2,063                |

28. Moreover, a suit for damages, and not ejectment, would be the appropriate remedy, if any be required. In support of this view, I adopt the following words of the strongest Board of Revenue which, perhaps, this Presidency has ever seen, embodied in an admirable State paper, recorded by it in Proceedings, No. 6369, dated 8th September 1868:—

"When to this it is added that a Ryotwari estate is heritable property, and that even when the ryot fails to pay his assessment, the Government have no power of ejecting him or resuming his land, but are bound by law to sell it at public auction, and hand over to him any surplus over and above the assessment, there can be no doubt that, subject to the one condition of paying the land-tax, the ryot is now really the proprietor of the soil, and not a mere tenant."

29. Again, the Government, in 1857, declared —

"The proprietary right of a ryot is perfect, and, as long as he pays the fixed assessment on his land, he can be ousted by no one. There is no principle of ryotwari management more fixed or better known than this, and Government deny that any right can be more strong."

30. These words describe the rights, which were inherent in the cultivators on estates assigned over by Government to middlemen, by whatever name called, for the plain reason that the ryots in question possessed them, *quoad* the Government, before the transfer of such estates. It was not in the power of the Government to circumscribe those rights at that time, and it stands to reason that it is impossible to limit them now. If then, for the cultivated portion, it is impossible to grant the rights of the ryot in the cultivated portion of an estate to the landlord, it follows that, according to every rule of ancient law and custom, and to present good policy, the creation of different tenures, even for waste land brought under cultivation, should be sternly forbidden. This can only be done by strictly pursuing the policy laid down in the preamble of the bill:—"to place the rights and interests of the ryots of other than Government ryotwari villages on the same footing of security as those of the ryots of Government ryotwari villages." This amounts to debarring the wretched Ilome Farm or *Pannei* system, and places the Zemindar, or other assignee, in his only appropriate and legal *status*, which is thus defined by the Board in the paper quoted above:—"The position of these Zemindars can only be that of farmers of the revenue."

31. I submit, therefore, that the provisions of the bill, regarding "the settled ryot," "the ordinary ryot," and "the occupancy ryot," are inappropriate, and should be abandoned, because they proceed on the erroneous assumption that the Zemindar is the owner of the soil.

32. Next, as to the share of the produce due from the ryot, I agree with the drafter of the Bill (Section 34), that it should never exceed five-sixteenths of the gross produce, and that, with this limit, all established customs, both as to assessment and rates of division of produce, should be maintained (*vide* Section 35).

33. There is, however, the omission of an important pendant to these provisions, which requires notice.

34. The duty of maintaining the irrigation works is not provided for. Now, it seems to me that this is a *lacuna* of very far-reaching consequences for evil. By neglecting this duty, it is in the power of a Zemindar absolutely to ruin the property of the ryot in the soil. It is necessary to enforce the duty by the insertion of an appropriate section. Furthermore, provision is required to enable the ryot to enforce performance of it by summary suit for damages, and specific performance before the Collector.

35. Moreover, the power should be taken away from Zemindars of charging for waste, or perished crops, when the loss has occurred through causes beyond the ryot's control. A summary suit, as usual, to decide disputes.

36. Nothing less than legislation on the above lines will suffice to carry out the declaration in the preamble of the present Bill, and to prevent the danger, which is now imminent, of rights, which are recognised in theory, being taken away in law and fact.

37. On the other hand, there are a few points in which the existing law and the present Bill are equally defective in affording necessary protection to the interests of the assignees of the Government revenue:—

(a) The assignee's share (rent) should be declared to be the first charge on the land and a sale for arrears should carry an unencumbered title to it.

(b) It should be rendered legal to proceed for the recovery of an arrear against the land *before* the expiry of a year, provided that satisfaction is not obtained by sale of moveables.

(c) I entirely agree in the propriety of the introduction of those useful provisions, Sections 113 to 116 A, dealing with that most fertile source of contention—the division of crops, where rent is payable in kind. But clandestine removal is not dealt with. In cases where the produce is divided between "landlord" and "tenant," a process called "pulli," *i.e.*, estimation of the probable outturn of standing crops, invariably precedes the harvest. The "landlord's" agent, the cultivator, the head of the village and the curnam are all present, and sign the estimate. Experience shows an extraordinary correspondence between this estimate and the results obtained by actual measurement. My proposal is, that when a tenant removes the crop, without observing the established rules of dividing the produce, the "pulli" should be taken as the basis of the landlord's demand, on which he be empowered without recourse to the Collector's Court to recover his dues under the ordinary procedure for distraint or attachment and sale. It is undeniable that, as the law now stands, the "landlord" loses much owing to the tenant's dishonesty, and that there is practically no means of redress.

(d) Again, a great difficulty is felt in proving tender of puttah and service of demand notice on "tenants," whose interest it is to keep out of the way. A fair and equitable mode of surmounting this difficulty would be, to render legal service by registered letter through the post.

38. The question of tenure was the cause of this draft Bill. The manner in which the draftsman has treated it has caused the subject to assume a bulk in its provisions, in no way, certainly, disproportionate to its vast importance, although, as I submit, entirely unnecessary, and unworkably complicated. After straining off this, a *residuum* is left, which represents the proposed reform in the existing rent recovery procedure. This involves the repeal of Act VIII of 1865.

39. I ask—Is this either really required or in any way expedient?

40. The land tenure sections would sap the foundations of society. The other portions would produce a social revolution. The cost to the State alone would be enormous.

41. Putting on one side the sections regarding improvements, which are inapplicable to a peasant proprietary, and which must stand or fall according as Government assents to, or disallows, the contention developed in this paper, this Bill takes away the power of distraint and attachment from "landlord," and throws the whole burden on the Collector. It makes the entire management of estates depend on the exercise of the executive and judicial functions of the Collector. The Revenue staff could not live under this burden in the Madura District, and the encouragement given to litigation would, owing to the abolition of the mutual relations hitherto obtaining between the parties, lead to great demoralization. I need not do more than indicate the hardship proposed to be inflicted on the ryot. The zemindar will, of course, maintain, at the head-quarters of the Revenue divisional officer, a smart Vakil, well-versed in every subtlety of the proposed law, while it would be perfectly absurd to expect the ryot to be able to afford this luxury, or to leave his fields on, perhaps, a 40 or 50 mile pilgrimage to the Revenue Officer's Court, in order to contend with the vexatious ingenuity of a tyrannical landlord, bent on compassing his ruin, by depriving him of his proprietary rights, and reducing him to the position of a tenant-at-will.

42. I shall not take up more time by detailed discussion of this part of the measure. I conscientiously believe that I am echoing the prayer of every single soul affected by it, in begging that the change contemplated be abandoned. It is in no

lotus-eating spirit that the land cries for rest. The legislative activity of the past decade might well satisfy two generations of law-givers. It is already in advance of the time, and of the people, who watch the swollen statute book with awe-struck stupefaction. I submit that the time has arrived for a pause, and an opportunity to watch the effect of what has already been done.

43. This Bill is accompanied by no statement of objects and reasons. It is left to those whose opinion is sought to derive these from its bare bones applied to their own experience. In my view, no plea of necessity seems to be sustainable, for the present law works, on the whole, well enough. Its obscurities have been filtered clear by judicial decisions, to obtain which both landlord and tenant have had to pay dearly. Things have at last settled down into comparative clearness and quiet.

44. Can it be called "necessary," in the pursuit of a fanciful, but impossible, legal or legislative symmetry, to render all this expenditure useless, and to impose on the country the evils attendant on the disturbance of a fixed *regime* and the huge tax for litigation, which must follow before the new law is understood, and those concerned have settled down again to a knowledge of the new relations which it creates, and of the novel procedure which it requires. A *policy* which *diruit aedificat mutut quadrata rotundo* cannot expect acceptance, when it is supported only by a plea founded on ideas of theoretical completeness, unattainable in the affairs of real life.

45. It takes even officials a long time to comprehend the effect of changes in the law. How much harder must it be for private parties? No more crucial proof could be cited than is contained in the papers printed with G.O., dated 6th January 1873, No. 5, Revenue Department, of the grave inconvenience which results from fresh legislation, and of the impolicy of resorting to it except under the pressure of unavoidable necessity. It will be seen from these documents that Messrs. Puckle and Brandt were, even after eight years' practical experience of its working, steeped in the most Cimmerian darkness, regarding the rights and relations of parties under Act VIII of 1865, the present Rent Law, which it is now proposed to repeal, just as it is beginning to be of practical utility.

46. To sum up, I am in favor of a terse, clear, Zemindari Tenures Act, in passing which advantage might be taken to introduce the three or four amendments required to Act VIII of 1865. This Act might be cast into the form of an amending Act, and the numbering of its sections might follow that of the parent Act. After the lapse of some years, it would be time enough to amalgamate the two, along with any further verbal improvements found necessary, into one consolidated enactment embodying the whole law on the subject.

1. Sub-Collector.
2. General Deputy Collector.
3. Temporary Deputy Collector.
4. Honorary Deputy Collector and Manager.
5. Mr. S. Subbaramaniya Ayyar, High Court Vakil.
6. Mr. Kótaiśāmi Tévar, Sub-Division Zemindar.

47. I have the honor to enclose papers on the subject received from the marginally-noted gentlemen, and I would draw particular attention to that written by Mr. S. Subbaramaniya Ayyar, B.L., of the High Court Bar, which appears to me to be an especially instructive and suggestive document.

#### ENCLOSURE No. 4.

From M.R.Ry. T. RAJARAM ROW AVARGAL, Honorary Deputy Collector and Manager of the Ramnad Estate, to the Collector of Madura, dated Paramakudi, 29th March 1884, No. 82.

With reference to your foot-note, No. 616, dated 27th ultimo, to the Proceedings of the Board of Revenue, dated 11th February 1884, No. 464, calling for report on the Draft Tenancy Bill by the Honorable D. F. Carmichael, I have the honor to report as follows:—

2. Before making observations on the several sections of the Bill, I beg to say a few words about the general scope of the Bill.
3. The Bill defines the nature of several tenancies and the mode of their acquisition and cessation. These tenancies are not in existence now in this zemindari, and the classification of

raiylats into "settled," "occupancy" and "ordinary" are unknown; and it is not advisable to introduce them afresh. An Act should, in my humble opinion, attempt at bringing varied features of a system to a general law and minimize the privileges which one class may have in preference to another. These differences in tenancy may prevail in mirasi villages and may find favor there; and so far as this district is concerned, I think this portion of the Bill ought not to be introduced. We would, by applying this portion of the Bill to this part of the country, only make complications, which already exist, the more complicated. I think that the present practice ought not to be interfered with.

4. Another feature in the Bill is that it gives Collectors greater amount of work than before. The tenants and landlords will have to resort to them oftener than before. Collectors are already overburdened and have frequently to be on tours in their divisions. In the comparatively small number of occasions they at present resort to, the parties are put to great inconvenience and delay. The expenses incurred will, in many cases, exceed the small amounts of rents generally sued for by a landlord. It is, therefore, very essential that a stationary officer should dispose of such cases. The present mode is open to no other objection than that one has to pay a heavy court-fee, and that objection can be set at rest by ordering levy of lighter fee in all suits between a landlord and tenant in the Civil Courts.

5. Further, the proprietors are now recognized to be owners of waste lands, and I think that provisions for the grant of waste lands to applicants by landlord are needed. The Bill seems to contemplate that an occupancy-raiyat can get possession of any waste land without the proprietor's assent. This is objectionable, because rights of priority, such as possessing adjacent lands, may be set up by some and there must be some authority to decide who has the preferential claim. Moreover, the applicants may be inclined to take up poramboke lands, such as tank-bed, thrashing floor, &c., and the proprietor must have some means of knowing beforehand that the places chosen are not objectionable.

6. Having made the general remarks about the scope of the Bill, I now beg to notice the several sections of the Bill.

7. *Section 14, Clause 1.*—Who is to decide what is suitable when homestead lands are taken up for the future? I think a provision should be made authorizing the Revenue Board to issue rules to regulate the distribution of "homestead lands;" otherwise there will be inequality in the taking up of homestead lands by each raiyat. A standard ought to be fixed according to which the zemindar should grant lands to raiylats applying for the same.

8. *Section 25.*—In addition to the raiyat being deemed to have surrendered the holding, is he not to be required to pay the *teerwah* for the year during which he lays the land waste? In this zemindari, the practice has been to assess cultivated lands and to levy no *teerwah* on lands left waste. The Bill seems to permit levy of *teerwah* on uncultivated lands, and this must be expressed in unmistakeable terms. In this case, an exception ought to be made for bad years. But if the Bill does not interfere with the present practice, then provision should be made that, in the case of "occupancy-raiyats," their non-cultivation for three years will be construed into surrender. Whether the Bill interferes with this practice or not, the limitation of three years in the case of "occupancy-raiyats," in respect of *nunjah* lands is very necessary. The rent being in the shape of *varam*, the raiyat pays nothing when the land is not cultivated. It is widely known that raiylats go away to Rangoon and other places without surrendering their lands and remain there for ten or twelve years, and the landlord will suffer seriously if he cannot let it to others.

9. *Section 29, Proviso.*—Section 43 (a) allows additional rents for land added to the area. How can this addition be ascertained without measurement? I think that ten years' limit ought to be removed. Besides, this section would not at all apply to such estates in which rent or land-tax is paid according to the extent of cultivation to be ascertained every year.

10. *Section 37.*—Does a transferee of an occupancy-right, who is himself not a settled raiyat, and consequently does not acquire the status of a "settled raiyat," not come within the scope of this provision? If he does not, the benefit of the provision ought to be extended to him.

11. *Section 39.*—In a previous section, "rent" has been defined to be whatever is payable, &c., in respect of the use or occupation of the land. In this zemindari, no separate emoluments are attached to the offices of village servants, and a deduction is made out of the produce of the *nunjah* lands and certain authorized fees are levied on this account. It has also been the practice to set apart a small portion for Dharmamagamai and on charitable purposes and for religious institutions. If the section is allowed to be in the present state, the mischief that will be done to the existing institutions would be incalculable.

12. *Section 39, Paragraph 2.*—The words "intentionally" and "dishonestly" ought to be inserted after "levying such imposts."

*Section 42.*—Clause 1 would permit receipt of only *warum* where it has been usual and would not respect contracts for money assessment. The evils resulting from the sharing system are so many and so well-known that the Court of Wards sanctioned the introduction of money assessment in lieu of *warum* in certain villages of this zemindari, and the system is working very well. I think that, in the interest of both the landlord and tenant, a clause authorizing such money assessment, with the consent of both parties and with permission of the Revenue Board, will be

ailed with great pleasure and result in increased prosperity. The agreement so made should be binding on the tenant.

13. Section 52 (1).—Requires the entry in a putta of the names of the person registered as a raiyat. There is no provision as to how the registry should be made. The register may bear entry of one man's name, and he may have alienated it to another man without intimation to the proprietor. Whose name should be entered in the putta? It would appear to be necessary that putta should stand in the name of the original owner, unless the transfer of putta should be applied for by both and sanctioned by the proprietor. Unless this is done, the alienation should be considered invalid so far as the landlord is concerned. The provisions of Regulation XXV of 1802, which makes similar provision in the case of malgusary lands, may advantageously be introduced in this Act.

In a putta, several lands may bear entry, and in this case I think it right that all the lands should jointly and severally be responsible for the rent or arrear due on the putta. Section 20 (c) simply declares that the rent is a charge on the tenant's interest in the lands.

14. Section 52, Clause 3.—The attestation by the Karnam cannot be conveniently had in all cases without exception. Various causes, such as his absence on other duty, suspension, &c., could contribute to this provision being not strictly acted up to. The word "ordinarily" should be inserted between "shall be" and "attested." The period for exchange of puttass ought not to apply at all to this estate, where the rent is ascertainable on the extent of cultivation in the fasli year. Even in the case of other localities the time is insufficient. The extent newly taken up in the year will have to be entered in the putta and the extent relinquished omitted from it. All these can only be ascertained about the end of the fasli year. The provision that the putta should be given within the fasli, hitherto in force, is the only one suited.

15. Section 54.—The penalties should be inflicted only when several omissions stated have taken place without sufficient cause.

16. Section 55.—No provision is made for communication of the deposit of amounts in cases (b) and (c). Under such circumstances, how can the landlords be aware of the deposits and how can they file suits under the next provision?

17. Section 91, Clause 3.—"District Judge" seems to be a misprint for "Collector of the district."

18. Sections 92 to 112.—By the act of permanent settlement, the Government transferred to the zemindars or other proprietors (with certain specified exceptions) the proprietary right exercised by itself, and whatever they collect is considered as being collected by them as authorized representatives of Government.

19. The Government under the Act II of 1864 collect the rents due to them by distraining the crops and moveable and immoveable property of their tenants without any restriction.

20. Under Act VIII of 1865, all those powers are not conferred on the zemindars and other landlords. Distrain of crops and moveable property only is allowed and it is also limited to the realization of arrears for one year's standing; and these powers can be only exercised when the landlord has taken a written engagement from their tenants.

21. Under the present Bill, the powers of the landlord to distrain his raiyat's crops and moveable property are still curtailed. Only crops are made the subject of distrain by the Collector at the instance of the landlord, while the other moveable properties are in no instances liable to distrain.

22. The position, under such circumstances, of a proprietor would be worse than at present, and their difficulties to collect and pay peishchash would be very much enhanced, as we are aware that ordinary decrees for rent are not successfully executed, though each process entails additional expenditure.

#### ENCLOSURE No. 5.

From M.R.Ry. P. KOTAISWAMY DEVAR, Sub-division Zemindar of Paleyampatty, to the Collector of Madura, dated Tallakolam, 2nd April 1884.

With reference to your footnote, No. 451, dated 27th February last, to the Board's Proceedings, Mis. No. 569, dated 6th February last, asking for an expression of my opinion on the provisions of the Madras Tenancy Bill, I have the honor to submit that to ventilate without reserve the views I entertain, and landlords in general may entertain, the Bill, in fact, proposes a radical change of the Madras Rent Recovery Act, and in so doing unnecessarily introduces several kinds of holdings which are quite novel to this Presidency, and which altogether change the relations that exist between the landlord and the tenant. This proposal, I am afraid, will excite feelings of disaffection among the people of this Presidency. The status of a raiyat being now well understood by the people in the course of their experience of twenty years since the introduction of the Rent Recovery Act, I beg that that understanding may be allowed to continue undisturbed. The present Bill blots out all distinctions between the landlord and the tenant, and places them both on the same level.

2. Section 5 charges the Curnam with the preparation and submission of accounts of different description; but I think that a clause or a section is wanting which will provide for the redress of grievances sustained by his submission of incorrect accounts—incorrect through inadvertence or wilful neglect.

3. Sections 14 and 15 seem to permit the raiyat to utilize a cultivable land, subject to rent as the site of a building for himself, and thus in course of time avoid his liability to the landlord. If that be the actual meaning of the legislature, the landlords' interests would be surely at stake. I therefore beg to suggest that these sections be made clear, conveying a meaning by no way against the interests of the landlords.

4. With reference to Section 18, I beg to submit that landlords are seen to hold "Punnai" lands which come under the category of "private lands," spoken of in the Bill. These lands are actually purchased by them for their private enjoyment, but let to raiyats for cultivation now and then for a year or years under an agreement providing for the troubles of the raiyats. But this section seems to confer a right of occupancy on the raiyat who has cultivated such lands under the said circumstances for twelve years which is, of course, highly objectionable, as the raiyat is not unpaid for his troubles and as the landlord is made to lose the purchase-money of those lands. I therefore beg to suggest that such a concession cannot be made in favor of the raiyat in the absence of any proper consideration to justify it.

5. Sections 26 and 27 speak of improvements with regard to the raiyats' holdings. In the first place it is not clear who is bound to make the improvements; whether the proprietor or the raiyat. These sections, on the other hand, allow a class of raiyats to effect the improvements themselves according to their own want, while the landlords are not permitted to prevent such improvements being made by the raiyats as threaten to diminish the value of their own holdings in particular or any other part of his estate. There should, therefore, be added a clause permitting the proprietor the right of guarding his own interest in such cases.

6. With reference to Section 29, I beg to submit that in my own experience it is found that village servants and others holding revenue-free lands, situated in the proprietors' villages, sometimes fraudulently encroach upon the raiyati or private lands, and it is therefore often found necessary to the proprietor to cause those revenue-free lands to be measured. It is therefore not consistent with justice that the proprietor should be prevented from entering upon and measuring such revenue-free lands. This section has further a clause which enjoins that when any land has been once measured by the proprietor, it shall not, without Collector's permission, be again measured. But I must observe that in practice so far as cultivated extent is concerned, the Curnam's periodical accounts are not accurate in themselves as they should be; hence the lands have to be remeasured before or soon after the termination of every fasli for the purpose of accurate ascertainment of actual rent payable by each raiyat, and the raiyats are therefore as a rule bound by their "Muchilikas" to pay increase of rent due on the excess of cultivated land detected, if any, on such remeasurements being made; and it is quite out of the question to expect of the Curnams always to prepare and submit accurate returns of cultivation. Hence the clause prohibiting the proprietor from remeasuring the extent of cultivation of his own accord is clearly prejudicial to his interest and highly objectionable.

7. Section 34 lays down that a raiyat shall not be bound to pay for his holding a money-rent exceeding five-sixteenths of the estimated average annual value of the gross produce of the holding. It is not set forth, however, how that annual average should be taken. I think no average could be precise and just, except that of the income of ten years.

8. Sections 39 and 40 impose a penalty upon the proprietor for collection of rent in excess of what is actual, and renders him liable to punishment for the offence of extortion under the Indian Penal Code. The penal provisions of this and other sections of the Bill against the landlord are so very stringent that they very necessarily need a modification; and they are also, I may say, unnecessary. The raiyat has only to deal with one individual, the landlord; whereas the landlord has to deal with numerous raiyats and the Curnams who are primarily responsible for the correctness of the accounts. These Curnams sometimes submit inaccurate accounts wilfully or inadvertently. It therefore happens that excess collections if made on the authority of such accounts are usually remitted on the discovery of the mistakes; and the raiyat has of course also the right and opportunity of legally recovering the excess collection with costs. Hence such penal provisions against the landlord for acts done by him unintentionally are not consistent with justice.

9. Clause 3 of Section 42 is imperfect. It should, I beg to suggest, include the proprietor's right to recover the petty contributions in part of raiyats called "Kanganum and Kolavettu," which are usually added to the "Malvarum" for meeting emergent repairs of tanks, and the cost of watching and dividing the produce of raiyat's land in due proportions between the landlord and the tenant.

10. Sections 48 and 49 describe the procedure to be attended to consequent upon the execution of agreements entered into between the landlord and the tenant for enhancement or reduction of rent. These sections, in fact, mean that such agreements should not be acted on or carried into effect unless a suit has thereon been instituted before the Collector and a decree

passed in connection therewith. This procedure, I beg to be excused to say, will only prove vexatious to the parties to the agreement. It is just, however, to prescribe certain limits of maximum and minimum for the enhancement or reduction of the rent, setting forth also the conditions or circumstances under which the agreement should be executed. Hence I think that it is sufficient to provide that either party to the agreement may resort to Collector for obtaining its cancellation only if he don't consent to the agreement with his free will, or if the agreement is against any rule of law.

11. The most characteristic feature of the Bill is the proposal to curtail the rights and powers of the landlord by altogether disarming him of his limited rights to attach the defaulter's property and driving him to seek remedy before the Collector in every instance of default. The Government exercise the powers of attachment and sale of the properties of every defaulter of public revenue summarily on the spot by agents, without which there is, of course, no means for expediting collections. It is a pity that the landlord, standing as he does in the same situation as the Government towards his raiyat, should be deprived of the limited power of attaching the properties of the latter, and that he should, on the other hand, undergo the inconvenience and unpleasantness of the attachment and sale of his property as well as loss of his regard and position in life for default of timely remittances of the several instalments of peshcush to Government which solely depends on timely and speedy collections from raiyats which, as you are aware, cannot be expected unless the landlord is invested with the powers of distraint as is allowed by the present Rent Recovery Act.

12. I beg to suggest also that the Bill does not provide for the transfer of putta of one raiyat to another. Such transfers now take place under the orders of the landlord, and this system must be allowed to continue.

#### ENCLOSURE No. 6.

#### Memorandum on the Tenancy Bill by S. SUBRAMANIAN.

The Bill has been drawn up with great care, but in my opinion it contains two serious blemishes which, if not rectified, are certain to render the condition of the tenant and Zemindar in this part of the Presidency very much worse than it is under the Rent Recovery Act VIII of 1865. That Act did not aim so high as this Bill. It did not pretend to do more than consolidate the law regarding recovery of rent. It laid down no important rules as to the nature of tenancies, and was construed accordingly as leaving untouched tenures of holdings in estates governed by it. This Bill, however, proceeds further and seems intended to reduce the common law of the country as to tenures into written rules and, in doing so, to introduce provisions for ameliorating the condition of tenants. I have no hesitation in saying that the Bill does not correctly embody the common law of the country, and enacts rules which will lead to frightful litigation and eventual ruin of both landlords and tenants. I refer to the classification of tenants into settled ryots, occupancy ryots, and ordinary ryots. The framer of the Bill seems to have been influenced by the theory which underlies the Bengal Settlement and the practice in that Presidency. That a Bill resting on that theory should come to be drawn up in Madras, and after all that has been written about Indian village committees, their peculiar constitution and rights, cannot but excite surprise.

2. I will try to show briefly that, so far at least as the southern districts of the Presidency are concerned in, the Bill proceeds on a wrong assumption as to the origin and existence of property in lands and introduces mischievous innovations.

3. In his work on village communities, Sir H. Maine says: "The assumption which the English first made was one which they inherited from Muhammadan predecessors. It was that all the soil belonged in absolute property to the sovereigns, and that all private property in land existed by his sufferance. The Muhammadan theory and the corresponding Muhammadan practice has put out of sight the ancient view of the sovereign's rights which, though it assigned to him a far larger share of the produce of the land than any western ruler has ever claimed, yet, in no wise denied the existence of private property in land. The English began to act in perfect good faith on the ideas which they found universally prevailing among functionaries whom they had taken over from the semi-independent viceroys dethroned by their arms. Their earliest experiments on the belief that the soil was theirs and that any land law would be of their exclusive creation have now passed into proverbs of *mal droit* management." (Maine's Village Communities, lecture IV, pages 104 and 105, first edition.)

4. In Madras, however, the mistake was not perpetrated to the same extent as in Bengal. At the commencement of the century eminent officers of Government reported that village communities existed all over the country and possessed undoubted property in the soil. Mr. Lushington, Collector of Tinnevely and Madura, in a letter, dated 29th December 1800, writes: "In tracing their past situation, it is not to be discovered that during the revolutions of many ages from the reign of their first princes until the final downfall of the Hindu authority any question ever existed in any stage of the Hindu history as to the right of the people to the lands

of the country, excepting villages or lands totally waste and that had escheated to Government. On the contrary, they appear to have been transmitted to them from the most remote era down to the present time without interruption. These rights are supported by usages which could never have prevailed but for their universal acknowledgment; and in the repositories of their history, their laws, we find the right of the people to property in lands repeatedly acknowledged and preserved. It has been the custom to consider the Hindu governments of old despotics and regulated solely by a arbitrary will of the reigning prince; theoretically viewed they were so, but in practice they had little of this character. The ordinances of their religion had generally the force and effect of laws, and in their operation they were beneficent and just. Even when the country was in later times ravaged by the Mussalman armies, and the adoption of the laws of Muhammad into the Hindu jurisprudence created universal confusion and engendered continual differences in the decrees of justice, no fundamental material innovations took place in the right to landed property (however grievous the public assessment often proved) such as I have described; and the privilege of tilling the glebe which he first broke and brought into fertility, it has never been the custom to take from the poorest cultivator, so long as he duly yielded the public share." (Page 82, Papers on Mirasi Right.)

5. Mr. Hodgson, Collector of Dindigul, on the 28th March 1808 wrote as follows: "So long also as the 31st March 1800, Mr. Hurdie stated that the Nattamgars of South Coimbatore considered that they already held a proprietary right on the soil." \* \* \* "The Nattamgars certainly consider the farm they cultivate as their own property, and no government, save the Mussalman, appears to have considered the soil its own, or itself at liberty to deprive the inferior subject at its will. In forming the benevolent system, this solitary precedent surely will not operate as an example to act upon; but where no written document is found, what has been known as usage will be established as law; this would confirm the prescriptive right of many industrious natives to the lands they have long occupied, and be the certain means of making them comprehend whence their advantages were derived.

"The foregoing reasoning is equally applicable to the Nattamgars and Gours of Dindigul, or rather to the *Pattukut* ryots, as they were denominated prior to the survey." Referring to the permanent sanad, Mr. Hodgson wrote: "That no Zemindar or proprietor (or whatever name be given to those persons) was entitled by law, custom, or usage to make his demand for rent according to his convenience; \* \* \* that the cultivators of the soil had the solid right from time immemorial of paying a defined rent and no more for the land they cultivated." \* \* \*

"It must then, I think, be admitted that Circar or Government, or the representatives of Government, the Zemindars, never could have been the absolute proprietors of the soil." (Pages 111 and 112, Mirasi Papers.)

6. In Mr. Wallace's report, dated 8th September 1805, he wrote: "Without entering on the question of who is the proprietor of the soil, I will content myself with stating that immemorial usage has established both in Tanjore and Trichinopoly that the occupants, whether distinguished by the name of Mirasidars or Mahajanam, have the right of selling, bestowing, dividing and bequeathing their lands in the manner which to them is most agreeable."

Mr. Place wrote in similar terms from Madras.

7. The result of investigation regarding Mirasi rights, commenced about 1815, was the accumulation of overwhelming testimony in favor of the comprehensive and complete nature of the rights in the soil possessed by raiyats as against the Government and Zemindars and others similarly situated. Until 1866 no one ever doubted that the ryots holding raiyati land (i.e., not Pannai) in Zemindaris and similar estates held any other than an indefeasible hereditary and transferable right in the land so long as they paid rent, and that they cannot be deprived of their land except by sale of their interest in accordance with the regulations. In respect of these essential characteristics, there was no difference between a Zemindar and a Government raiyat. Certain observations in the cases 3, H.C., and in 6, H.C., tended to introduce some confusion of ideas on the subject. But it is admitted that these cases ignored the custom of the country, and a Bill which is intended to remedy the mischief occasioned by those decisions should not fall into the same error. The first question, therefore, is whether the provisions of Chapter III of the Bill classifying the raiyats into settled raiyats and so forth is substantially a correct statement of the custom of the country. I think not. Irrespective of the period of a raiyat's holding the place of his residence, all occupiers of lands in Government villages and all holders of lands other than Pannai in zemin villages have been recognized for over at least half a century as possessing in the southern districts at least a permanent and a transferable right. It may be said that a settled raiyat represents the Mirasidar, the occupancy raiyat and ordinary raiyat inferior tenants, well known in this country as Purakudis, with rights of occupancy and those without. If that be so, it is clear then that by conferring on the Zemindar the rights which are secured to him by the Bill as against occupancy raiyat and ordinary raiyat, the right which originally belonged to defunct Mirasidars or Kaniyatchi raiyats of the villages is to be transferred to the Zemindar instead of to the Purakudis in occupation. It should be borne in mind that Purakudis were in direct relation with the Mirasidars, and formed part of the village community as against the Government or Zemindar and others. If in any village the Kaniyatchi raiyats have disappeared and the lands are in the hands of Purakudis, it seems to me but just,

expedient and in accordance with the feeling of the people that the Purakudis should benefit by it and be allowed to enjoy the same rights in such lands as the Kaniyatchi raiyats did before. Certainly they are the natural successors of the defunct Kaniyatchi raiyats, and the Zemindar has no right to urge against such natural successors any other claim than a claim for rent, except on the erroneous Muhammadan theory that the Zemindars were the sole owners of the soil. I admit that, under the British regime, considerable inroads have been made on the rights of village communities, and that Mirasidars have lost some of their privileges in the village lands. On the other hand, the position of another portion of the village community was somewhat raised; raiyats holding lands directly under Government, even in villages in which vestiges of Mirasi rights were not found to exist, were dealt with as possessing a right to occupy and transfer their land so long as they paid the Government demands. This treatment by Government has not been without its use even outside Government villages, inasmuch as in Zemindari also all the raiyats have been in this part of the Presidency recognized as Kaniyatchi tenants, except in regard to Pannai lands of the Zemindar. If I am correct in making this statement (and no one who is well acquainted with the southern districts will, I believe, doubt the accuracy of the statement), it cannot but follow that the introduction of the refinements involved in the classification adopted in Chapter III will take away considerably from the rights now enjoyed by raiyats in these parts. Besides disputes as to whether there has been occupancy for the period and of the character required will lead to frightful litigation on the prospect of which the money-lender, the Government as stamp vendor, and the vakils are alone to be congratulated. The proper thing to do will be to declare that all raiyats now holding raiyati lands shall hold them so as to transmit the same to their heirs and assigns so long as they pay the rent due, and that they shall not be liable to be ejected except after a sale of their interest in execution of Civil Court decrees or decrees for arrears of rent. I repeat that, so far as the Zemindaries of the south are concerned, no vested rights, &c., will be touched in the least by such declaration of law, and that the above will be the only adequate way of doing justice to the agricultural population of the country. I will now notice the next great defect in the Bill—I advert to Chapter VI. I do not know why the right now exercised by landholders to distrain without the intervention of public authority should be taken away and recovery by suit alone permitted. No term would be too harsh to characterize the astounding provision contained in Section 94, clause 2.

8. At a time when the whole country is groaning under the intolerable weight of the Court-fee stamp taxation, when the levy of such fees is the subject of denunciation equally by subjects, suitors and judges, we find this Bill coolly providing to convert every distraint into a suit. It may be said that there is nothing new in the provision that the distraint proceedings under the chapter will take the place of suits for recovery of rent hitherto allowed in Civil Courts whose jurisdiction is to be transferred to Revenue Courts. That is not true. The mischief consists in taking away the power to distrain without the intervention of the public authority. Such distraints hitherto involved no payment of Court fees and Court costs. The number of such distraints is out of all proportion to the number of suits against defaulting tenants. I believe that there are twenty instances of distraints for every instance of a suit. If, therefore, such distraints are abolished, litigation will increase ten and twentyfold, and must end in the impoverishment of both landlord and tenants. If the framers of the Bill had deliberately set about to invent a plan for ruining the tenants, he could not have hit upon a more effective device than this abolition of private distraints and the levy of the iniquitous Court-fee tax in distraints through public officers. The raiyat is more likely to suffer than the Zemindar. It would pay the latter to maintain a regular law establishment at the head-quarters of the Divisional Revenue officer, but the poor raiyat, every time a distraint application is entertained, will be dragged many miles away from his home and lands and brought under clutches of revenue agents, &c. It might be said that I am exaggerating the frequency of distraints; that is not so. The statistics which are obtainable in every Division office will show how large the numbers of distraints are. This is not due to any abuse by Zemindars of their power to distrain. The raiyat is to blame in the majority of instances. They fall often into arrears and do not think of paying until notice of distraint is given or distraint is actually made. In many cases a defaulting raiyat pays up as soon as a demand is served by the Zemindari servants and before a distraint is made. Hereafter the making of the demand even is reserved for the Court officer, and by the time the demand reaches the raiyat, distraint is made. Why it is proposed to deprive the Zemindar of the power to distrain, I cannot understand. I deny there is evidence to show it was so abused as to call for legislative interference. In our desire to be just and fair to the raiyats, let us not be unjust to the Zemindars. They have to make to Government payments on account of peishush, road-cess, &c., and the Government show very little indulgence to them nowadays. It would not be right, therefore, to deprive them of a speedy mode of enforcing payment of just dues by raiyats. The power of distraint has been exercised by them from the date of the Regulation of 1802, nor was it for the survival of archaic legal procedure, and that it was an extra-judicial remedy, and that this convenient extra-judicial remedy has been preserved as such and made more complete by the power of sale being conferred on the landlord. (Early History of Institutions, first edition, page 262). The preamble of Regulation of XXVIII of 1802 ran thus: "It being necessary to the

punctual collection of the public revenue that landlord and farmers of land should have the means of compelling payments from defaulters without being obliged to have recourse to the Courts of Judicature and incurring the expense and delay necessarily attending a law process for the recovery of arrears of rents or revenue, and it being at the same time expedient that the under-farmers and raiyats should be protected from the oppressive exercise of such power, the Governor in Council has passed the following rules." This should still be the aim of the legislature. They should not destroy the extra-judicial character of the process and convert it into an inconvenient dilatory expensive judicial remedy.

9. I would now draw attention to the absence of legislative provision for enforcing landlord's duty to keep up irrigation works in proper order. In many estates certain fees are taken by the landlord from the gross outturn before division to enable him to maintain the tanks in a state of efficiency, and whether such fees are collected or not, the duty of keeping the works of irrigation in a state of repair rests on the landlords. It is notorious that the Zemindars sadly neglect to discharge their obligations in this respect and bring distress on themselves and their raiyats. Some easy and adequate remedy should be provided to enable raiyats to insist on the landlords to keep the irrigation works in repair. I would suggest the raiyats be authorized to apply to the Collector in case of the tank being out of repair; that the Collector be empowered to investigate the complaint and pass such orders as he may deem proper so as to secure the necessary repairs being executed by the landlord in the first instance and, on default by him, by the raiyats, who should be entitled to deduct the cost of repair from rents due by them or recover the same from the Zemindar in execution of the Revenue Court's decree or order. The raiyat should be secured means for deriving a proper supply of water from existing tanks before the legislature proceeds to enact provisions for securing to him the benefit of his own improvements.

10. I would confine the landlord's right to claim enhanced rents only to (1) where improvements have been carried out either wholly or in part at the expense of the landlord; (2) where the Government have increased their demand for revenue on such landlord. I would omit clause 4 of Section 52. Such penal provisions cause more injustice than they prevent in this country. What is to become of the fines collected in prosecutions under this Act, such as under clause 3, Section 54, and Section 111? What is to become of moneys deposited in Court, but not paid away to landlord or returned to tenant under Section 59? I would suggest that the same be applied in some manner beneficial to the raiyats of the village or the estate, such as the repair of irrigation works, improvement of sanitation or primary education. If it be said that as the time of Magistrates will be taken up by trials for the special offences created by such a law the State should be compensated, I would suggest that 75 per cent. of the fines be applied, as aforesaid, 25 per cent. going to the State.

11. As to Section 60, I would reduce the rate of interest to 6 per cent. That is what the State charges the Zemindars on arrears of revenue and what Courts allow by their decrees as a rule.

12. I would omit from the section imprisonment except for default of payment of fine, the amount of which may, if necessary, be increased.

13. It would have been more satisfactory if the Rent Recovery Act, with which people have become so familiar, had been merely revised and such additional provisions as are contained in Sections 29 to 33, 55 to 59, 76 to 79, 89, 109, and 113 of the Bill, and a few sections recognizing all raiyats holding raiyati lands as holding an indefeasible right thereto had been added. Such humble attempts, however, are not to be looked for in these days of codification.

From the Collector of Malabar, dated 28th March 1884, No. 1529.

READ—also the following letter from J. LEE-WARNER, Esq., Acting Collector of Nellore, to the Secretary to the Board of Revenue, dated Kavali, 5th April 1884, No. Extra 1:—

With reference to the Board's resolution, dated 11th February 1884, No. 464, I have the honor to state that Mr. Carmichael's Draft Madras Tenancy Bill is, in my opinion, unnecessary, inequitable to the proprietors, and quite unworkable in its present state.

2. I have not the memorandum by me in which it was introduced; but I gather from its section 3 and other internal evidence that all the comparative backwardness of the Madras raiyat has been charged to the defects of Act VIII of 1865. In an useful publication of 1877, Mr. H. J. Stokes noted and commented on certain ambiguities of that Act, and made suggestions for its amendment. If these suggestions had been acted upon, it would not have been open to any such objections. Even as it is,

it has stood almost twenty years a firm buffer against the assaults of the proprietors upon the rights of the raiyats. I may be referred to Mr. Justice Holloway's judgment in the case of Chockalingum Pillai (Special Appendix 9 of 1870), 6th Volume, Madras High Court report, page 164, as an instance refuting this assertion; but on this point I wish to say that it is still more a proof of the general suitability of Act VIII of 1865, as a measure framed to secure permanency of tenure for the raiyat, and freedom from rack-rent and high-handed ejectment, that in spite of that judgment, the raiyat has held his own so completely. There is, on the contrary, no general advantage to be got out of Mr. Carmichael's bill. It disarranges everything, introducing new and unpractical distinctions; and it is calculated to raise the antagonism of the two classes, whom we must want to live in peace with each other, to the highest pitch. Moreover, it upsets customary law by pretending to give to the raiyats occupancy rights as its own creation, the fact being that the raiyati tenure is older than the proprietors themselves. It destroys the friendly relations which ought to exist between the two classes by making the Collector interfere with everything between them; and is likely to produce results which will be disastrously felt in the event of another famine in this Presidency, when it will be found impossible to use for famine relief purposes that mighty force which exists in the mutual friendly inter-dependence of classes.

3. I have alluded above to the case in which Mr. Justice Holloway ruled or appeared to rule that Act VIII of 1865 had not "protected tenants against the unreasonable exercise of the so-called rights of property." Apart from the fact that this ruling has been since considerably modified and toned down by the Chief Justice's interpretation of it in his observations in *Varadarajulu versus Venkatachelum* (9th May 1882), Indian Law Report, Volume V, page 345, I think that the judgment went very little further than to be much talked about. Long after that, I myself knew of a zamindar begging of his raiyats a holding in the aiyen lands to convert into punnai. Also as I have myself since in various districts stopped all manners of attempts on the parts of proprietors to break the customary law by using the provisions of the much abused Act, I may fairly deny that a complete alteration of the law and fantastic descriptions of degrees of raiyatship, and a twelve years' rule, is necessary. On the other hand, it is obviously suicidal to base a Bill of this sort on any other doctrine than the self-contained strength of the raiyati tenure. Any appearance of filching from one class for the benefit of another class is a weakness in itself. Such weakness is betrayed in all the internal fittings of the new Bill.

4. Then, as regards its working machinery, to take one part of it only as an example, the proposed enactment makes a separate application to the Collector necessary in the case of every defaulter, while the restriction of liability to the crops alone will increase the number of such applications more than ever, as the landlords will hurry in their applications, while the crop is still on the ground. The Collector will thus have to do as much towards the recovery of rents for landlords, as he is now doing in the matter of collection of revenue. I submit that the establishment is not equal to the strain which will be put upon it. Moreover, the Collector himself must take evidence and admit or reject the applications himself. However summary it may be, is such inquiry possible? Besides, I think that the landlord should by no means be deprived of the summary powers of distraint which he now possesses; and all that is required to make the provisions of Act VIII of 1865 in this respect as nearly perfect as is possible is to enact that when a zamindar or his subordinates are found to have used his summary powers oppressively or illegally, he should forego the rent; and when distraint has been made without arrear, he should be subject to heavy penalties. The law may also reserve the power of dealing with immovable property in the hands of the Revenue Courts on the landlord applying for process, and substantiating his claim; but the procedure with regard to the attachment and sale of such property should remain the same as it now is under Act VIII of 1865. All the *minutiae* and restrictions of the new Bill will be found on trial to be quite unworkable, or will have the effect of ruining the proprietors, while the Revenue Courts are struggling under the increased pressure put upon them.

5. The truth is that it is not the fault of Act VIII of 1865 if the raiyats are backward. They are backward in spite of the Act. The Act offers them privileges, if they will care to take them; but they have not come forward for them, preferring

to believe in the landlords' good faith towards them; and for the present they suffer doubtless for their ignorance; but will the new Bill have more success in reference to its complexity? I think it is unreasonable to expect that it should have such an effect. When enlightenment dawns upon the raiyats, as a class, they will find Act VIII of 1865, with some alterations and improvements it may be, a ready instrument for their protection and a sufficient one in my opinion.

6. Having closed my prefatory remarks, I have now the honor to address my notes to the sections, assuming of course that in some shape or other, and founded on the general principles enunciated in it, as it now stands, the bill will be brought forward. I must apologize for the use of native terms in some cases, where I have not at hand their English synonyms.

Section 2.—This section does not repeat the exemption explicitly declared in section 83 of Act VIII of 1865. I do not know that it is necessary that it should do so; but I bring to notice the omission.

Section 4 (I).—After (d) "any lands which are assigned to" and after Government "as such" should be inserted to improve the language.

(II.) The question whether any land in dispute forms part of a village in an estate will be decided upon hearing the evidence in each case. There appears to be no necessity to define "village."

(IV.) My idea is that private land should be defined as "land other than public land over which raiyati rights are exercised, on which the landlord has by the custom of the country, by inheritance, transfer or purchase, the right of occupancy. Private land may include immemorial waste in raiyati lands, as also raiyat lands acquired by the proprietor at a rent recovery sale under this Act."

(V.) I consider that "homestead" itself requires definition; nor am I sure that raiyati does include homestead. It certainly should not include poramboke. In accordance with my general remarks on the bill, raiyati land ought to be fixed as all land available for occupation by raiyati other than private land.

(VI.) The definition of raiyat should be shaped so as to exclude renters and assignees. Otherwise the same confusion may recur in the interpretation of this Act, which was felt as regards the definition of "tenant" in Act VIII of 1865 (*vide* Board's Proceedings, No. 851, dated 28th March 1876).

(IX.) Add "and includes rent on homestead" (*vide* section 46) where such is chargeable."

(X.) Supposing a Government raiyat has not rented his land, is he a landlord under this Act? and will he be bound to proceed against his sub-tenants under sections 92 and 112 of this Act, all Civil Court jurisdiction being ousted hereby?

(XI) (a)—What is the meaning of "under one set of conditions?"

(XIV.) What is the necessity for so minute definition of transfer? Does it not also include a trust?

(XVI.) By the custom of country, a Zemindar's private stamp is equivalent to his signature, even though he is able to write.

Chapter II.—Is not the registration which is rendered imperative under this chapter desirable also in the case of the smallest "inam" estates. In the case of "Grana Garbha Khandrigas" in Government villages in this district will the Government earnam open the register or the inamdar? The definition of village in the first chapter seems to tie the Act down to village as defined in the Madras Estates' Curnams Act. Until that Act has come into full force and time has been given for appointments to get into proper working order under it, it will be difficult to enforce these provisions. The curnams in proprietary estates are often illiterate and underpaid. The emoluments of the office are split up among many co-parceners, who take the work in turns. The levy of the fines inflicted will turn out a dead letter. Moreover, in a large number of estates, the curnams do not themselves know where all the lands are. In fact, it is not their interest to do so, as they make the great part of their living out of the uncertainties of the holdings. The only remedy which I can suggest is, where this has not been done, to give all proprietors a fixed period for setting their estates in order by proper survey and measurement. It will cost them something; but they are to blame for having allowed the records of area and measurement of holdings

to be lost. I see no other way of securing proper accounts, without which there must remain endless confusion in the working of the Act.

Sections 12 to 23.—I have studied the settled raiyat a great deal, but he remains a shadow which I cannot grasp. The Special Deputy Collector, who has taken great pains over the Bill in the limited time at his disposal, observes:—

“The classification of raiyats in these sections is not very clear and seems to be the cause of the confusion and complication which prevail throughout the subsequent chapters. In these and several other sections the words ‘notwithstanding any contract to the contrary’ occur. If contracts valid according to the Indian Contract Act or any other law in force at the time of contract have been already lawfully entered into, I would respectfully ask whether it is equitable to declare such contracts ineffectual with a single stroke of the pen? In my humble opinion, it would be more equitable to interfere with all existing lawful contracts as little as possible and to declare as null and void all such future contracts as may be repugnant to the provisions of the proposed enactment.

“As I understand the holder, as a raiyat of raiyati lands in a village, consecutively for 12 years, becomes a *settled raiyat* of the village, cessation to hold such land for one year deprives him of that status (in fact, he ceases to be a raiyat altogether, but does not subsequent acquisition restore him to that status?); but he has nevertheless an indefeasible title to all ‘*bastu*’ or ‘*homestead*’ land. What this homestead land means is not clear. If it means village-site lands, I have to remark that every person whether a settled raiyat or not, who obtains a piece of village-site land, by way of purchase or other valid transfer, has a similar title.” Is an *izaradar*, who rents a village and has cultivated the unoccupied raiyati lands therein for twelve years consecutively, a settled raiyat of that village? If not, why is it not distinctly stated so? If he is, can he not be ejected at the end of his *izara*, though there is a contract to that effect—section 15?

“Occupancy raiyats are mainly of four kinds—(1) all settled raiyats—section 16 (1); (2) raiyats holding lands immediately under a proprietor and who have obtained special grants of occupancy right by such proprietor—section 17 (1); (3) those who have held private lands consecutively for twelve years after the commencement of the Act; and (4) those who hold a land, the occupancy right of which had been previously acquired by the proprietor. Section 16 (1), does not the very term ‘*settled raiyat*’ of a village imply that he holds, as a raiyat, raiyati land? Section 18 (2)—Is this special provision necessary? Are not these cases governed by the general principles of the law of succession? The same remarks apply to section 19.

“An ordinary raiyat is a raiyat holding raiyati land as a raiyat and not having a right of occupancy in respect of it. He cannot be ousted except in the three cases specified in section 23.

“There are three classes into which all holders of raiyati lands, as raiyats, are divided in the bill; and of these, the first division is strictly speaking a part and parcel of the second, for settled raiyats are included in the category of occupancy raiyats. In this classification the Bill simply follows the Bengal Tenancy Act of 1859, with such improvements as were suggested by the Famine Commission. But I am not sure how far this division, however suitable it may have been to the customs of Bengal, is warranted by the customs of this Presidency. Let us now see how far this classification is in harmony with the existing practice as sanctioned by the Act, as well as with division of lands into ‘*private*’ and ‘*raiayati*’.

“According to the present practice there are two classes of tenants in proprietary estates, viz., (1) raiyats, and (2) *izaradars*. Raiyats are of two sorts, first, those who have held their lands hereditarily, and, secondly, those who have taken up lands recently. But neither in practice nor under the Rent Act is much distinction made between these two sorts. *izaradars* or middlemen are generally the farmers of revenue placed in charge of a given tract of country for a stated period under agreement to pay a stipulated annual rent. They have simply to collect all rents due by the raiyats as regards occupied lands and can cultivate directly all unoccupied raiyati lands. The *izara* terminates at the end of the period agreed upon.

“Applying the classification in the Bill to the description of tenants above given, the first kind of raiyats come under the category of occupancy raiyats and the second under that of ordinary raiyats; but a farmer comes under none of these classes. There is a special exclusion of this class of middlemen from the head of occupancy raiyats—*vide* section 16 (2), but there is no such exclusion from the head of ‘*ordinary raiyats*.’ To say that they must be treated as ordinary raiyats will be to give them the undue benefit of section 23, regarding ejectment, which is against the existing practice by which an *izaradar* loses his *izara* or lease on the expiration of the period agreed upon, and can assert no claim to its renewal.

“The Bill classifies all land (not exempt from paying revenue) into (1) private land and (2) raiyati land. By private land, I understand that the proprietor has both the proprietary and occupancy right in it, and by raiyats’ land that the proprietor has only the proprietary title in it. With whom does the occupancy right rest? If the land is held by an occupancy raiyat he has the occupancy right, but an ordinary raiyat has no such occupancy right in the lands held by him. It is absurd, in my opinion, to say that there can be any land in which neither the proprietor nor the actual occupier for the time being has an occupancy right. Can it be said that

the proprietor himself has got the right when none else possesses it? If so, all occupied raiyati lands, as well as those held by ordinary raiyats, become private lands, and the distinction between private and raiyati lands is thus lost. Again, if the proprietor has not himself an occupancy right in such lands how can he grant any such to another person—*vide* section 17 (1)?

“Speaking of private lands they are the private property of the proprietor, and it is by his sufferance and as his under-tenant (for the term raiyat as defined in the bill includes the proprietor as regards private lands) that another man can cultivate or hold such land. Can such permissive enjoyment for a limited period of twelve years by an under-tenant be equitably held to give him an occupancy right at the expense of the proprietor? On what principle this period of limitation is fixed, I do not know.

“Bearing in mind the object of the proposed legislation, as stated in the preamble, viz., to make the position of a proprietary raiyat as secure and as independent as that of a Government raiyat, and that, according to the law of the country, every raiyat has a right to a land which he has once occupied as a raiyat; the best classification appears to me to be into (1) raiyats, and (2) *izaradars*, as regards the raiyati lands. All holders of raiyati lands must be considered to have acquired an occupancy right in their several holdings, so long as they pay their rent, whether their occupation is new or old, just as it happens in the case of a Government raiyat. A man who acquires a raiyatwari land newly on a darkhast enjoys all the privileges of one who has held similar lands for ages. Why cannot the same security be extended to the raiyats of zemindaris? *izaradars* as such have no occupancy right in any land and their tenure should be entirely governed by the terms of their engagements (in other words, they are simply assignees of the landlord).

“As regards private lands the proprietor’s occupancy right in them must be preserved inviolate, whatever may be the length of another man’s permissive enjoyment of them, except when the proprietor himself makes a voluntary grant.

“Section 20.—The incidents of occupancy rights are given generally in this section. Has not an ordinary raiyat the same privileges? I think he has, except in the case of (c);—he can use the land in any manner, which does not render it unfit for the purposes of tenancy; he may make improvements on it, as provided by this Act, viz., section 28 (1 and 2); he shall not be ejected from it, except in the event of a decree for ejectment passed under this Act, though ejected from it, he may sublet the land or his interest in it is capable of being transferred or bequeathed, and descends in any part of it; his death like any other immoveable property.

“Section 21.—When is a proprietor said to acquire the occupancy right in any land formerly comprised in the holding of an occupancy raiyat? Is it in the single case referred to in clause (g), section 20? Or are there any more cases of the kind?

“Section 22 (2).—Can the parties agree upon any rent without limit? Or is such rent subject to the limit of five-sixteenths in section 34? If so, ‘section 24’ must be a mistake for ‘section 34.’”

I think that, apart from the objections which I have already taken to the subdivisions of raiyats into classes, and the twelve years’ rule, these are the natural doubts which a study of these sections raises. As regards particular sections, if the general shape of the Bill is retained, as it is now, I will also myself observe.

Section 13.—The period prescribed for entailing forfeiture of occupancy should be extended from one to two years. Thus “if for two years a raiyat throws up his holding and ceases to reside, he may be held to have thrown up intention of retaining his status and competing for raiyati lands against outsiders.”

Section 14.—I do not understand whether homestead is used as synonyms with village-site holding. Does village-site in such case belong to proprietors? What is the rent which is provided for in section 46? The subject of village-site is one which calls for legislative enactment not only in proprietary, but also in Government villages. It would be well if every raiyat as such were held entitled to a fair portion of the village-site for his house and cattle-sheds; and that he be made to pay for any large excess, which, by whatever means acquired, he retains selfishly, having already more than he needs for his own wants. This holding up of and encroachment on village-site is a constant difficulty everywhere.

Section 15 would be better placed along with section 79 and succeeding sections, as it relates to ejectment, or it may come as a supplement to section 46.

Section 21 seems to be quite illogical and unreasonable. Under section 4, definition VI, it is granted that a proprietor is in the position of a raiyat as regards his private land. It seems, moreover, most unfair that when a proprietor has brought the occupancy right in a sale on account of arrears of rent and got his own name

registered as the occupancy holder, a raiyat squatting upon that land, in defiance it may be of the proprietor, may acquire occupancy right.

**Section 24.**—Under this section would it not be well to empower the raiyat to surrender part of his holding also? In the Vizagapatam district, I was witness to a great deal of contention between a proprietor and his raiyats, the former desiring to "salt" his raiyats' holdings by making them include with good land a certain proportion of useless stuff, which they did not require.

As it is very difficult for a raiyat to gain access to his proprietor, if he is likely to prove troublesome, may it not be better to rule that in default of personal service of such notice, the raiyat may send his notice by registered letter, holding the Post office receipt in evidence of such sending. The constant recourse to the Collector at every stage of proceedings provided in this Act seems inadvisable.

**Section 25.**—The object of this section is not clear. A raiyat will not quit a holding on which he can make his living unless he is terribly oppressed. Similarly, a proprietor does not want to lose a good raiyat. There must be a contract between the ordinary raiyat and his proprietor; and I suppose that the raiyat has to pay his rent whether he cultivates his land or no. This mere walking away will not relieve him of obligations in this respect. Perhaps, it would be clearer—"If an ordinary raiyat bound by contract on a holding leases that holding, without arranging for the rent, after one year, the proprietor may put some one else in possession of the land. Such transfer will not relieve the defaulting raiyat from his responsibility according to the terms of his contract."

Under the head "Improvements" the Special Deputy Collector has dealt so fully with sections 26 to 28 that I shall insert them *in extenso* :—

**Section 26.**—An improvement is defined as any 'work which adds to the letting value of the holding, which is suitable to the holding and consistent with the purpose for which it was let,' and section 26 (2) gives a list of all such works of improvement under six classes. Is the repair of an existing tank which has fallen out of repair an improvement under this section? I think it is under clause (e). Does such improvement, though no more than zemindar's duty to his tenants, entitle him to an enhancement of rent? Again, can a zemindar, who improves a tank so as to irrigate an extent of dry land in addition to its recognised wet *ayacut*, compel the holders of such dry lands to pay the increased wet assessment unless there is a condition to that effect in the *puttah*? In the case of dry lands in Government villages, the Government have ruled that a condition should be invariably inserted in the *puttah* to the effect that whenever irrigation is provided the land is liable to be charged with wet assessment. Is not a similar condition necessary in the case of zemindari raiyats?

**Section 27 (1)** prohibits a proprietor executing any improvements on occupancy lands without the permission of the raiyat, except in the case of failure by such raiyats to comply with his request, under section 2, while the occupancy raiyat can improve his land without the zemindar's consent. I do not see why a zemindar should be restrained from improving his estate and thereby increasing his own rent as well as the income of his tenants. This provision will press very hard on a proprietor, especially in the case of works under clause (a), and the requisition regarding raiyat's permission is, in most cases, simply an impossibility. Suppose there is a tank irrigating the lands of more than one village, held by several hundreds of raiyats and it is in the interest of the proprietor to improve it, it will be endless if he is bound to take the permission of every individual raiyat under it. Again, in the case of improving the existing tanks with a view to render irrigable dry lands in addition to their wet *ayacuts*, is it the permission of the holder of the to-be-irrigated dry lands or those of the already irrigated wet lands that should be taken or of both? Do Government take any such permission in regard to their own raiyatwari villages? Also suppose, in the case of a tank newly fallen out of repair, the holder of a wet land under it sinks a well at his own expense, and afterwards when the tank is repaired by the proprietor, he refuses to use the tank water and wants a reduction of rent. Is this allowable? I think it is not under the provisions of section 45, as the diminution in the productive powers is only temporary. If it is not, what means is there of compelling zemindars to repair the tank long as the tank is unrepaid, is all that is necessary; and a permanent privation of the kind I have illustrated is uncalled for and harsh. Considering the lamentable tendency on the part of the zemindars to neglect their tanks and to wring out every possible pie from their tenants, it is highly desirable to prescribe a set of rules for the grant of remissions for deficient irrigation.

Speaking generally of improvements under (a), I would confine the right of an occupancy raiyat absolutely to the improvement of dry lands, which he may, if he likes, irrigate without additional charge and without the consent of the landlord by constructing a well of his own or a tank; and in the case of wet lands under an existing tank belonging to the proprietor, the latter

should have absolute right to repair it and to ensure the irrigation; failure to do so being subjected to a loss of rent. Again under the same clause (a) suppose a proprietor constructs a well close to his estate for the benefit of men and cattle of the village and perhaps of travellers, can all the raiyats of the village be forced to pay an enhanced rent for such work?

"How can a zamindar who wishes to construct an extensive irrigation work acquire lands required for the purpose? The security of property ensured by the proposed law will, not unlikely, make his raiyats obstinate and unwilling to part with their lands, especially when they are not to be benefited by such works directly or indirectly. The Land Acquisition Act provides for the acquiring of lands required by the state or companies and not by zamindars, for public purposes. It is therefore advisable to show him some legal means of compelling his raiyats to give up their lands for such purposes, of course, on payment of proper compensation. All that is necessary is where he is unable to make his own terms with parties, he must apply to the Collector, who will award compensation and acquire the lands."

"I cannot see the force of the phrase 'as such' in section 27 (1). The use of the words 'permission' and 'request' in section 21 (2) may wound the sense of self-importance which not a few of the zamindars have; and the words 'consent' and 'requisition' may be substituted for them without risking any such offence."

**Sections 29 to 33.**—I cannot see the aim of this restriction upon the proprietor's right of measurement of his raiyats' holdings at any time, so long as there is some precaution used that his officers do not injure the standing crops. Most of these estates are unsettled and unsurveyed. In some there is an immense proportion of waste over which the raiyats claim either the right of pasturage at low rates, or the free right to alter their holdings as they please. In Ramnad, for instance, in the northern taluks the raiyats took up lands one year and left them fallow the next to recover tone; but they did not pay for more than they cultivated. The settlement of these sections would prohibit. After all, the legislature has no wish to manufacture causes of disagreement between the landlords and their tenants; and I never heard of tenants objecting to the perfect right of their landlord to measure their lands at any time.

**Section 34.**—This attempt to prescribe a maximum limit of money-rent is a most important feature of the bill, and one fraught with peril to the bill itself; for it is quite certain that the landlords will make a determined stand against it. Not having the Hon. D. F. Carmichael's memorandum before me, I have no guide to show how he arrived at five-sixteenths more than any other one-sixteenth; but it is to be hoped that in his calculations he took the data into consideration on which the *peish* was originally fixed. I cannot myself see why one-half should not be taken, instead of five-sixteenths, leaving the landlord and ryot within these limits to settle their own disagreement. It is not likely that landlords will be such idiots as to drive away good tenants. I foresee two difficulties in working out the provisions of this section :—

- (1) In most estates there has been no survey or classification of soils and no proper accounts of yield have ever been taken.
- (2) Crops are sometimes charged according to their nature and kind. Thus in case of a special product, like betel, even royalties are exacted and paid. High rents are invariably paid upon garden products, such as turmeric, plantains, sugar-cane, &c.

Is every proprietor to forego these present gains, while, on the other hand, he is to be put to great loss in having to survey his estate?

**Section 35.**—The maximum amount of *vâram* should in no case exceed one-half.

**Section 37.**—Suppose the landlord has given the land to the poor tenant on a favorable rent, as being a relation or dependent, is he bound to show similar favor to the next comer?

This section suggests the advisability of ingrafting in this bill the rules concerning the disposal of darkhasts for raiyati lands ordinarily followed in Government villages. At least, the principle should be somewhere affirmed, that a raiyat of the village and a neighbouring holder should ordinarily be preferred, where there are one or two more applicants for the same land.

*Section 38.*—I would add "and unless such transfer has been duly noted in the Collector's register of proprietors." There should also be enacted a corresponding obligation on the part of the ryot to notify any transfer made by him to the landlord.

*Sections 39 and 40.*—These penal provisions are unduly severe. Moreover, there are some collections which have for centuries had the sanction of custom. The words "all impositions in addition to the actual rent" are too comprehensive, the exception in 40 "except under special enactment for the time being in force" leaving the landlord in continual danger. Why should not section 4 of Act VIII of 1865 stand with a provision against illegal or oppressive taxation? Under the bill, as it stands, the collection of any nuzzer (paid to zemindars), or katnam (paid to Dewans), or russum (paid to temples, &c.), or fine for non-performance of kudi marammat (village customary labor) is prohibited; and the landlord is branded as a criminal for exacting such.

*Section 52 (d).*—Zemindars never write off arrears. A document or bond is taken from the raiyats, renewed from time to time, so as to keep the debt alive. On this the zemindars sue in the Civil Courts, when the circumstances of the ryots show improvement. The result is that the ryots are kept for ever in the bond of their landlords, and capitalists are precluded from ever coming forward to assist them, as it is never known what demands the landlord has not got against them in his books. From the coming into force of this Act, must the whole of this arrear be shown in the putta?

(e) Where melwaram is taken, its amount cannot possibly be calculated until the crop is almost ready for harvest. The whole machinery of what is known as puli (estimate of the probable yield) and obbadi (leave to cut the crop) in the Ramnad estate hinges upon this. It will, therefore, be impossible to enter these items in the putta.

*Section 52 (3).*—As regards this provision, I would observe that the eurnams are most often the tools of the proprietors, and do more injury to the ryots than any one else.

*Section 54 (3).*—This subjection bringing the ryots before the Magistrate is hard and inequitable and impolitic. Moreover, puttas and muchilikas are, as a matter of fact, prepared by the village eurnams at the same time in the proprietor's cutcherry. If the ryot thinks that the conditions of the latter are unfair, is he bound to accept it? Clearly not. There must be first his agreement with its conditions.

*Section 55 (a).*—Simply "having reason to believe" is insufficient cause. The money must be tendered and refused before a raiyat can take the step of taking his payment to a public office.

*Section 60.*—I have obtained from all whom I have consulted an almost unanimous consensus of opinion that twelve per centum is too high interest; nine is the highest ever levied in such cases where the land is in any sense a security. Six per centum will be better.

*Section 61 (3).*—The Collector is apparently expected to decide all facts. How should he then refer any point of fact for the decision of a Civil Court?

*Section 62.*—Is the written authority exempted in such cases from stamp duty? Proprietors are ever changing their responsible advisers, and the necessity for a power-of-attorney properly stamped in each case will greatly increase the expenses of the proprietor in the management of his estates.

*Section 67.*—Why should such permission be held necessary?

*Section 72 (a).*—It has been suggested to me that even in this case it is better to leave provision for some part of the profit to go to their raiyat to foster the feeling of a thorough inter-dependence of interest. After all it is only by the raiyat's exertion that any cultivation is made. Three-fourths might go to the landlord and one-fourth to the raiyat. The more the proprietor and raiyat are brought to feel that it is for their mutual advantage to work amicably and fairly together, the more surely will the object of the bill be gained. (2) I think that enhancement within the limitation of rent enacted under section 34 can be left to agreement between the parties. It is of no use imposing too many restrictions upon the landlords.

*Section 84.*—In the proviso to this section what does "contrary to local usage" mean? Does it mean "local agricultural custom" or what? The Collector has his work cut out for him.

*Section 89 (c).*—What is the object of the limitation of six months? Is the landlord to lose the rent of the subsequent period if more than six months have elapsed between the institution of the suit and the date of sale when no judgment debtor contests the claim?

*Sections 92 to 112* provide for the recovery of arrears of rent. The old Rent Act gives the landlord the power to distrain any moveable property of the defaulter, to whom it is open to appeal to the Collector, if he is dissatisfied with the demand or the distraint; but this bill deprives him of that power and gives it for some unknown reason to the Collector or some other officer appointed by him on the application of the landlord. It is still left open to the defaulter to appeal if he is dissatisfied with the demand; and only crops gathered or ungathered are declared as liable to attachment. The application is further required to be stamped under the Court Fees Act according to the amount of arrears; and the value of the stamp will fall on the tenant in the end. The restriction of liability to attachment to crops makes it necessary so to arrange the instalments under section 50 that they may all fall due before the harvest season. This must drive the tenants, most of whom are poor, depending on the year's produce for the payment of rent, to borrow money at exorbitant rates of interest. If, on the other hand, the instalments are so arranged as to fall some before and some after the harvest, the landlord may fail to recover the subsequent instalments, if the tenant having paid the first kists has managed to get the produce out of his possession; and the temptation for doing this will be very strong. The bill provides for no copy of the list of attached property to be given to the defaulter, who is thus left without the means of checking any probable misappropriation on the part of the distrainer, who will probably be of the grade of revenue inspector. Is the resale under section 102 to be at the risk of the defaulting purchaser or not? Is not the sale to be confirmed by the Collector as in the case of revenue sales? Section 96 (3) does not provide for the service of the demand, if the party lives some miles off or his last residence is not known. In such cases, the safest and most direct way is to post it on the land itself. The terms "inferior tenant" and "superior tenant" in section 107 (1) as well as "superior landlord" and "inferior landlord" in section 108 have not been defined, though of novel use in the Revenue Law. Section 106 (2)—As the distraining officer may be several miles away from the Collector, why not provide that the money must be paid into the nearest Government treasury, and the fact reported to the Collector at once? Section 112 appears to have been enacted to carry out one of the suggestions of the Famine Commission, to guard against a proprietor pressing his tenants for payment in times of scarcity.

*Section 113* guards in a great measure against the crying evil of delays in arranging shares where the rent is payable in kind. The delay in several cases extends over a year or so, and the poor ryots are now left practically without any help. The section gives him the right to demand a division to be made in time, and on the landlord's failure to do so, he can apply to the Collector. The same protection is given to the landlord against his tenant where the latter neglects or refuses to divide the produce in time. This provision, though good, is not, in my opinion, as good as is desirable, and I would go further and declare that if a zamindar neglects to arrange for the division or to apply to the Collector within two months after the harvest, the whole heap may be taken by the tenant. It must be noted that the delay is generally due to the landlords, who, with their short, inefficient and ill-paid establishments are practically unable to attend to each case of division of crops.

7. It will be seen from the above remarks that there is much that I find fault with in the bill. Many of its provisions are not only too minute and interfering, but are also harsh upon the proprietors. Its severe effect, if it were now passed into law as it stands, would be fatal to all of them if the raiyats should apply its provisions rigorously; but it is a well-understood fact that the same ignorance and want of cohesion among themselves which has stood the zemindars, &c., in such good stead the last twenty years, exists among the raiyats to this day; and if the effect which I have

predicted does not immediately follow the introduction of the bill, it is because the raiyats do not understand what has been done for them and written about them. I do not like to interlard this report with personal experiences, as it may seem egotistic to do so; but in this connection, I wish to remind the Board of the immense trouble which I had in 1874 in introducing paper puttās into the Ramnal estate, the Maravers, Ahambadyers imagining that the old leaf receipts were better. The former were the creation of the law of 1865, the latter conveyed absolutely no meaning. The raiyats, however, preferred the latter. This shows what difficulties may arise from over-doing the bill.

8. I have not yet received any opinion on the bill from either the Sub-Collector or the Head Assistant Collector, who are both very busy with jamabandi and other works. When their reports are received, I shall, if in time, submit them for the perusal of the Board without any remarks.

READ—also the following letter from J. LEE-WARNER, Esq., Acting Collector of Nellore, to the Secretary to the Board of Revenue, dated 8th April 1884; No. 1767:—

With reference to paragraph 8 of my letter, No. Extra I, of the 5th instant, I have the honor to forward herewith the observations (in original) made by the Sub-Collector on the Draft Tenancy Bill, which I have just received. I have also received a similar report from the Acting Head Assistant Collector, but as it is short and raises no new points, I have retained it here.

From W. J. TATE, Esq., Acting Sub-Collector, to the Acting Collector of Nellore, dated 7th April 1884.

In answer to your letter, No. 105, dated 1st March 1884, on Board's Proceedings No. 61, dated 11th February 1884, I have the honor to acknowledge the receipt of the Draft Tenancy Bill and to state—

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- (c) In Section 75, the number of the section and sub-section referred to are omitted. I presume Section 61, Sub-section 1, Clause II, is intended.
- (d) The words "and no landlord" in line 2 of Section 92 are wholly unintelligible. Probably, it will be sufficient to omit these words altogether.
- (e) Surely, the words in Section 81, line 4, "so many number of assessors" are a mistake for "such number." The grammar of the sentence will, however, be best corrected if the words "number of" are wholly omitted.
- (f) In Section 95, line 8, the word "does" should obviously be "do."
- (g) Section 119 is terribly worded. I fail to see how an "act" can be performed either "to" or "in" the Collector. Perhaps, "act" is a misprint for "action," but even then the wording would be unintelligible. In fact, this whole section requires recasting.

6. The next point to notice is the definitions. I cannot help thinking that there may be parts of the presidency wherein the words *seri*, *khas*, and *pannai* may not (any one of them) be understood, and I suggest therefore that these words themselves should be defined. To this it may be answered that an Act of the legislature is not a glossary and that these words can be found in any glossary. I have, however, consulted one glossary and failed to find them. No doubt, their meaning is accessible enough to the landlord and to the Court deciding what is "private land;" but I doubt if, unless the words are carefully translated by amplification into ordinary Telugu and Tamil, it will always be so to the tenant. Moreover, a definition is faulty which repeats in explanation the words to be defined. To say that "private land" includes "land which a proprietor has held as private land," is no more useful or necessary than (to take a section of the Penal Code) to say that "injury" includes things which are "an injury." And even the modification "for twelve consecutive years, &c.," does not fully help us out; while, to my thinking, the term "private" is objectionable in itself. "Private" naturally connotes that which is "public," but the land in a zemindary which is, or should be, "public," is not the land held by the raiyats, over which rights of ownership exist in whomsoever they may be vested, but the poramboke land excluded from the basis of the permanent settlement, and thereby virtually reserved for the communal purposes of each village. For "private" I would read therefore "self occupied." If, however, "private" is to be retained, a definition of "public" land, as distinguished from what is called "raiya land," must certainly be entered. This would supply an omission in the Act and should be followed by a section enabling any raiyat to sue for a declaratory decree that certain ground which the zemindar desires to assess, e.g., village backyard or burning ground, is land set apart by immemorial custom for the communal purposes of his village.

7. I notice that the terms "proprietor" and "landlord" are both defined, and both used throughout the Bill. At first sight, it would appear as if its framers intended to denote by "proprietor" the registered-holder of an estate as against the world, and by "landlord" the same person in his relations with his tenants only. But several sections, such as 52, 53 and 54, negative this supposition, and still further confuse the terms "raiya" and "tenant" (vide the 1st line of Section 52 compared with its marginal abstract). And I suspect that in translation it may be found necessary to translate "landlord" and "proprietor" by the same word and so with "raiya" and "tenant." If this be so (and it should not be forgotten that Indian Acts are supposed to be drafted for the Indian people to understand, as well as for English lawyers to interpret, a theory particularly necessary in the case of a Rent Act), the necessity for the use of two English words to mean what becomes the same thing to the people affected by the Act is not altogether obvious. Of the two words I would retain "landlord." Proprietor has ordinarily a far more general meaning, including as it does the proprietor of a shop or hotel; whereas landlord is plain definite English and exactly expresses the class of persons which it is intended to particularize. Again, the word raiya is here for the first time in Madras law conclusively enlarged in its signification to include the tenant of a zemindar as well as those of Government. But as there may have been good reasons for this latter usage, I would suggest that this word be retained, and the word "tenant" like the word "proprietor" omitted from the Act. It is noted that this use or disuse of the former word does not effect the classification into "settled," "occupancy" and "ordinary" raiyats.

8. Section 4 (ix), the definition of rent, leaves unnoticed the possibility of a rent of scattered trees, and I say this *pursue* Section 120, which deals only with *suits for the recovery of rent in respect of forest rights*. Tree rents do exist in some districts, notably in Chingleput, from which district there arose a reported case, in which (I write from memory) the High Court ruled that a landlord was entitled to give a tree putta, as the value of the trees really represented the productive value of the land. And in this district the claim of the Venkatagiri Zemindar to insert a clause in his puttās forbidding his tenants to cut the trees, but allowing them to enjoy the usufruct thereof, and, I think, on some occasions charging them "rent" for the same, has come up in several suits. On this point, the Bill now before me is silent, unless an inference can be drawn from Section 39 (1), coupled with the definition of "rent,"\* that such tree puttās (which can hardly be said to be granted either for the use or for the occupation of land) are illegal, and

\* Vide also the omission in Section 52 (1) of any mention of trees.

further that the landlord's claim to charge rent on the trees in raiyat land being abrogated by want of specific provision in the Bill, they vest absolutely in the tenant. If this is the intention of the Bill, such intention should, I submit, be specified with far more precision. I would propose that a clause be added to the effect that "no claim of the landlord to charge rent on trees growing on raiyat land in the occupation of any raiyat over and above the rent settled with respect to the land itself and limited by Section 31, and no prohibition to the ryot bidding him refrain from cutting such trees, shall be valid for the future. This places the estate raiyat in the position of a Government raiyat in this respect, and leaves untouched the right of the landlord to lease trees on private land or unoccupied waste, a right it is fair he should have.

9. The definition of "arrear" (xii) is, I would respectfully suggest, a little clumsy. In the words "remains unpaid before sunset," the words "before sunset" are of course intended to be read with "unpaid;" thus, remains "unpaid-before-sunset." It strikes me that it would be better English to read "after sunset" or to change the clause thus: "has not been paid by the sunset of .....

10. In the absence of any guide from the statement of "objects and reasons," I cannot understand what is intended to be covered by an involuntary sale—xiv (definition of "transfer"). The most important subsequent section in which the word "transfer" occurs appears to be 20 (f), defining the rights of occupancy-raiyats. It would surely defeat the whole object and scope of this section, if the word "transferred" herein included a sale obtained by force or fraud or peremptorily ordered by the landlord; yet such, I fear, may be the result of the use of the word "involuntarily" without explanation or further definition. If what is meant is a sale by order of a Court in execution of a decree, then this does not apply to land, as land held by tenants is in itself unsaleable, though the case would appear to be otherwise with an occupancy-raiyat's right, title and interest. If it is intended to include a transfer of property effected under Section 98 (1), then I would make matters safe by reading for "involuntary" "effected under the provisions of this Act."

11. Section 5 (1).—I fear the provision at the latter part of this sub-section will be practically almost a dead letter. I would add to it "provided also that any raiyat shall be at liberty to apply to the Collector of the district for a copy (either public or private) of the said register as far as it relates to his own holding. Such application shall be stamped in the manner prescribed by law for other similar applications." In Sub-section (2), the fine of Rs. 100 leviable on the Curnam is so large that practically it would never be levied. I would reduce the maximum to Rs. 20 and the maximum daily fine in default to Rs. 10. The original maximum might be retained in the case of a proprietor, but I would not fine the latter in the case of refusal to allow inspection, except on the application of the raiyat affected, which application should be heard and registered as a suit, in which the expense incurred by the applicant would also become leviable from the defaulting proprietor as costs.

12. Section 24 (1) (a).—Here again there is the confusion between proprietor and landlord. A raiyat is bound to give notice in writing to the proprietor, but it is only the landlord (vide Section 119) who can empower a naib or gunastah to accept service. This objection may seem like a quibble, but it is just possible it may give rise to legal difficulties. But if it is meant that the two words should be interchangeable throughout, it is at any rate as well to include them in the same definition.

13. Section 25, though necessary, is severe. I would insert "provided that he shall not be ejected from the land till after three months from the close of the said year and from the date of a written notice to quit. The raiyat shall further be entitled to bring a suit before the Collector within such period of three months to determine whether the facts constituting a surrender have occurred."

14. Section 26 (2) (f).—Though, no doubt, the fact that a raiyat has erected a dwelling house with offices, &c., on his land should be taken into account in settling any compensation payable to him on ejection, still, a house cannot be said to improve the cultivable value of a holding inasmuch as it diminishes its area. I would, therefore, insert in the Act a specific clause that the raiyat shall be bound to obtain the landlord's permission before so building, that an appeal shall lie to the Collector against refusal, and that, in considering the grounds of such refusal, the Collector shall take into consideration the holding of the raiyat, and the extent of village-site available in the village. It follows that the words "other than an improvement of the description mentioned in Section 26, Clause (f)" should be omitted from Section 28 (1), and that a provision for an appeal to a Revenue Court should lie against the proprietor's refusal to permit an ordinary raiyat to make improvements generally.

15. Sections 27 (2) and 28 (2).—When is a proprietor of an occupancy-holding or an ordinary raiyat "entitled" to make improvements but for the raiyat's or proprietor's permission? Does the word "entitled" refer to the kinds of improvements specified in Section 26 (2)? If so, I think it would be better to read "desires ....." to make such improvements as are described in Section 26 (2). If, on the other hand, the word "entitled" means "entitled owing to his position as such proprietor or raiyat, then I submit that it is unnecessary as being implied in the word proprietor or tenant and appertaining to their status as such.

16. Section 29.—I consider, from what I have seen of the way measurements are carried on by zemindari officials in this district, that it is most advisable that the raiyat should not only, as provided by Section 5, be allowed to inspect and make extracts from the register of measurements, but to appeal to the Collector (Revenue Court) against its accuracy, if he sees reason for disputing it, and that such Court may have power to order remeasurement by a commission, the costs of which shall be borne as it decides—vide the parallel procedure in Section 113. Section 61, Sub-section (1) (i) (a) is too vague to apply to this case.

17. I would add to Section 30—which, by the way (like Section 31) contains a clerical error of (28) for (29)—the word "and Curnam" after the word "raiya" in the indicative part of the sentence, and also permit the raiyat to depute the Curnam or any other person acquainted with the boundaries to attend the proprietor's agent at the measurement. This is consonant with the permission in Section 113.

18. Section 31, line 3.—"29" should be "30." This section should be enlarged in reference to the preceding remarks.

19. Section 31 (a), line 1.—For "30" read "31." There is no reason why Section 31 (a) should not form part of Section 30, and the objectionable lettering of sections (which occurs elsewhere in the Act) be so avoided. I would then omit the elaborate and troublesome procedure calling on the raiyat to show cause, and on the other hand amplify the words "requires him to do so" in Section 30. I would thus simply enact that the proprietor shall be bound to give the raiyat a written notice of the time at which his land is to be measured, and that, if he fail to appear in person or by agent at such time, the burden of proof that the proprietor's measurements are wrong shall lie upon him in any suit brought to contest such measurement. For non-appearance at such measurement, the Curnam should further be liable to a fine of Rs. 10, unless this is sufficiently covered already by the provisions of the Estates' Karnams' Act.

20. Section 34.—Who is primarily to estimate "the average annual value of the gross produce," and when is this to be done? Provision is made for the action of the Collector when a dispute arises (Section 113) and a presumption is also raised from the rent payable for the preceding year (Section 36). But to avoid frequent re-estimations, I would enact that the crops should be estimated at the same time as the land is measured and with the same provisos, vide Section 29, Clause 2. This will virtually render the written permission of the Collector a condition precedent to enhancement on the ground of increased value of produce within ten years. When that is obtained, the enhancement may follow on the grounds specified in Section 44, (2) and (3), and the raiyat can then bring a suit to contest it. In both this and Section 29 (2), I would limit the power of permitting or refusing such remeasurement and re-estimation to the Collector of the district.

21. In Section 36, for "agricultural," I would read "fasli," as less likely to be misunderstood. So in 24 (1) and 70 (1). The "agricultural" year may be held to vary in different districts, and if it is intended that a varying year be adopted power should be given to the Board of Revenue to determine what is the agricultural year in any district.

22. Section 39, Clause 2.—By whom is the fine leviable on the landlord to be decided? By Government, by the Collector of his own motion, or by the regular process of a suit brought by the tenant in the Revenue Court? I should myself prefer the latter procedure, adding that any Court may take cognizance of such illegal import, if it comes judicially before it in the course of an inquiry, even although such import may not be the "issue" of such inquiry. But whatever procedure is designed, that procedure should be specified. If the latter procedure is the one intended, then the 1st clause of Section 39 (2) may, I think, well be amalgamated with Section 40. Further, I do not see why, when the tenant is given his legal remedy, officers of Government should be forced to go out of their way to inquire into the landlord's dealings, nor do I quite see how the landlord is to be punished for extortion, if the ryot pays voluntarily. There are many cases in which ryots in an estate consider themselves bound by a sort of feudal obligation to contribute to the well-being of their landlords, e.g., on occasions of marriage, &c., and, provided that illegal means are not used to obtain such contributions, I do not altogether see why they should be hindered from doing so. Apparently, however, such contributions would come under the general head of impositions, which is a "question-begging" and therefore objectionable word.

23. Section 41.—It seems to me that this section read with Sections 34 and 72 (d) involves an absurdity. By the first two sections an occupancy-raiyat is liable to pay any money-rent shown to be payable by him provided that such rent does not exceed five-sixteenths of the estimated average annual value of the gross produce. But when the rent of this kind of raiyat is enhanced, he is not to be held liable to pay more than one-fifth of the estimated annual value. In other words, some occupancy-raiyats in a village may (owing to previous usage) be paying up to five-sixteenths or nearly one-third of the estimated annual value of their crops, while others, however,—for a Court may go in allowing the landlord to enhance the rent—will never have to pay more than one-fifth of the same sum calculated on the same factor. Surely this perpetuates inequality of tenure without much benefiting either party.

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24. *Sections 46 and 47.*—I presume from Section 61 (i) and (ii) that there is to be an appeal to the Court against these enhancements, and that under Section 61 (1) (i) (b) an ordinary ryot will also be permitted in such appeal to lay claim to the status of an occupancy-ryot and so defeat the enhancement. But a limitation (say six months) should be specially allowed for such appeals in default of a special "limitation" section in the Act, which is much wanted and yet is strangely enough missing. And I would add on the other hand that no landlord should be allowed to enhance the rent of an ordinary raiyat without giving him a corresponding previous notice in writing. This section (17) leaves an ordinary raiyat so utterly at the mercy of the landlord up to the limit fixed in Section 34, that this provision or something of the kind is absolutely necessary for his protection. Even therewith it is to be feared that the first step taken by a grasping landlord on the passing of the Act will be to raise all rents up to five-sixteenths of the annual value of the gross produce, so that when an ordinary raiyat becomes in it) in the Bill is not seen to, the provisions about enhancement of rent are more or less nugatory, it being those only who are already "settled raiyats" who are likely to be benefited by them; and the result will be as if it were enacted in one simple section that all raiyats who are not now settled raiyats are at once and henceforward to pay a rent equivalent to five-sixteenths of the estimated annual value of their produce. And here I would remark parenthetically that it is a mistake not to insert the words "and Section 34" after "Section 24" in line 1 of Section 22 (Sub-section 2).
25. *Sections 48, 49, 63 and 69.*—I do not, in the case of the landlord who has received notice to reduce, quite see the use of going beyond the written agreement by a suit in the Collector's Court. I would simply enact that the agreement executed by him be presented to the Collector for registry and become valid when so registered. That the intention of the Bill is, after all, little more than this is shown from the fact that Section 69 (1) deals (unlike its predecessor) only with enhancement of rent and not with the question of the consent thereto of the tenant. Further, the wording of the two sets of provisions seems a little contradictory. From Section 49 (1) it would appear that a suit only lies in the case where an agreement has been executed. Section 69 (1) on the contrary contains a second clause referring to a case where the defendant agrees otherwise (i.e., before the Court) to pay the enhanced rent demanded. Section 49 should therefore contain a third sub-section "if such agreement is not executed, the person by whom the notice is issued shall be at liberty to sue for its execution. But the service of the notice is really the precedent condition to the suit, and, this being so, there is little use in the agreement. It does not bind the tenant, for he may apparently dispute it, Section 69 (2), or it may be questioned by the Court, Section 69 (1) (proviso); nor does it save him trouble and expense, for he has to file the landlord's agreement in Court and apply for a decree, Section 49 (1). If notice of enhancement or reduction be duly served, the opposing party knows what will follow and the agreement is needless. I would, however, give either party six months instead of one month within which to contest the enhancement or reduction and allow suits to be admitted after this date whenever it is alleged that the notice required in Section 48 was not given, the burden of proof of the service of such notice being in the person issuing it. No doubt the object of the agreement [followed by the proviso in Section 69 (1)] is to protect the tenant from fraud, but I think this object would be gained by the above provisos equally well while the procedure would be vastly simplified (another gain to the tenant).
26. *Section 50.*—I fear that the proviso to this section will go far to nullify its good effect. At present, zemindari kists are fixed in the most arbitrary manner and a case came recently under my notice in which a large proportion of the rent payable by a raiyat was fixed as payable in the inconvenient month of July. This raiyat would now have to pay, say, in November, but then under the proviso, he would still continue liable to pay too large a proportion of his rent before he had any chance of realizing on or hypothecating his crops. If the kists are to be fixed by any outside authority at all, I would, for the sake of uniformity, as well as for the above reason, omit this proviso.
27. *Section 52 (1).*—This, I think, presupposes the putta to be annual and even binds the landlord to grant such a putta. Considering that the measurements can ordinarily only be revised once in ten years (proviso to Section 29), *vide* also my remarks on Section 34 and the following, I do not see any real necessity to grant a putta oftener, unless the raiyat applies at his own cost for another, on the ground of his former putta being from any cause not forthcoming. And I fear that the grant of an annual putta is likely to cause inconveniences both to landlord and tenant, to cause a repetition of litigation, and to give the landlord a chance of altering the conditions of the tenancy by inserting some new clause or condition when he has no business to do so. Why should not zemindari raiyats be treated just as Government raiyats in this as in other respects?
28. Nothing is said in the Act about the landlord's power to collect from the raiyats the "merahs" or cesses due to the village servants, temples, &c., of the village. It is a common practice now in some estates to insert clauses to this effect in the puttas, and these have frequently

been defended in contested suits on the ground of convenience. Contributions (like these) levied by the landlord on account of some purpose other than his own benefit do not seem to come within the purview of Section 39 (1), and if puttas containing provisions of this kind are to continue, it will be advisable to add to Section 52 (1) another sub-head (f) showing "other amounts payable by the raiyat according to law or the custom of the village." A further section should also be added to the Act respecting these levies; otherwise they will become "*ipso facto*" illegal and the position of the village establishment in estates will suffer from non-regularity in payment of their dues. Payments on account of trees (*vide* my remarks above, paragraph 8) will also (if held valid) have to form another sub-head (g).

29. After the word proprietor in lines 1 and 2 of Section 53 (1), it is advisable to add "or his duly authorised agent;" Section 119, part 2, refers only to the delegation of the proprietor's powers in respect of the service of notices. Perhaps the end desired would be best attained by a considerable extension of the scope and amplification of the wording of Section 119. The same addition requires to be made in Section 54.

30. Similarly to "proprietor" in Section 53 (3) I would add not only "or his duly authorised agent," but also the words "or if the proprietor so desire it, the Curnam of the village." It is the Curnam in Government villages and not the Tahsildar who keeps the No. 10 account of the village (virtually a registered counterpart of the receipts given), and under the new Act applicable to Curnams in settled estates. I apprehend that it will be possible to introduce a similarly correct account into proprietary villages also.

31. *Section 54.*—I remark here that the section is not adequately described by its marginal abstract. A "putta" is not a statement of accounts, and it is not the failure to keep, but the failure to deliver, counterparts which is made punishable by the section.

32. In Section 54 (2) nothing is said as to whether the Collector, in recovering from the proprietor a penalty for refusing to grant a putta, may also direct him to grant it, and in the case of failure, grant it (as provided for by the Act now in force) under his own hand and seal. Such a provision cannot, I think, fail to be useful (as what the raiyat is supposed to want is his putta and not the mere recovery of money by way of fine from the landlord), and I see no adequate reason for its omission.

33. *Section 54, Sub-section 3.*—I must say that I object *in toto* to the proposal contained in this sub-section. This is the only instance in which breach of the provisions of the proposed Act is erected into a new "offence," and it is to my thinking a most unfortunate one. Why should the case of the raiyat here stand on a different basis from that of the landlord, and be treated from another and more unfavorable point of view? Surely the jurisdiction given to the Collector by the Act is sufficient for all purposes, the power to "fine," levy penalty, and "recover" being repeated times without number; and surely it is sufficient hardship for a recalcitrant raiyat to be dragged away from his home and cultivation to a possibly distant Court on summons (as well as having, if found in the wrong, to pay the costs of litigation) without his being subjected to the disgrace of being hauled before the Magistrate. I would therefore read this sub-section thus: "If a raiyat refuse to deliver to a proprietor, within 15 days of the grant or tender of the putta described in Section 52" (this addition is, I consider, necessary, and I am surprised it should have been omitted), "a muchilika corresponding thereto, the proprietor may, within six months from the date of such refusal, institute a suit before the Collector to recover from him such penalty as the Collector thinks fit, not exceeding the aggregate amount or value of all rent payable by the raiyat to the proprietor during the first fash for which putta is granted or tendered." This follows, with a slight exception in favor of the raiyat, the wording of the preceding sub-section, but inasmuch as the words rent payable may cause the inquiry to be protracted, owing to a question being raised as to what is the rent payable, it would perhaps be better to substitute the words "not exceeding Rs. 500" in Sub-section (2) and "not exceeding Rs. 50" in Sub-section (3). And as no provision appears to be made for cases in which the raiyat *bonâ fide* declines to deliver the counterpart because he intends to appeal to the Collector against the provisions of the putta, I would add the following: "provided that if the raiyat's refusal to deliver muchilika proceeds from a *bonâ fide* objection to any of the provisions specified in the putta, the Collector shall be bound to consider the grounds of such refusal, and shall, if he finds any of them reasonable, refrain from ordering the recovery of the aforesaid penalty." And when the raiyat's refusal appears *bonâ fide*, I would enact that the Collector shall in such cases proceed to dispose of the objections raised and tender a proper putta to the raiyat under his hand and seal, and pass a decree ordering him to accept the same.

34. To the discussion of this portion of the Bill (Chapter IV, 61) I would finally add that the enactment in Section 53, Sub-section (4), is so stringent that it would be advisable also to enact that receipts should invariably be printed, of course, with gaps within which the amount paid, &c., may be filled in. I do not think this course would present insuperable difficulties, as it is a common practice, at least in the larger estates, to issue printed puttas even now, while it would certainly be a security against fraud on the part of the Curnam or the lower-paid agents of the proprietor, and as such receipts might be taken from a printed book containing counterfoils, which might also be used for the purposes of Sub-section (3), would act as a check, to some extent, on false cases that may be brought by the raiyat under Section 54 (1).

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For the further protection of both proprietor and Curnam, it might not also be amiss to require that they should be sealed with a special seal, as well as signed, a course I have long wished to see adopted in Government villages. Certainly, if this is not insisted on, it ought to be laid down that they are to be signed by the proprietor's agent and attested (like pottas) by the Curnama.

35. Section 55 (1), *last line but one of the Sub-section*.—The word "present" is too narrow. I would allow tenants to forward this species of application by post. Also, for the sake of administrative convenience, I would suggest the insertion of the words "or such other office as he may direct" after the words "his office." This will obviate the necessity of a raiyat having to come a long distance to deposit perhaps a petty sum.

36. "In a registered cover" (line 5 of Section 57 (1)).—Who is to pay for the registration and postage? Provision should be entered enabling the Collector to recover the same from such person as he thinks fit, having regard to the special circumstances of the case.

37. Section 58 (1).—It is not improbable that the person in question (Section 55 (1), clause (a)) may still refuse to accept payment. Nevertheless, as the section runs, the Collector is bound to pay him the amount of the deposit, the word used being "shall." It is hardly the Collector's business to do this without application, and I would therefore insert the words "on his application" between "shall" and "pay." The person mentioned in Clause (a), Section 55, receives a registered notice, and is therefore aware of the fact that the raiyat has paid his dues to the Collector. If he wants the money, he may apply for it. Again, in Section 59 a provision is required stating what is to become of the money deposited in case the depositor either does not apply for it, or applying does not return the receipt given under Section 56.

38. Generally speaking, I do not think that these provisions for the deposit of rent by tenant are required. I think it would be sufficient in the case mentioned in Section 55 (1) if the tenant were allowed to bring a suit before the Collector to enforce acceptance of rent which case also the landlord's reason for refusal to accept would come under consideration, and which course would therefore be fairer to him, and in the other two cases (b and c), if it were enacted that the tenant shall not be liable twice over for the same rent on the ground of having paid it in good faith to the wrong person, leaving the disputing sharers or landlords to go to the Civil Court to settle their claims. These proposals would certainly tend to simplify both the action of the tenant and that of the Collector, and, as far as I can see, would leave the former equally protected.

39. In Section 60 (1) I would particularize the nature of the suits by referring to the sections under which they can be brought, the present wording being in some cases too vague, especially in I (a) as pointed out above. And in Section 61 (3) I would omit the words "or fact," as it seems to me that the Collector, sitting as a Revenue Court and hearing and recording evidence, is as competent to determine questions of fact as an ordinary Civil Court. And for the Civil Court, in which but for this Act such suit would have been instituted, I would read "the District Court," if not "the High Court." The procedure then resembles the well-known practice of "stating a case." In the absence of any explanation, I fail to see the object of the sub-section as it now stands; and that a Collector should hear part of the facts of a suit and decide on a Civil Court's opinion as to the other part of them seems to me absurd.

40. Section 62, line 1.—In the absence of any special proviso about the stamp leviable on the "written authority," it would appear that an ordinary vakalatnama stamped 8 annas would come within the meaning of the section. Reference should, I think, be made in it to the provisions and schedule of the Stamp Act, the words "duly stamped in accordance with the provisions of . . ." being inserted after "authority."

41. Section 66, line 3.—Here again a provision is required to the effect that such registration shall form part of the costs of the suit. Is the summons to be issued in the form prescribed by the Civil Procedure Code, or does it issue under Act III of 1869?

42. I think Section 67 is unnecessary. A written statement, so far from being objectionable, frequently tends to very greatly elucidate the matter in dispute. It should, however, not be made obligatory.

43. Section 72 (1) (d).—*Vide* my remarks in paragraph 23.

44. Section 72 (2).—"Double" is too high; a limit of one and-a-half times would be better.

45. Section 75.—I consider the limitation of time in this section too severe on the tenant. If it must stand as now worded, I would extend the period of fifteen days to three months, and then oblige the proprietor to file his application for ejectment within one month subsequently. But I would alter the section altogether. I do not consider it necessary to cause the raiyat to appear again before the Collector and express his willingness to pay the sum fixed in the decree. The decree, if it is to be a decree at all, is binding, and all that is wanted is that the raiyat should have time to make up his mind whether he will bear the enhanced rent or suffer ejectment. I would therefore enact that on the first refusal of the tenant to pay the enhanced rent decreed, the proprietor may, within one month of such refusal, apply to the Collector for the enforcement of the decree by ejectment of the raiyat; order for ejectment not to be passed till after the raiyat has had an

opportunity of showing cause. I am, however, in doubt whether a raiyat ought to be ejected on this ground at all. The decree directing him to pay an enhanced rent is (as above stated) binding, and the rent so enhanced can accordingly be treated as money payable to the proprietor and distrained for by the Collector on the proprietor's application accordingly. If the raiyat does not relish this course, his way out of the difficulty is to relinquish. I am afraid that if this section stands it will be sometimes used as an engine by an unscrupulous proprietor who wishes to get rid of objectionable tenants, and I would therefore omit it wholly and consider the procedure for enforcement of the payment of enhanced rent sufficiently supplied by the other sections of the Act.

46. Section 76 (2), line 2.—On the analogy of Section 56 (1) I would add the words "under his official seal" after the words "the same."

(3) If Sections 55 to 59 (both inclusive) are to be (as I think they should be) omitted, a clause will be required here (in place of Sub-section 3) authorizing the Collector to keep such deposit for a certain period pending the orders of the Civil Court.

47. Section 77.—I would add a clause limiting rather strictly the time for application for execution of decrees of this nature.

48. Section 79 (2).—I think, considering the poverty of a large proportion of the raiyats in the large estates, that the limitation of fifteen days in this sub-section is far too short. I would extend it to three months. And after the word Collector I would add "or to the plaintiff" as a matter of convenience to the raiyat. Here again a close limitation (say one month after the expiry of the three months mentioned above) should be fixed to the date of application for execution, and such execution should not issue without notice to the raiyat to deposit the rent or show cause.

49. Section 80 (2).—Is compensation payable under this section for "improvements" which have nevertheless tended to render the land "unfit for the purposes of the tenancy," e.g., if the raiyat has covered it with cattle-sheds or converted the whole of it into a pound for cattle, Section 26 (1) (a) and (f)? These are "improvements" under the section; but the wording of Section 79 (1) is so broad that it is quite possible to imagine a contention made by the landlord and admitted by the Court, that the letting value of the land has been thereby seriously damaged. It seems a little absurd to eject a raiyat for making such improvements on the one hand and compensate him for them on the other. I think the phrase in Section 79 (1) "used the land in a manner which render it unfit for the purposes of the tenancy" should be defined.

50. Section 82 (1).—I would add to (a) (b) and (c) a fourth item, viz., (d) "to the amount required to be expended in order to bring back the holding to a state suitable for the purposes of the tenancy."

51. Section 83 (b).—Does this not conflict with Section 80 (3)?

52. Section 84, *proviso*.—I would omit this proviso on the ground that local usage in this respect is difficult to determine, and that it will only cause needless litigation.

53. Section 91.—I think there is a mistake in the last line of Sub-section (1) read with Sub-section (3). The permission of "second appeals" and the mention of the "District Judge" in line 1 of the latter sub-section point to the *district* and not the High Court, as intended by Sub-section 1.

54. Section 92, line 3, "entitled by law," I would read for this "entitled under the provisions of this Act" (Section 61 (1) (iii)). The phrase now in the Bill seems to re-admit the jurisdiction of Civil Courts expressly barred by Section 61 (2).

55. On Chapter IV generally. This chapter, no doubt, in order to benefit the tenant substitutes a somewhat protracted and round-about procedure for that now prescribed; and, as a kind of doubtful compensation to the landlord, allows the tenant absolutely no period, *vide* the use of the word "immediately," or, at best (vide Section 106 (1)), a very short period (3—7 days) within which to pay the arrear. There is danger here (1) of hardship to the tenant by reason of a too speedy sale; (2) of fraud, inasmuch as the tenant, hearing the landlord has applied for attachment, has ample time within which to conceal his crop. It may no doubt be argued that such concealment would be criminal, but to be punished it must be proved. This lays considerable extra burden on the landlord, and the results, when the prosecution fails, as such prosecutions often will do, would be highly disadvantageous to his interests. On the whole, therefore, and without undervaluing the intentions of the Bill, I think it would be better to continue the present practice, amended where necessary.

56. There is no provision in this chapter permitting the distrainer to call in the aid of the Police to suppress resistance to the attachment, or authorizing him to apply to a Magistrate for orders to be given to the Police; nor is there even provision made for a civil remedy in case of disobedience to the Collector's order of distraint. Something similar to Sections 328—330 of the Civil Procedure Code is here required.

57. Under the present Act (Section 32) a third party may bring a summary suit before sale to declare the ownership of the property. In the Bill he is bound to pay the arrears first, and

then can only claim compensation (Section 106) by suit, presumably (but not clearly or certainly) in the Civil Court. No other course is possible if the property distrained is to be brought to sale in three or four days, but the proposed provisions cause undoubted hardship to the actual owner, and are liable to nullify the benefits of the free right of transfer allowed to an occupancy tenant, Section 20 (7). On account of this, and on account of the hardship to the tenant, and the doubtful gain to the landlord, who presumably would prefer having his rents to pauperizing the tenant and crippling his resources by sale of the crop (which may fetch much less than its real value), I would propose that the time of sale be extended to one month after attachment. If the convenience of the distrainer is the thing to be considered, I can hardly suppose it more convenient to him, or a greater saving of public time, that he should wait in the same village from three to seven days, instead of returning to it after a month.

58. This leads to the question who is the distrainer likely to be? The work of all the scattered distraints of a taluk or zemindari division cannot possibly be done by a Tahsildar or Deputy Tahsildar. It would be considerable waste of a Revenue Inspector's time to make him go to a village for this purpose for three (or seven) days, then to another and so on, or even to make him perpetually return to the same village after a month, whilst in the zemindari divisions there are no Revenue Inspectors at all. One result of the new procedure is thus the necessary entertainment of an extra and probably low-paid (for their pay will have to be realized out of sale-proceeds) process establishment, and in the hands of this establishment will be thrown absolutely the power—

- (1) to decide *prima facie* who is the owner of the crop [Section 96 (2)];
- (2) to exercise discretion as to the reaping and storage of crops [Section 97 (2)];
- (3) to take charge of the distrained property or decide who is to do so [Section 97 (3)];
- (4) to see that the sale is duly notified and decide within what period, less than seven days, it shall take place [Section 98 (1) (2)];
- (5) to decide on the place of sale (Section 99);
- (6) to decide on the manner of sale (Section 101);
- (7) to postpone the sale [Section 101 (a)];
- (8) to permit time for the payment of the purchase-money;
- (9) to re-sell (Section 102);
- (10) to issue certificate.

No appeal against a sale, and no suit to set it aside, on the ground of irregularity, appears to be allowed in the Bill; nor is there any provision for recovering from or punishing the distrainer. The process establishment mentioned above will therefore, I fear, exercise their not inconsiderable powers absolutely without control. The extent to which a tenant may suffer by their improper exercise, and the opening they afford for corruption, are too obvious to mention. Far better even the present procedure, wherein if the landlord adopts harsh measures, he also suffers in loss of costs if sued, and loss of the *entente cordiale* with his tenants even if let alone.

59. The words "any person" in Section 97 (1) are surely too vague. To me, at least, they seem to open a loop-hole for acts which may be absolutely criminal.

60. If the provisions of this chapter are to stand, I would certainly define "fair price" in Section 101 (a), instead of leaving this determination with the distraining officer.

61. In Section 102 I would add "at the risk of the purchaser" after the words "put up again and sold," and I would, in connection with this, withdraw all option as to immediate payment of, at least, a part of the purchase-money as deposit. I do not think this likely to deter purchasers, and it may save the distraining officer from the necessity of going back again to the village to resell the crop a few days after he has quitted it.

62. In Section 103, before "certificate," I would insert the words "duly stamped," *vide* Schedule I (16) of the Stamp Act, and enact that the stamp value should form part of the costs of the sale.

63. Section 104 (1).—If the sale is to be conducted by a Government officer, other than a person belonging to a temporary establishment and remunerated from the proceeds (such remuneration falling under the head of "expenses"), a provision is required permitting Government to receive a percentage in consideration of his services.

64. Section 106 (1).—It is of no use laying down that a deposit may be paid to the Collector, even though "Collector" includes a Divisional Officer. There would be few cases in the large zemindaris (at least) in which a raiyat could get together his arrear and take it often 30, 40 or more miles, in time to stop a sale to take place three or even seven days from the date of notice. If this period, on which I have already written, is to be retained, I would for the words "with the Collector" substitute the words "in the nearest treasury," and allow the receipt granted by the Treasury Officer to act as an acquittance. To better permit the raiyat to do this, I would add to Section 98 (1) after the words "three or more than seven days" the words "exclusive of Sundays and public holidays." Of course it may be said that the section allows him to deposit with the distraining officer, but as the alternative of a deposit with the Collector is given, the above remarks are necessary. The treasury receipt should be all required to cause a stoppage of the sale.

65. Section 106 (1).—In this section I would also read for "before the sale," which is a little vague, "before the commencement of the sale."

66. Section 106 (4).—Does the suit referred to cover only the case of a third party whose property has been wrongly, i.e., illegally, distrained, or also that of the tenant who alleges partiality or irregularity in the proceedings including sale, e.g., the collusive sale of the property at a low price, covering only the arrears of rent, whereas there should have been a surplus? Probably the former is intended, but the wording should be made more clear, as the first sub-section of Section 106 allows deposit by the defaulters and the rest follow it. In case the former is only meant, then the Civil Court is the proper tribunal, and reading this Section 61 it would seem that this is the remedy intended. If the latter is meant also, I am of opinion that suit should lie to the Collector, who is the superior of the distraining officer, and is the person concerned in the due administration of the Act. Such suit does not appear to be provided for by the vague wording of Section 61 (1) (iii), and if it is not, the omission should be remedied.

67. Section 113.—This "application" should, I hold, be in writing, and stamped like a plaint, in fact treated as a suit for apportionment of produce, the "order" mentioned in 115 (2) having the force of a decree (which pace Section 117 (2) it apparently has not, as the Bill stands), and being equally appealable. Even with the aid of a commission the valuation of a crop is by no means easy work, and the result of that valuation is of such importance that it is advisable that an Appellate Court should be at hand to correct blunders, and to re-arrange, if necessary, the distribution of expenses and costs, which may amount to a considerable sum (Section 116).

68. Section 119.—A provision is also required allowing applications, &c., to be brought and notices, &c., received by managers of the estates of disqualified landlords or of estates under attachment. It has been already pointed out that this section needs amplification and revision.

69. And I think, considering the reluctance of tenants to appear when their case is not of importance (they being sometimes content with having stirred up the matter, or troubled the landlord by means of a complaint without intention of prosecuting it), that there should be a provision for *ex parte* judgments, or judgments in default, after notice served and returned, full time being allowed for review of such judgment on application, and an appeal being allowed against the refusal to review.

70. I cannot say that I am satisfied with the Bill. In the matter of aiding and relieving the tenant it certainly goes far, but on the other hand, its provisions are so numerous and complicated that it will be years before the ordinary tenant will understand and avail himself of them, whilst to the educated and aggressive tenant (and such are to be found in some of the petty zemindaris of the south, for instance, in Chingleput) the Bill, if passed into law as it stands, will afford innumerable grounds for litigation and innumerable pretexts for harassing a too careless landlord. It will be seen that I am altogether against the new provisions for distraint in realization of arrears, and that in the interest of both parties; that I doubt the necessity of the troublesome procedure in Sections 55—59 inclusive, and in Sections 48 and 49; that I consider that the "ordinary" raiyat is very hardly treated, while his "occupancy" brother receives benefits hitherto undreamed of, and that some of the clauses of the Bill are to my mind absolutely and unnecessarily penal and severe. In times of peace and prosperity a country like India naturally becomes litigious, and nothing is more satisfactory to litigious people than to have the power of perpetually harassing an adversary. It seems to me that the Bill before me unintentionally supplies this power in great profusion, and I would respectfully submit that the sound policy of the State should rather be the up-building of a class of contented and powerful landlords—strong, over contented and industrious tenants than the introduction of all possible "bones of contention" between the two parties. Determine the rights of the tenant if you will, but do not exaggerate those rights, or refuse him (under sufficient safeguard) all power of amicably agreeing with his landlord.

71. In fine, I humbly think that the Bill fails in the most important requisites of such a Bill—

- (1) Clearness;
- (2) Simplicity; and
- (3) Fairness;

that it needs the most careful redrafting, if not recasting, and that it would be the greatest mistake to pass it into law till the fullest possible criticism has been invited on every one of its provisions.

From the Collector of Nilgiris, dated 26th February 1884, No. 75.

READ—also the following letter from C. W. W. MARTIN, Esq., Acting Collector of Salem, to the Secretary to the Board of Revenue, dated Tirupatur, 9th April 1884, Extra No. 9.4:—

I have the honor to submit my opinion on the draft Tenancy Bill in reply to Board's Proceedings, No. 464, of 11th February 1884. I shall first make the remarks that occur to me upon the sections of the Act.

The wording of the Bill as it stands.

2. Section 3, Clause 1.—The Act cannot come into force on 1st April 1884.

Section 4, Clause 1.—Estate (d) substitute any "farm" of land revenue for any "renters" of ditto ditto.

Section 4, Clause III.—The definition gives the Collector the absolute power of deciding on a man's status without appeal by any kind of registration. The register to be kept should be a register *required by law* to be kept by the Collector. If the Collector refuses to register, a claimant should have an appeal to the Board.

Section 4, Clause IV.—Private land is really not defined at all. It is defined to be "private land." It should be defined as "land worked by the proprietor under cultivation on his own private account for twelve consecutive years, &c."

Section 4, Clause V.—As our previous Acts have used the word ryot, it would be well to speak of "raiya or ryoty."

Homestead land should be defined. Its definition in Webster's Dictionary is "land immediately adjoining the dwelling." In Section 14 (1) it may be a house-site not comprised in an occupancy holding.

Section 5.—The Curnam, who will be often the proprietor's creature, is uncontrolled in his description in the register of what is raiya and what is private land. He may draw up his register so as to give all or nearly all the unoccupied land to the proprietor as private land. The Curnam should be made liable to a penalty for falsely stating any description of land to be of a character other than it is, and a machinery for testing the accuracy of his returns should be devised.

Section 12.—Does a mortgagee become a settled raiya and along with, or distinct from, the mortgagor?

Section 14.—Instead of "out-offices" use "out-houses."

Section 15 is worded as though the holding is of such a nature that ejectment for debt or under a Court's decree is impracticable. I presume it should run in lines 2 and 3 "shall not be ejected from that land for arrears of rent except, &c."

Section 16.—Is this section intended to confer occupancy rights for lands under mortgage, on the mortgagor or on the mortgagee?

Section 18.—By this section taken with the derivations of private and raiya land, I understand that a Zemindar is to have no longer the idea that he owns any land in his Zemindari except what comes under the derivation of private land; that he can, however, acquire land himself as a raiya by holding it as private land for twelve years; and that he is liable to be deprived of all property both in it and in private land if he once lets a raiya into it. I say "deprived of all property" because practically the ejectment of a ryot under this Act is almost impossible. The Zemindar not being debarred from being his own ryot he will naturally become so with regard to all the unoccupied raiya land in his Zemindari, and convert it into private land by holding it for the prescribed time.

Section 24.—Is the notice of intention to surrender to be deemed "a surrender" if the ryot says no more about it? If so, this had better be stated, otherwise the ryot must give a second notice saying that his intention is carried out which will enhance the number of forms to be gone through.

Section 25.—Rate of counting one year indefinite. The rent of the holding has to be unpaid, and therefore ryot can always render this section inoperative by paying a very small part. The time for payment of the whole rent cannot be previous to the time at which the last instalment falls due. I think the words should be "a part

of his holding" instead of "his holding" in the first line, "one year from the end of the fasli" in the second line, and "that part of his holding" in the third line.

Section 26, Clause 2 (f).—Put out-houses for out-offices.

Section 34.—It would be well to give a list of what may be regarded as staple crops.

Section 35.—Why not prescribe a maximum varam as well as a maximum money-rent?

Section 39.—Such fees as are collected as Svatantrams, &c., for the payment of village servants should be paid still; otherwise these people who fulfil the functions of barber, washerman, toty, &c., will have to collect their fees themselves instead of having them collected and disbursed by a kind of central agency.

Section 42, Clause 3.—How is the landlord to recover? By what kind of suit?

Sections 48 and 49.—There is no need of providing for cases in which the variance is agreed to, and it may throw much extra work on the Collector's establishment.

Sections 50 and 51.—Four instalments fixed for each district according to the PRINCIPAL revenue kists should be enough to convenience the ryots generally. The elaborate provisions of these sections do not seem called for.

Section 53.—What's the ryot to do in case he disputes any of the terms of the receipt? This should be provided for by Section 54 by inserting in line 3 after the words "paid by the raiya" the words "or if the ryot disputes the accuracy of a receipt given to him."

Section 54, Clause 3.—This won't do. It makes the ryot punishable for refusing to give a muchilika, but does not direct any inquiry as to whether the puttah is a proper one. There should be a provision for an inquiry, and it should be considered whether this inquiry is with advantage transferred, as it virtually is by this section, from a Collector to any Magistrate.

Section 61.—After word Collector insert the words "Collector of the lowest grade."

Section 62.—"Gumastah" is very indefinite, and as the section is very wide, I think it might as well run "every person empowered in that behalf by a written authority, &c." Otherwise an inquiry as to whether an agent is or is not a gumastah becomes necessary.

Section 69, Clause 2.—After enhanced rent demanded, add "or if he appears not to be acting as a free agent."

Section 70, Clause 2, I look on as a mistake. It is better to have the question decided by the law itself, and if it is decided by the Collector that the enhancement is a proper one, I see no fair reason for postponing its operation for a whole year. It is an uncalled-for tenderness on behalf of the ryot, who has probably been paying too little for many years.

Section 72, Clause 1 (d).—I don't at all understand the grounds of this provision. If a ryot doubles the produce by an improvement, he gets the whole benefit; but if the proprietor's improvement doubles the produce, his share of the benefit will be two-fifths of it only, and the ryot who has done nothing gets three-fifths!

Section 72, Clause 2.—I should say that "the rent of the holding of an occupancy raiya may be enhanced to the extent of the improvement conferred on it by the proprietor, less 20 per cent," because the proprietor cannot improve without the consent of the raiya, and it is very unlikely that he will join with the ryot in improvements unless he gets a substantial *quid pro quo*. The raiya has no title to get the lion's share for merely according his permission to a temporary invasion of his holding.

Section 91, Clause 3.—I cannot find any instance in which a District Judge will act on appeal. All appeals lie to the Collector of the district and from him to the High Court.

Section 92 has been wrongly printed; "and no landlord" in the second line has no sense.

*Sections 93 to 106.*—Under these sections the whole power of summary distraint has been taken away from proprietors and laid on Collectors. No provision of any sort has been made for charging the proprietors fees for the work done on their behalf, and the establishments which Collectors will require will be enormously large. In fact, all that work which is now done by many gumastahs in the numerous estates all over the Presidency is now to fall on the Collectors and their establishments. A provision must be made similar to that in Act VIII of 1865 for paying over to Government the costs of the attachment at one anna in the rupee, but I doubt whether the work can be managed at all, and it is altogether a centralization of this particular power of distraint that is in my opinion not at all desirable.

*Section 106 (1).*—A time should be specified for payment such as sunset of the previous day.

*Section 107 (1).*—For the first two lines I would suggest the words "when an under-tenant on his property being lawfully distrained under this chapter for the default of the tenant from whom he holds on a subordinate tenure."

*Section 107, Clause 2.*—Is the suit spoken of to be before the Collector or in a Civil Court?

*Section 113.*—Is the written authority to be stamped? If so, this had better be expressed and expressed otherwise if *vice versa*.

*Section 120.*—At the end the words "and the like" will give rise to many disputes as to what they include. There should either be an entire definition of the rights included or these words should be omitted.

3. The above are the remarks which have suggested themselves to me on the wording and tenor of the sections from such consideration as I have had time for.

4. On the general principle of the Bill I observe that there is a total departure from Act VIII of 1865 and an introduction both of new ideas and of a new mode of procedure.

Trying to look at the matter from the point of view either of the landlord or of the tenant, I have never yet been able to comprehend the justice of allowing the tenant to attain to these very absolute rights of fixity of tenure and benefits for improvements in return for the act of grace by which the landlord admits him *for a time only* into his land. The policy of making this the case is, however, one of expediency and not of justice, and the question seems to me to be whether, admitting it to be expedient eventually to vest such extensive rights in the raiyats, it is necessary or advisable to do so *per saltum* at this point of time.

5. The preamble of the Bill recites that it is expedient to place the rights and interests of the ryots of other than raiyatwari villages on the same footing of security as those of raiyats of Government raiyatwari villages, &c.; but this Bill makes the Zemindari raiyats more secure than the Government raiyats, for the Government raiyat is sold up without benefit of clergy if he does not pay his arrears and his improvements are never looked at, while, with the exception of the ordinary raiyat, it seems under this Bill to be nearly impossible to get an eviction, and only then at the risk of finding an improvement pleaded in set-off difficult of determination and amounting to, perhaps, several times the rent of the holding.

On the principles enunciated in the preamble, summary eviction should follow non-payment of rent.

6. I believe that it may hereafter be necessary to admit the existence of this, occupancy right, but the time might, with advantage, be deferred until a sop is required for the Cerberus which free-thinking and free-speaking are gradually calling into existence. For the present there is no very pressing demand to satisfy to such an extent.

7. I should prefer to see an Act which leaves the relation of landlord and tenant on the basis on which it now rests under Act VIII of 1865 with extended provisions, such as are contained in this present Bill, for securing to tenants the benefit of their own improvements on eviction, and with an intelligently remodelled procedure for regulating the exchange of puttahs and muchilikas, the decision of what are proper puttahs and the modes of realizing rents. I especially prefer the old procedure in the

matter of leaving the power of distraint in the hand of the landlord. The new proposals to make Collectors arbiters of everything, and to make them the sole instruments of distraint are, I believe, impracticable for working purposes.

8. I have only had intervals in a time of exceptionally heavy work to look at this Bill, and I don't know it at all well enough to be sure about the working of one part of it with another; but on the whole I have come to the conclusion that the principles of the preamble, which no doubt are right and proper, will be sufficiently carried out for the present by an amendment of Act VIII of 1865, coupled with the compulsory imposition of settlement parties on all estates for the purposes of equitably assessing the rates that should prevail between landlord and tenant.

9. To prevent the tenant being a tenant-at-will, it is sufficient to provide that his payment of the rent due within a reasonable period from the time it falls due either to the proprietor or to a public officer shall secure him from ejectment.

10. Supposing, however, the Bill eventually to be adopted as it stands, something should be done to explain the position of the landlord with regard to unoccupied land which has not become his private land by being dealt with under the definition that may be adopted for private land for twelve consecutive years. Can he proceed to farm this land himself from time to time as he pleases and so prevent any extension of cultivation except through day-laborers, thus placing that part of the population, which is due to increase, in the position of being unable to acquire land even as ordinary raiyats? Or is it intended to compel the landlord to lease out his unoccupied lands to such persons as require to become tenants? And if so, what provisions become necessary to enable the proprietor to secure for himself a fair share of land under his own grant which he may convert by lapse of time under the definition into private land?

11. Unless some such provisions are made, I can conceive that in some estates the raiyats will become worse off under this Bill than they ever would have been had there been no legislation of this kind at all, for the landlord will not be such a fool as to let a man into his estate whom he cannot afterwards get rid of, and all extensions of cultivations will be done by day-laborers who, under less severe restrictions on the landlord, might become independent tenants.

From the Collector of Salem, dated 22nd April 1884, No. 984.

READ—also the following letter from J. P. PENNINGTON, Esq., Acting Collector of Tanjore, to the Secretary to the Board of Revenue, dated 7th April 1884, No. 1854:—

With reference to the Board's Proceedings, No. 464, dated 11th February 1884, I have the honor to submit the following remarks.

2. Before expressing any opinion on the "Madras Tenancy Bill," I should like to have seen a full statement of the objects and reasons for it. From the brief preamble, it would appear that its main object is "to place the rights and interests of the raiyats of other than Government raiyatwari villages on the same footing of security as those of the raiyats of Government raiyatwari villages." I am not quite sure that I understand Section 20, clause (f); but I conclude that an "occupancy ryot" (at any rate) will have full power to transfer his land by sale, mortgage or otherwise; and, except for the provision in clause (a) (which it will, I think, be rather difficult to enforce), his position appears to me to be (practically) very much what it is at present.

3. But the case is quite different with the newly-invented "ordinary ryot."

4. As far as I can see, the Bill, far from putting him into the same position of security as is enjoyed by a Government ryot (who, as soon as he takes up land, becomes its absolute owner), finally converts him into a mere tenant of a landlord with very limited rights indeed and deprives him (I imagine) of all power to alienate his land in any way. I should like to know, before discussing the provisions of this Bill in detail, whether the Government have finally determined to convert Zemindars, &c., and their

ryots into mere landlords and tenants. If they have, this Bill probably gives them all the security they can hope for.

5. For myself, I object to the distinction between the "occupancy" and "ordinary ryot," because I do not believe it has any foundation in the customary law of this Presidency. Every "proprietor" (as defined in the Bill) is bound to give a putta far land taken up by a ryot, and once he has made out the puttah, he has (according to the custom of the country, which is the common law) divested himself (just as the Government does) of his full proprietary right in that piece of land, and is thenceforth entitled only to the fixed share of the produce specified in the puttah. That, it appears to me, is the law as hitherto laid down and uniformly recognized by the Government of Madras; and before the status of an ordinary ryot is so altered as it is by this Bill, I should like to see the reasons for a change which is nothing less than revolutionary, and which (as already observed) places all such ryots in proprietary estates in a distinctly worse position than the corresponding class of ryots in Government villages.

6. I am quite aware, of course, that many great authorities look upon the right of free sale and mortgage as injurious to the ryots themselves; but it cannot be more injurious to the "ordinary" than to the "occupancy ryot," and the Bill does not (I think) interfere with the occupancy ryot's full liberty in this respect; and it seems to me that very strong reasons would be required to justify any legislation which would deprive men generally of a right they have always possessed for the sake of those weaker brethren who are incapable (it is supposed) of managing their own property. I believe that the ryot's right to transfer any land held on putta is too well established to be safely interfered with, even if the necessity for any such interference was clearly proved, which I doubt.

7. The "ordinary ryot" under a "proprietor" is placed at a further disadvantage in comparison with the "ordinary" ryot holding direct from Government by the provisions of Section 47 which gives the landlord power to enhance his rent at any time and puts him, I think, in a much more unsafe position than he has at present under Act VIII of 1865.

8. Then again in deciding suits for enhancing or reducing rent, too much is left to the discretion of the "Collector" (very often an Assistant of one or two years' service); and, speaking generally, I am afraid the provisions of the Bill as to enhancement, &c., and compensation are too intricate to be easily understood or successfully administered.

9. Section 75 is unintelligible as it stands, because it does not appear to what sub-section reference is made.

10. All the difficulties about assessing compensation for improvements are avoided under the present law by the simple rule that no ryot can be ejected except for non-payment of rent, and then only by sale of his property, the surplus (if any) going to him. I doubt very much if the elaborate provisions for assessing compensation could ever be successfully worked in this country.

11. On the whole, therefore, I object to the principle of the Bill, and I venture to repeat here what I said to Mr. (now the Honorable P. P.) Hutchins when reporting on the proposed amendment to Act VIII of 1865:—

"I think that the use of any words which imply that the relation between the ryot and his superior holder corresponds to that between landlord and tenant under the English law is only likely to cause confusion and will give the Courts an opportunity of citing English precedent, which it is most desirable to avoid."

"2. The Madras Government has consistently and uniformly laid it down that the ryot is the proprietor of the land he holds (most recently in paragraph 8 of G.O., No. 437, dated 29th April 1882), and I see no use in confusing this clear idea and leading principle of Revenue law by speaking of him as a tenant. No doubt he is a 'tenant' in one sense, as holding the land, subject to a certain payment to a superior; but he is distinctly not a tenant in the technical English sense of that word, and what he pays to his superior is certainly not rent as understood in Political Economy. It should be made quite clear, I think, that the ryot holding under a puttah is the real proprietor, and that the so-called rent he has to pay is merely the Government share of the

crop, commuted or not as the case may be. I would therefore alter the Bill as shown in the enclosure,\* because I believe that it was chiefly the use of these technical terms in Act VIII of 1865 which obscured its meaning and entirely defeated the very objects of its framers."

\* Not submitted.

(And again) "I think (for the reasons already stated) that it would be contrary to the common law of the country that any ryot should be ejected for any other cause than non-payment of assessment. Not being a tenant or a lessee according to my view, and, I believe, according to the view of the Madras Government, he should not be made liable to ejectment as if he was."

12. The Bill under consideration meets one of my objections by definition of rent which shows that it is not to be confounded with what is usually understood by the term, and by a provision (in Section 34) that this so-called rent shall never exceed a certain fixed share of the produce; but I do not see the use of this roundabout way of securing the rights of ryots, and I cannot understand why Government should hesitate to legislate in the sense of their own repeated orders; and still less, why they should legislate in a sense apparently opposed to them.

13. I am quite aware of course that the Courts have frequently decided that a putta is only a lease for a year, but the more correct law has (I think) been recently stated by the High Court, viz., that practically it has effect as a permanent lease and can only be cancelled on failure to pay the rent specified in it.

14. The fact is the "proprietor's" share of the produce (Mélvaram) is the assessment due to Government and nothing more. All his property flows from the Government, and Government could not confer on him more than they possessed themselves; nor can it be supposed that they ever intended to place people who happen to live in Zemindaries, &c., in a worse position than those who live elsewhere. All Puttadars in Madras are really "peasant proprietors," and even in the case of waste land newly occupied they become by virtue of the puttah, which the Zemindar is legally compelled to give them, not tenants, but "peasant proprietors," subject only to a land-tax or rent (whatever it may be called) which is fixed and can only be altered by due course of law. As observed by Sir Thomas Munro, "the ryot is the true proprietor, for whatever does not belong to Government belongs to him;" and to begin now to define his rights as those of a mere tenant, seems a retrograde step of a very serious character.

15. As observed by the Acting Sub-Collector in his letter accompanying, we have none of us had time to study the Bill as it requires to be studied, but I cannot help thinking (and hoping) that the objections to its principle will be so numerous as to necessitate its early withdrawal. Mr. Campbell's paper on the Land Revenue of India, published in the new edition of the 5th Report (volume II) shows clearly how unwise it would be to follow Bengal legislation in this matter. We are centuries ahead of Bengal in the development of the rights of the cultivating classes; so that whilst in Bengal it is considered (by the Zemindars) quite monstrous to recognize any tenant right at all, in Madras it would be going back a hundred years to establish it in lieu of what we have got already, however imperfectly the rights of ryots may be understood and recognized.

16. I quite agree with Mr. Hebbert in thinking that it would be wiser to amend Act VIII of 1865 (with which we are all now tolerably familiar) than to stir up all the extinct controversies about the rights of Zemindars and their ryots as this Bill does with the result, I am afraid, of making "confusion worse confounded."

17. I enclose copies of reports received from the Acting Sub-Collector and Temporary Deputy Collector. It is clear from the last that the Deputy Collector does not at all recognize the fact that ryots in Zemindaries are as much "proprietors" as Government ryots are. This shows what harm has already been done by the loose and ambiguous phraseology of all our Acts and Regulations.

18. In conclusion, I would just point out (though it is obvious) that the Bill requires to be carefully rewritten, being full of minor mistakes, e.g., Section 4 (i), (d), "any renters" should be "land rented" or "land held by any renters."

- (2) The definition of "private land" as land which the proprietor of an estate has held as his "private land" for 12 years is rather vague.
- (3) "Homestead" is not defined.
- (4) "Holding" might be more clearly defined; it is not clear what is meant by the words "under one set of conditions."
- (5) The last clause of paragraph 5 should run "make extracts from the same free of cost."
- (6) *Paragraph 31.*—The words "made before or after the second day of March 1884" might be omitted. All contracts are (apparently) included in these words, and the date before or after which they may happen to be made is apparently immaterial.
- Section 45.*—"(b) of settled raiyat" should be altered into "of the settled raiyat" omitting (b).
- After Section 46 for "of ordinary" read "of the ordinary."
- Section 52.*—Before fasli add "agricultural year" and put fasli in a bracket thus: "Agricultural year" (fasli).
- In Section 79 (1) "(a)" appears to be superfluous.
- Section 81.*—Omit "number of" between "so many" and "assessors."
- Section 91 (3).*—For "District Judge" read "Collector of the district" (?)
- Section 92.*—The words "and no landlord" are unintelligible.
- The following vernacular words should be translated or omitted altogether:—"Bastu," "Abwab," "Naib," "Ijaradar," and "Gumastah;" and for "Raiyat" and "Raiyati" I would substitute the stereotyped words "Ryot" and "Ryotwari" throughout. I would also add a section similar to Section 49 of Act VIII of 1865.
19. I observe that the appeal against the decision of Divisional officers has been transferred to the Collector, and, on general principles, I think the change is right; but I must at the same time point out that in many districts it is already impossible for the Collector to do his work as it ought to be done, and that it is unreasonable to add to it in any way unless he can be relieved in some other direction. I invite particular attention to the remarks of the Temporary Deputy Collector on this point (paragraphs 4—7 of his letter accompanying).
20. Mr. Hebbert's suggestion in paragraph 6 should certainly be adopted, and I agree with him (and not with the Deputy Collector) as to Sections 14 and 15 of the Bill.
21. As to Section 21, I entirely approve of the Bill which is, I believe, founded on the common law of the country. The "proprietor" (so called) holds his "estate" on the understanding that he must give a puttah to any ryot who occupies land in it and must therefore divest himself of the ryot's share (Kudivaram) at once. It (very properly) prohibits the extension of the practice of cultivating land by hired labor as "private" (Pannai) land.
22. I agree with both officers as to Section 34.
23. In his remarks in paragraph 21 of his letter, the Deputy Collector has overlooked the provisions of Section 61; the Collector can only try claims "under this Act."
24. The other Divisional officers make no remarks on the Bill.

ENCLOSURE No. 1.

From F. H. HEBBERT, Esq., Acting Sub-Collector of Tanjore, to the Collector of Tanjore, dated Tranquebar, 29th March 1884, No. 295.

With reference to your footnote No. 1210, dated 6th March 1884, to Board's Proceedings, No. 464, dated 11th February 1884, communicating Government Order on the Honorable D. F. Carmichael's draft Tenancy Bill, I have the honor to submit the following remarks which are all I am able to make, considering the very short notice given for discussing so important a Bill.

2. I think it a pity the Bill has been drawn on the lines of the Bengal Bills, and that such spelling and terms as Bastu, Abwab, Seri, Khas, Pannai, Ijaradar not only disfigure the Bill, but add greatly to the difficulty of understanding it.

3 The principle of the Bill is admirable, but it is faulty through the radical error of its being a mere plagiarism from other Presidencies, for it ignores the fact that throughout Southern India all the tenants holding lands in "estates" as defined by Section 4, clause (i) are at present ryots with an occupancy title, notwithstanding the High Court ruling in Second Appeals, Nos. 738—762 of 1882,\* which after all only referred to a question of evidence.

\* Dated 18th December 1883.

4. If this is so, that is, if all the tenants referred to in the Bill are really occupancy tenants with a right to free sale, fair rents and fixity of tenure, which I think every Revenue officer in the Presidency will affirm, then I think the distinction between "settled raiyat" and "ordinary raiyats" is a mischievous one likely only to disturb existing titles.

5. I should, for these reasons, have preferred the Bill to have been drafted on the lines of the existing Act VIII of 1865, which would be an admirable Act if cleared from some doubts.

6. However, accepting the present Bill, I think the following clauses are open to objection:—

*Clause (2), Section 3,* in abolishing Act VIII of 1865, Section 13 of that Act which refers to sub-tenants and is of large application in some districts, notably South Canara, should be retained. This Section 13, Act VIII of 1865, refers to the tenants other than the proprietor holding by Milkent-Istimirar, &c., mentioned in Section 4, clause (i). Its omission would be a great mistake.

*Section 4, Clause (IV).*—I know of no lands corresponding to home farms which I suppose the terms Seri, Khas, &c., mean; if there are any, they must be very small, and it would be better to make them ryotwari, or else there will be constant intrigues to increase their area; perjury, forgery, &c.

*Clause VI,* horticulture, &c. Arboriculture should be added, most garden lands containing palmyra and other trees. Backyard cultivation should also be protected.

*Clause VIII.*—In my opinion a settled raiyat should be all tenants of "estates" unless the contrary is shown.

*Clause IX.*—I am not sure that services such as watching crops, &c., should not be in this clause protected as well as rents in kind and money. There are some lands held subject to personal services, such as repairing tanks, &c.

*Clause X.*—Surely landlord should be defined to be holders of "estates" as defined in clause (i), otherwise this clause might cause wholesale dismay among Government ryots. The definition might also include agents which would be too wide.

*Section 12.*—Looking upon the tenant as being really the owner of the land, subject to a mere rent-charge to Zemindars, &c., i.e., as being the same as ryots in Government villages, I think this section unfair in throwing the burden of proof on the tenant. A settled ryot I should define as all persons holding land for rent in estates as defined by Section 4, clause (i), unless proved to be an ordinary ryot.

*Section 13* is wholly unnecessary and will cause much litigation; negative clauses surely are unnecessary.

*Section 15.*—I doubt if the Zemindars have the smallest claim to Natham or village-site. This clause seems to be a Bengal importation. In Ramnad, &c., the village-sites have been excluded from the paimash and are held irrespective of tenancies of agricultural land. It has been sold, transferred, &c.; moreover much of this land is held by traders, &c. However, I hope the clause can do no harm; it might be left out. It certainly will cause great litigation in Tanjore where the Mirasidars claim all house-site, notwithstanding the Limitation Act.

*Section 20, Clause (c).*—The superior claims of Government under the Revenue Recovery Act are endangered by this clause. I am not sure this criticism shows any real weakness in the section.

*Clause (g).*—The provisions of Section 88, Criminal Procedure Code, might be defeated by this. It would be a pity to allow this as some Zemindars are somewhat notorious for aiding and abetting dacoits, &c., and why should they gain by their tenants' property being confiscated.

*Section 21* seems very hard on the landlord. If he has private lands, or wishes to have private home farms, why should he be prevented?

Read with Section 22, I do not see how there can be an ordinary ryot, considering also Sections 12 and 18.

*Section 25.*—Why this section, since the landlord can obtain an ejectment for non-payment of rent by ordinary procedure of the Code? This clause will act *ipso facto* in determining a tenancy; and we shall have landlords sleeping on their rights or pretending to, or intriguing to do so and taking possession of the land by force; I think this section the most objectionable in the Bill, but if it must be kept, let the time be extended to two years; besides, notice should be given to mortgagees, &c., to enable them to intervene.

*Section 34* is a very important one and very valuable, but will, I believe, cause litigation throughout the country as money-rents are, I believe, higher than this, and five-sixteenths is less

than the waram or half produce; so this section will discourage the conversion of grain-rents into money-rents.

Section 35, I think, should define waram as half the gross produce of the land. This is really the real and true rent which Zemindars, Inamdars, &c., are or were entitled to. Under various pretexts the landlords have increased this but not very universally, and I think there would be little harm done in reverting to the old custom.

If Section 40 is to remain as it is, there must be some other clause added providing for the payment of village servants, &c.

Section 42.—Waram might be declared to be half the gross produce; otherwise fair rent of Section 41 is very much less than the fair rent of Section 42.

Section 46.—I deny the right to Zemindars to raise rent. They never have done so except by taking advantage of the ignorance of the ryots, but where Government has raised the peish-cash on account of new channels, &c., the right to raise the rent should be given subject to the approval of the Collector.

Section 61, Clause 4 practically turns the Collector's Court into a Civil Court; the procedure should be summary or else litigation will be long and costly.

This section will be especially objectionable if house-site land is to be subject to the provisions of the Act. In such a case suits for the recovery of even a Zemindar's palace might be brought in the Collector's office.

I do not know that any of the other sections of the Code are objectionable, save for their elaborateness. The more particular an Act is, it is so I believe in order to clear up doubts, but such is the nemesis on human writing, the more particular they are, the more subject to doubt they seem to be, and consequently the more litigation they encourage.

#### ENCLOSURE No. 2.

From M.R.Ry. R. C. NARAYANASAMI NAIDU, Temporary Deputy Collector, Patukota Division, to the Collector of Tanjore, dated 1st April 1884, No. 310.

I beg to submit my remarks on the draft Tenancy Bill referred to me with your office footnote No. 1210 of the 6th ultimo.

2. Regarding the extremely defective nature of the present Act (VIII of 1865, Madras) which the Bill is intended to supersede, the opinions of those most competent to judge have been singularly unanimous. There can, therefore, be no doubt that the law of landlord and tenant in this Presidency stands in need of reform.

3. With respect to the Bill under reference, however, I beg respectfully to state that in my humble opinion there are grave reasons for questioning the soundness of the policy of the proposed legislation.

4. The Bill proposes to leave the decision of all questions arising under it with the Revenue authorities. This right of hearing appeals now vested in the District Court is taken away by Section 91 and transferred to the Collector of the district; but the High Court is authorized to hear regular and second appeals from the original and appellate decisions of the Collector. Even suits for the recovery of rent which are now triable by the ordinary Civil Courts are to be tried exclusively by the Revenue Courts (clause 2, Section 61). Thus the Bill, if passed into law, would entail heavy additional work on the executive, and, when we consider that the whole machinery of the Code of Civil Procedure with a few insignificant exceptions is to be put in motion in every suit arising for decision (clause 4 of Section 61), it seems to me that we should find ourselves simply powerless to cope with it.

5. If the people to be affected by the measure were allowed a voice in the matter, I have little doubt that they would object to our jurisdiction as strongly as possible. The ordinary Civil Courts are held in fixed localities and the parties know to what place they are to go for a hearing. They are attended by a large number of competent professional advisers whose services can be always secured with comparative ease and cheapness. The Revenue Courts, on the other hand, are itinerant and people are often put to great inconvenience in securing the attendance of their witnesses before them; and, as regards professional advice, parties are, as a rule, obliged to content themselves with the aid of a few unpassed and often uneducated law agents. If one were to choose between two such Courts, can there be a doubt as to how one's choice would be?

6. On the whole, therefore, it seems to me that it would be simpler and more satisfactory to all concerned that the whole of the matters dealt with by the Bill should be left to be adjudicated on by the ordinary tribunals who are better suited for the work.

7. There is one matter which may perhaps be decided by us with advantage, i.e., questions regarding the ascertainment of the conditions of the tenancy in each particular case. But I am not sure that even here the ordinary Civil Courts would not be able to do the work better than we even can.

8. Leaving the policy of the measure out of consideration, however, I will now beg leave to consider the provisions of the present Bill as it stands.

9. Chapters I and II do not call for any special comment, nor is there anything to be said against the manner in which the status of settled and occupancy raiyats is acquired except, perhaps, that clause 2 of Section 14 seems to be a little hard on landlords.

10. Section 20 is the first of a series which shows how the legislature under reference deals with contracts between landlords and tenants. I cannot understand the principle on which contracts in favor of landlords are allowed to be ignored, while those against them are directed to be recognized as valid. The same observation applies to Sections 44, 45 and 83.

11. Section 21 seems to contain one of the most questionable provisions in the whole Bill. If, by express contract or by a decree for ejectment, the landlord acquires his tenants' interests in any holding, he becomes the owner of both the Melvaram and Mirassivaram rights, and should therefore be in the same position as a Government ryot in Taraff villages as to his powers of disposition in respect to the holding. It seems to me, therefore, that any person holding the land thereafter should simply stand in the position of a Purakudi.

12. Clause (c) of Section 23 seems to be unnecessary, as the whole of it seems to be covered by clause (b).

13. A provision may be added to Section 24 to the effect that once a notice of surrender is given by the tenant, the tenancy shall cease from the expiration of the time fixed unless the landlord chooses to excuse it.

14. Section 34 seems to be very hard on the landlord. I think it ought to be amended so as to allow the customary rent to be paid. A change in this section would also necessitate a corresponding alteration in Sections 44 and 47.

15. Section 37 also seems to be hard on the landlord.

16. Section 39 does not recognize the various incidents customarily attached to a tenancy in addition to the payment of rent. I think these incidents ought to be upheld unless they are clearly against public policy.

17. Section 52 does not provide for the putta setting forth all the terms of the tenancy. Section 4 of the present Act (VIII of 1865) may be retained in its integrity. The putta ought to be a document containing every one of the terms regulating the relationship of landlord and tenant. Further, I think the putta ought to be tendered within two months or even a month from the beginning of the fasli. In certain villages a crop is generally ready for harvest before three months have expired from the 1st of July; and if, as is often the case, one of the terms of the tenancy is that the landlord should be present at the harvest and take his share of the produce, the law ought to allow sufficient time to the tenants to adopt the procedure prescribed by Section 113 before he begins to cut the crop.

18. I do not see why there should be a difference in the nature of the penalties prescribed in respect of the landlord and the tenants as provided for in clauses 2 and 3 of Section 54.

19. Section 61 does not seem to embrace one of the most important class of suits arising between landlords and tenants, viz., those for the determination of the terms of the tenancy. With regard to clause 4, I think it ought to be provided that every summons issued under the Act should state the place at which the person summoned is to attend, as otherwise incalculable mischief might be caused by the constant circuits of the deciding Courts.

20. I think Sections 65, 66 and 67 should be removed, and the Code of Civil Procedure allowed to be observed with respect to the matters therein dealt with.

21. Is Section 86 intended to give power to the Collector to try all matters of difference between the landlord and tenant? Is he to try all claims whatever, whether they are for moneys certain or for damages to be ascertained?

22. Section 91 seems to contain some errors. The words "District Court" in the side note to clause (1) and "District Judge" in clause (3) should be altered into "Collector of the district."

23. I do not see why a distraint under Section 92 should be confined to crops alone. Why should not the landlord distraint the moveable property of a tenant as under Section 14 of Act VIII of 1865?

24. In Section 93 it does not clearly appear whether the Court-fees paid on an application for distraint are to be levied from the tenant or not. If they are to be so levied, the amount should be entered in the notice of demand. Under any circumstances, it would be hard to call upon the landlord to pay stamps which he cannot recover as costs.

25. Lastly, I think it advisable to add a clause to Section 116 to the effect that if a tenant removes any crops under the circumstances mentioned, he shall be deemed to have committed the offence of theft within the meaning of the Indian Penal Code.

26. In conclusion, I beg to be excused for the delay that has occurred in the submission of this report.

From the Collector of Tinnevely, dated 16th April 1884, No. 197.

READ—also the following letter from H. SEWELL, Esq., Collector of Trichinopoly, to the Secretary to the Board of Revenue, dated 8th April 1884, No. 1202:—

With reference to Board's Proceedings, No. 464, dated 11th February 1884, I have the honor to submit my remarks on the Madras Tenancy Bill.

Section 3.—The date requires alteration.

Section 4, paragraph 1 (d).—Estate is defined to mean and include any renters of Land Revenue under Government. What is meant by this is not quite clear. I presume the ordinary raiyatwari pattadars and purchasers of lands from those who hold sanad, milkent-istimrar are included.

Section 4, paragraph 5.—The word "Homestead" is a peculiar English word, and seems to me to require some explanation.

Section 5.—The fine imposed on a Curnam seems to me enormous compared to his usual salary.

Section 14.—The word *out offices* might be replaced by the word "out houses."

Section 26.—I would add to the proviso "or if it interferes with the right of other parties, e.g., obstructing the flow of water to a Government tank."

Section 29.—The proviso under this section does not seem necessary. Fields of holdings which have not been properly surveyed and demarcated with stones are likely to be extended or diminished gradually according as the neighbouring field owners are poor and powerless or rich and influential. Any legal restriction on the measurement of fields in view to ascertain the correct area is undesirable.

Sections 31 and 31 A.—I would omit these two sections altogether. Cases of disputes as regards the actual area between the landlord and tenant should be settled by the Collector deputing a Surveyor, the landlord paying the cost. The Surveyor should be empowered to settle disputes as regards the boundaries of fields held by different individuals.

Section 35.—I would also fix the limit of the *varam* when the rent is payable in kind, just as the limit of the money rent has been fixed in Section 34. Both the sections, as they are laid down in the Bill, have the disadvantage of undoing the rates which prevail at present and to which the tenants have become reconciled, and of provoking discussions and increasing litigation. But if the Legislature is prepared to protect the interests of the tenants at the expense of the landlord in cases where money rent is payable, it is desirable to adopt similar measure where it is payable in kind.

Section 38, paragraph 2.—By whom and how the notice should be published might, with advantage be added to this section.

Section 39, paragraphs 1 and 2.—The section should, I think, be modified so as to contain a proviso for the kudimaramut or customary labor which the raiyats or tenants holding lands under tanks or channels, are bound to contribute.

Sections 44 and 45.—It would be better not to permit any change in the rates except once in twenty years, unless for some special improvement effected by the landlord or for permanent deterioration of land, from some cause beyond the raiyat's control.

These sections, as they are at present worded, would simply provoke litigation whenever the proprietor of the raiyat is so disposed. The productive power of the soil is admitted on all sides to be either improved or impaired, according as it is manured in proper season and in proper quantity or as such care is altogether neglected.

Section 53, paragraph 4.—This should, I think, be modified. It will be difficult to grant receipts of the prescribed kind always. On many occasions, the landlords are obliged to grant small receipts, as a temporary measure, and then withdraw them when

the full amount is paid and issue proper receipts. This will continue to be the case under the most stringent rules. It will, therefore, be unfair to leave the section as it is.

Section 62.—The word "person" may be substituted for "gumaṣṭa of a landlord" and "power-of-attorney duly registered" for "written authority under the hand."

Section 72, paragraph 2.—If dry land be converted into wet at the proprietor's expense, double the dry rate would not be sufficient in many cases. The average dry rate of Government assessment in this district is Re. 1 and the wet rate Rs. 4.

Section 74.—I would fix the limit as twenty years.

Section 92.—The phrase and "no landlord" appears to be a misprint. Chapter VI will, I imagine, throw a very large increase of work on the Divisional Officers, and will probably necessitate increased establishments.

READ—also the following letter from E. C. JOHNSON, Esq., Acting Collector of Vizagapatam, to the Secretary to the Board of Revenue, dated 2nd April 1884, No. 59:—

In accordance with Resolution No. 464 of the Board of Revenue, dated the 11th of February 1884, I have the honor to submit a report on the "Draft Tenancy Bill" therewith circulated.

2. No statement of objects and reasons accompanied it; nor does it, in all particulars, follow the lines indicated in G.O., No. 437, dated 29th April 1882, especially in the matter of subletting. On this subject *vide* paragraph 9. The Bill moreover bears evident marks of having been drafted in haste and without sufficient consideration having been given to the bearing of one part on another, or of the effect of the terms employed. It could never, for instance, have been contemplated that the "proprietor" and "the raiyat" could combine to ignore an existing intermediate tenancy holder, yet this is the effect which would result from the use of the terms "proprietor" and "rai yat" in Section 22 and elsewhere throughout the Bill. In the absence of a clear and definite statement of objects and reasons it is by no means easy to usefully criticise the provisions of the Draft Bill.

3. Before going *seriatim* through the Bill, I wish to call attention to some most important matters which it appears to me have been either omitted (whether intentionally or not it is impossible to say) or left in ambiguity. First among these is the question whether the sub-tenant of the Government puttadar is intentionally excluded from the benefit of the Bill or not; and whether, if such exclusion is intended, the policy is an advisable one.

4. The first clause of the preamble to the Bill distinctly limits its scope to the raiyats of other than Government villages; but the latter part of the preamble speaks of "defining the relation between landlords and tenants." Now the sub-tenant of a Government puttadar distinctly comes within the definition both of "rai yat" and of "tenant" as given in Section 4, and the puttadar who has sublet comes within the definition of "landlord" though not within that of "proprietor." Owing to the fact that the term "landlord" is very seldom used throughout the Bill (the terms generally used to denominate the opposite contracting parties being "rai yat" and "proprietor"), there are very few sections of the Bill as it stands of which the Government raiyatwari sub-tenant could get the benefit; but as already stated at the end of paragraph 2, I cannot think that the effect of using the term "proprietor" throughout has been duly considered. On this point I shall have more to say further on (paragraph 6). If, as seems necessary for other reasons, "landlord" be substituted generally for "proprietor," the Government raiyatwari sub-tenant will be able to take the benefit of the Bill as it stands. Concluding, therefore, that the Draft Bill leaves the status of such Government raiyatwari sub-tenant an open question, I will proceed to consider whether, as a matter of policy, it is advisable to exclude him from the benefit of the Bill.

5. The Bill, it seems to me, will be a satisfactory settlement of the question it purports to deal with only in so far as it determines finally, and once for all, the relation between the actual cultivator of the land ("raiya") and his lessor, be the latter who he may. However much we may wish to eliminate the "middleman," it is utterly impossible to ignore him; and any settlement which attempts to do so can only end in a helpless muddle. If we refuse to the actual cultivator of Government land (under a puttadar) the rights which we grant to the actual cultivator of zemindary, proprietary and inam land (and under the Bill as it stands the sub-lessee in proprietary land becomes, by the very definition of the word, "raiya" in respect of the land sublet to him and steps into all the rights and privileges, *quod* such lands, of his lessee) we shall in the course of time have to face over again in Government land the very state of things which in estates has called this Bill into existence, *i.e.*, a system of rack-renting. The margin between the true rent-value of the land and the Government revenue charged thereon, coupled with the power to sublet at competition rates, will tend gradually to the puttadar's retirement from the duties of a cultivator to the less arduous position of a gentleman living on his rents, the actual cultivator becoming that most pitiable of beings, the tenant-at-will of a petty middleman. This state of things, if not faced now, will have to be so at some future period, and how much more simple will it be to provide for it now, when dealing with the general question, and before the mischief is done, than it will be hereafter. Moreover, there can be no legitimate reason adduced why the tenant of a petty inamdar should be placed in a better position than the tenant of a Government puttadar. I therefore think that the benefits of the Bill should be extended to the actual cultivator of the soil, whatsoever be the tenure of his lessor, and that it should aim at determining the relations between all "tenants" and "landlords" as such.

6. This brings me to the next subject left in ambiguity, *viz.*, that of the "middleman," who must be dealt with if relations between all "tenants" and "landlords" are to be determined. As observed in the latter end of paragraph 2, the Bill as drafted practically ignores the middleman, inasmuch as it grants rights against the ryot only to "the proprietor." Under Section 22 rent is to be fixed between the "proprietor" and the "raiya;" and it might be argued that any intermediate tenure holder could only collect in the Civil Court such rent as had been so fixed.

7. Now, however much it may be our policy to get rid of the middleman, it would be inequitable and impracticable to ignore altogether the interests of existing intermediate tenure-holders. Moreover, ungrateful as would be his ordinary position between a "raiya" with "the three Fs." and a proprietor to whom he is bound to pay either little less than, or even more than, the "fair rent" at which the "raiya" are entitled to hold, there are cases in which he might be useful and at the same time able to draw a legitimate profit from his tenure, as in the case of improvable lands held by a monied lessee of an impecunious proprietor. I think therefore that it should be the object of the Bill to preserve the existing rights of intermediate tenure-holders so far as they may not be incompatible with the advantages conceded to the cultivator, and that provision should be made for the revision of the contract between intermediate holders and their superior landlord in cases where the rents of their raiyas have been curtailed.

8. To ignore the middleman in the capacity of "landlord" would lead to widespread evasion of the rights which it is intended to confer on the actual cultivator of the soil, for if the raiya could not take the middleman into the Revenue Court to have a fair rent fixed, the proprietor might, through a series of middlemen, rack-rent the "raiya" at will. I will therefore assume that the "raiya" is to have his remedy under the Bill against the middleman in his capacity of "landlord;" and also that questions between the middleman in his capacity of "tenant" and his superior landlord, touching rent or matters which affect the ryot under him, should be cognizable by the Revenue Courts. To ensure this it will be necessary to substitute "landlord" for "proprietor" in almost every section where the latter word is used, except Section 5; and "tenant" for "raiya" in Sections 24 and 36, and perhaps in Sections 38, 39, 40 and 61. I append a memorandum showing the result of their alterations. In any case it should be made perfectly clear what the position of the middleman is to be: and this, I submit, is not done in the Draft Bill.

9. Section 20 gives the right of subletting to the occupancy-ryot, and also the right of transfer of his interest, *i.e.*, of free sale. No mischief is likely to arise from subletting inasmuch as by virtue of the definition of "raiya," and the manner in which that word is used throughout the Bill, the sub-lessee becomes "raiya" in respect of the portion of land sublet to him, and is entitled to hold at a rent as low as his lessor. It will thus be unprofitable to sublet; and almost impossible to recover possession of land when once sublet; under which circumstances we are likely to see subletting reduced to a minimum. But the grant of right of transfer may lead to mischief, and seems to me likely to prove to the ryot a very "Pandora's box." As has resulted from giving the Irish tenant a saleable interest, so it will result here; he will at once proceed to utilise to the utmost the power of borrowing which that interest confers on him, and will eventually be sold up by the sowkar, who will find it pay him best to buy up the occupancy-right, and under color of cultivating the land himself by the late "raiya" as his servant, he will really keep the latter as his tenant at a rack-rent. How to prevent this most undesirable conclusion is a very grave and difficult question.

10. The section is borrowed with slight alteration from the Bengal Bill. Paragraph 41 of the statement of objects and reasons thereto attached recognizes the possible evils which may result from the grant of a transferable interest: it is added that, should they arise, the Government of the day will know how to deal with them. Paragraph 40 points out that such a custom is already recognized to a great extent in Bengal, and that it would be unwise to resist the tendency. Now in this presidency, no such right at present exists: and there is therefore no necessity for providing for it, such as there is in Bengal. At the same time, it seems a far more statesmanlike method to anticipate and prevent the evils which loom in prospect than to trust to meeting them as they appear. In my own opinion, the right to hold at a fair rent will prove a far greater and more permanent benefit to the raiya if it be distinctly declared untransferable, but if the right of transfer be recognized, it should be declared unsaleable in execution of a Civil Court's decree for debt or foreclosure of mortgage. Even in Bengal, it has been considered necessary to guard the interests of the landlord by granting him a right of pre-emption. In the Bill under report no such provision is made, but it seems to me absolutely necessary that it should be if Section 20 is to pass as it stands.

11. Unless some exception is made in their favor, the Bill will be ruinous to small inamdars who have rented out their lands. The maximum (proposed) rate of rent for the future ( $\frac{1}{5}$  of value of gross produce) is probably less than half the rent they are now receiving, and if I read the Bill aright, they will be unable to get rid of their present ryots, who will, in course of time, acquire occupancy-rights (*vide* section 79, which protects the ordinary "raiya" from ejectment except for misuse of the land or non-payment of rent). I think it would be well to provide that holders of inams with an area (say) of not more than 10 acres might, within two years after the passing of the Act, eject any ordinary raiya who did not hold on a lease for a specified term; and that in such an inam any raiya not possessed of occupancy-rights and holding on a lease for a fixed term might be ejected on the expiration of the lease in existence at the time of the passing of the Act. This will enable any petty inamdar whose tenants have not been in occupation for twelve years to get the land under his own cultivation again; if he subsequently chooses to let it, he will do so with his eyes open and must accept the consequences.

12. I will now go through the sections of the Bill *seriatim*.

13. Section 4 (IV).—"Has held as his private land." This is mere tautology and meaningless. It should read "has kept under cultivation by himself or his servants."

14. Section 4 (V).—If the sub-tenant of Government raiyatwari land is to have the benefit of the Act, the words "in an estate" will have to be omitted.

15. Section 4 (IX).—I would insert after "use" the word "letting;" the Courts would no doubt hold letting to be a "use," but it would be well to make the intention of the Legislature clear.

16. Section 5 (3).—The wording of this section will be considered by Zemindars and proprietors derogatory to their dignity. For "shall be deemed to be Curnam for

the purposes of this section," I would substitute "shall be bound to provide for the duties attaching under this section to the post of Curnam, and be responsible for their due performance."

17. *Section 20 (e).*—If the raiyat sublets, the new cultivator becomes, as the Bill now stands, "raiya" in respect of the portion sublet, and steps into all the rights of his lessor. I think this is quite as it should be; but I am not sure that it has been contemplated by the drafter of the Bill.

With the right of transfer I have dealt in paragraphs 9 and 10.

18. *Section 21.*—This proviso is much objected to by the landowners; and I do not myself think it necessary, in view of the very large measure of protection awarded to the ordinary raiyat, who in the course of twelve years' time will obtain occupancy-rights.

19. *Section 24.*—For the term "agricultural year," the word "fasli" should be substituted. The former phrase is rendered necessary in the Bengal Bill by the fact that the fasli is not the only agricultural year known in that presidency.

20. *Sections 27—28.*—The landlord may be put to considerable loss unless some tribunal is provided to determine whether any given work proposed is an improvement or not. In the interests of the ryot too this is advisable. No tenant should be entitled under Section 80 to compensation for any work to which the landlord has refused his assent, unless, after a reference to the Collector (who should be bound to hear both parties), the work were declared by that officer to be an improvement. Similar procedure should be provided for cases where the landlord wished to execute a work which the tenant denied to be an improvement.

21. *Section 31A.*—A money penalty should be leviable from a ryot disobeying without good and sufficient reason the Collector's order to attend.

22. *Section 34.*—The limit of  $\frac{1}{5}$  is of course only tentative. I am of opinion that it is altogether too low; and that taking that proportion as the standard of a fair rent would make the act a confiscatory one. The utmost limit to which the rent can be reduced without incurring the stigma of confiscation is to the proportion in force at the time of the permanent settlement.

23. Now, in the Circuit Committee's report, dated 11th October 1784, paragraph 8, it is stated that the ryot's share averaged from one-third to one-half of the produce; apparently of the gross produce though that term is not made use of; it is stated that "the people supplied themselves with seed, bullocks and laborers;" and Sir Thomas Munro in his Minute, dated 7th January 1823, apparently quoting from the above-mentioned report of 1784, adds the word "gross." In paragraph 29 of the report of 1784, the ryot's share is estimated on an average at "barely one-fifth of the harvest." In paragraph 47 it is recommended by way of amelioration to fix the ryot's share at one-third, two-fifths or half (according to the class of land), "clear of all deductions," which phrase, read by the light of the preceding correspondence, I take to mean "of the gross produce."

24. In Collector Alexander's report, dated 30th April 1802, in which he submitted the proposals, which were subsequently approved, for the permanent settlement of the Havelly lands, he states the usual share of the kadimi (or as he translates it indigenous) ryot to have been from  $\frac{1}{3}$ ths to  $\frac{1}{2}$ rd. Here I have no doubt the calculation

\* Valuation.

I have perused, treat of the gross produce only, and make no deduction for cultivation expenses.

25. On the average receipts at these rates calculated on a term of three years, the permanent settlement was made, the peishcush of the Zemindars being fixed at  $\frac{1}{3}$  of the average collections; while that of the proprietors of Havelly lands was fixed at only 12 per cent. less than the average collections.

26. At the present day the peishcush payable to Government on the Zemindaries in the district varies from  $\frac{1}{3}$ rd to  $\frac{1}{4}$ th of the zemindar's actual collections; while that payable by the proprietors averages a little less than half of their collections.

27. To fix the maximum rent leviable by landlords at the value of  $\frac{1}{5}$  of the gross produce would, I have little doubt, cut down their receipts by nearly one-half on an average throughout the district. To do this would be to treat them with extreme harshness; nor do I think that it is necessary in the interest of the raiyats. I believe that the maximum rent might safely be raised to the value of half the gross produce in the case of dry lands, and even higher in the case of wet, where irrigation has been provided by the landlord. Perhaps the best way to guard the landlord's interests in the matter of such improvements would be to provide for the levying by him of such a water-rate as the Collector might fix, in addition to a rent assessed on the value of a dry crop. There are estates in this district, such as Bobbili for instance, where the zemindars have always been improving-landlords, and have steadily fostered and improved the irrigation of their taluks. It would be extremely bad policy to deprive them of the just fruits of their labors; and were such a policy acted upon we should look in vain for improving-landlords in the future.

28. The fixing of the limit of a fair rent is undoubtedly the crucial point of the Bill; it will require grave deliberation and should have full discussion. I have before me at this moment but slight data for arriving at any definite conclusion as to the exact proportion which should be accepted, but of this I am certain, viz., that the tentative limit entered in the Draft Bill is much too low.

29. *Section 35.*—Where no varam, proportion should be fixed by Collector.

30. *Section 38.*—"Prescribed." No manner of publication is in fact prescribed in the Bill.

31. *Sections 39—40.*—These sections are much objected to by the landowners; it has always been customary in certain cases to let lands at somewhat reduced rents on condition of the performance of small services, the supply of firing, straw, &c. All such arrangements will become penal under the Bill, and the landlords contend that this will cause much inconvenience. Some inconvenience it certainly will cause; but I think the balance of advantage is much in favor of the doing away with such contracts which unquestionably give an opening to oppression. The term "abwab" should not be used.

32. *Sections 41—47.*—I find no distinct provision in the Bill enabling a raiyat, whether occupancy or ordinary, whose rent at the time of the passing of the Act is in excess of  $\frac{1}{5}$  of the value of the gross produce, to get such rent reduced. Section 61, Clause (ii), would give the right were it an enabling section; but it is not so, and therefore some distinct provision appears necessary; which, applying as it would to all raiyats, should precede Section 39 or Section 43.

33. *Section 48.*—All such notices should pass through the Collector. One of the greatest difficulties found in working the existing Act VIII of 1865 is that notice of demand is always denied and satisfactory proof of it very difficult. Service through the Collector would obviate this.

34. *Section 50.*—The proviso is very obscure.

35. *Section 61 (a).*—To provide for adjudication on the question of whether any particular land was private or not, the words "and the class to which it belongs" should be added after "raiya."

36. *Section 67.*—I would omit this. The written statement is of great value in bringing out the issues clearly, and binding the parties down so that they cannot shift their ground.

37. *Section 69.*—Though Section 68 speaks of "enhancement or reduction of rent," this section speaks of enhancement only, and requires to be amended so as to include reduction also by adding, in Section 69 (1), after "enhanced rent," "or to accept the reduction;" in the proviso, after "enhanced rent," "or accept the reduction of rent reduced;" in 69 (2), after "pay the enhanced rent," "or accept the reduction of rent."

38. *Section 70.*—I very much doubt the necessity for this section; and certainly consider the last clause of it inadvisable.

39. *Section 72 (d).*—The tentative limit of one-fifth is much too low.

40. *Section 74.*—To avoid one-sided legislation, I think the provision should be extended to the case of rents reduced.

41. *Section 79.*—The form of this section requires amendment: (a) should be placed after "except," and instead of "provided, &c." we should read "or (b) when an arrear of rent remains due in respect of the holding of an ordinary raiyat at the end of the fasli, in which case, &c."

42. *Section 85.*—In marginal abstract substitute Section "84" for "203."

43. *Section 91.*—Either the body of the section or the marginal abstract is wrong; as the section gives no appeal to District Court. It is not clear which is mistaken.

44. *Sections 92—112.*—No part of the Bill has called forth such adverse comments from the landlords as the provision for taking the power of distraint from them. The power of distraint under Act VIII of 1865 has not worked badly; and but very few instances of oppression have come to my notice in a long zemindari experience. If, after reducing his rents and giving his raiyats occupancy-rights, we proceed further to take this power from the landlord, already sufficiently shorn of his prestige, I am of opinion that his position will be absolutely untenable.

45. The "raiya"—"the incorrigible ryot" as one of the best landlords in this district terms him—does not look upon the payment of rent as a pleasure, but as a rule does his very best to evade it. I fear it is too much to hope that when he has to pay a reduced rent he will look upon it in a more pleasing light. Many and various are the dodges by which he tries to evade distraint, by nominal transfer, stacking his grain on a friend's ground, &c., &c. If, as a preliminary to distraint, application has to be made to the Collector, great delay will inevitably result, and probably the golden moment will be lost and the crops have disappeared by the time the Collector's order comes to be enforced.

46. I do not see either why distraint should be limited to the produce of the land excluding other moveable property of the defaulter. This will, in my opinion, be more prejudicial than beneficial to the ryot; the present power of distraining moveables other than produce makes it safe for the landlord to permit the raiyat to dispose of his produce; if the power be withdrawn, he will, in order to ensure payment of rent at all, be obliged to insist on payment before the crops are removed from the ground, thus forcing the ryot in most cases to borrow the money. Should the proposal of the Bill on this point become law, a very large increase to the establishments of Deputy Tahsildars in zemindari and proprietary taluks will be necessary as their work will be enormously increased, while they are barely able to cope with what already falls to them.

47. I should be glad to see all the provisions of the existing law on this subject, i.e., Sections 14 to 37, and Section 83, Act VIII of 1865, re-enacted; they have, I think, worked as satisfactorily as could be expected; and Section 17 provides an ample remedy for any abuse of the power thereby conferred. I would expect, however, that if the re-enactment of this law is considered inadvisable, some provisions similar to those of Section 83, Act VIII of 1865, should at all events be added to the Bill. Produce should be subject to distraint as long as it is on the holding in respect of which the arrear accrued, irrespective of possession (the proviso as to possession will only give an opening to fraud); and the power of distraint should be extended to moveable property with an exception for ploughing cattle and farm implements.

48. I need hardly point out that Section 92 contains a clerical error, the words "and no landlord" having been evidently inserted by mistake.

49. Before closing this report, I must acknowledge the assistance which I have derived from letters on the subject by the Rajah of Bobbili, A. V. Nursing Rao Esq., (husband of the Proprietrix of Shermahomedpuram), and G. I. Nursing Rao Esq., (Proprietor of Anakapalle, &c.); and from a memorandum drawn up for me by Mr. H. T. Knox, c.s. I have the honor to enclose copy of a letter on the subject from my Principal Assistant, Mr. C. F. MacCartie, which reached me too late for embodiment of his suggestions in my own report. Mr. MacCartie, in his remarks on Section 79, appears to have overlooked the provisions of Section 88.

## ENCLOSURE No. 1.

## APPENDIX A.

## VIDE PARAGRAPH 8 OF REPORT.

*Memorandum on the Use of the Terms "Proprietor" and "Raiyat" in the Bill.*

CHAPTER III—*Section 20 (g).*—For "proprietor" "landlord" should be substituted; as it is surely not intended that if there be an intermediate landlord, his reversionary rights should be ignored.

*Section 21.*—"Landlord" must be substituted for "proprietor;" it is already used in the same sense in the latter part of the section.

*Section 22 (2).*—Under this section as it stands, the "proprietor" and "raiya" can determine the rent without consideration of the intermediate landlord, if any; and the latter could collect only such rent as they had fixed. Substitute "landlord" for "proprietor" and the section becomes reasonable. The same person may be "tenant" of a "proprietor" and "landlord" of a "raiya."

*Section 23.*—"Landlord" should be substituted for "proprietor;" otherwise, the middleman would not be debarred from ejecting, while the superior landlord would.

*Section 24.*—"Tenant" should be substituted for "raiya." This will enable an intermediate landlord, the rent of whose raiyats has been reduced so as to make his own lease no longer profitable, to get rid of his burden as is only equitable. "Landlord" must be substituted for "proprietor;" otherwise, under the section as it stands, a "raiya" ignoring his immediate "landlord" can get rid of his tenancy by a notice to the superior landlord.

CHAPTER III—*Part 5—Section 27 (1).*—For "proprietor" substitute "landlord" which includes proprietor; otherwise, an intermediate landlord, not being "proprietor," might be entitled to do what in the case of the "proprietor" is expressly forbidden.

*Section 27 (2).*—The same alteration required here, to enable the middleman to make improvements. It is often the case that a middleman is willing and able to effect improvements which a "proprietor" cannot afford; and it is in this that his sole utility exists.

*Section 28 (1) and (2).*—The same alteration required for a similar reason. There should be a proviso that when there are intermediate tenures the consent of the holders of each should be obtained or the option of making the improvement offered to them.

*Part 6—Sections 29, 30, 31, 31A and 32.*—This is headed "The Landlord's Right to measure Land," but throughout the sections the word "proprietor" is used. "Landlord" should be substituted throughout. The effect of "proprietor" in Section 29 as it stands is that if the proprietor were registered holder of revenue-free lands situated in his own estate which he had sublet to "raiya," he could not enter upon and measure them. If it be intended to restrict the right of measurement to "proprietors," special provision is required for such a case, as by adding after the words "land entered" the words "in a name other than his own."

CHAPTER IV—*Part 1—Section 36.*—For "raiya" substitute "tenant."

*Sections 38, 39 and 40.*—For "proprietor" substitute "landlord." This is absolutely necessary. I think it would also be well to substitute "tenant" for "raiya" for the protection of the middleman; but this is a matter of opinion.

*Part 3—Sections 44 and 46.*—Unless the intermediate landlord is to be entirely ignored, "landlord" must be substituted in these sections for "proprietor."

*Part 6—Sections 52, 53, 54 and 55.*—For "proprietor" substitute "landlord;" otherwise, the intermediate landlord is not bound to grant a patta, furnish receipt, &c.

CHAPTER V—*Part 1—Section 61.*—For "proprietors" substitute "landlords," and if it be intended that the Revenue Courts should take cognizance of rent-disputes between superior and inferior landlords, for "ryot" substitute "tenant." If this is done it will be necessary to provide that where the "landlord" is not the "proprietor" all superior landlords should be joined in the suit; and that when the "tenant" was not "raiya" and the suit related to (i) (a), (b), (c) or to (ii) or (v), all tenants should be so joined.

CHAPTER V—*Part 2 (a) (ii)—Sections 72—75.*—"Landlord" must be substituted for "proprietor."

*Section 78.*—It is not clear whether any distinction is intended between "proprietor" and "landlord" as used in this section. I think "landlord" should be used in both places.

*Part 2—(c) Section 79 (1).*—For "the tenant" read "him" in last line.

*Sections 80, 82, 83, 84 and 85.*—Substitute "landlord" for "proprietor" throughout to protect the cultivator from the middleman.

## ENCLOSURE No. 2.

From C. F. MACCARTHEE, Esq., Acting Principal Assistant Collector, to the Acting Collector of Vizagapatam, dated Gudem Hills, 26th March 1884, No. 23.

I have the honor to submit the following remarks upon the Madras Tenancy Bill which was sent me with your endorsement, dated 11th March 1884.

Section 2.—For obvious reasons, on which it is unnecessary to enlarge, the Act should be expressly excluded from the agency tracts of the three northern districts.

Clause V.—Interpretation clause includes "Homestead Land" in "Raiyat land," and Sub-section 1, XIV, gives the settled raiyat a permanent, heritable and transferable interest in any homestead land in his village which he holds as the site of his dwelling house. Again the only improvement open to the ordinary raiyat is, by Section 28 (1), limited to the erection of a dwelling house or homestead. These provisions do not seem called for by the circumstances of the country, and to be based upon the idea that raiyats or cultivators live upon their farms as in England. This is not the case, as Indian cultivators congregate in villages where each tenant has a right, founded on ancient custom, to such portion of the gramannuttom, or village site, as he requires, rent-free. If homestead does not mean the raiyat's residence, it should be more precisely defined. In other words, seeing that each raiyat has, under existing circumstances, an indefeasible right to such portion of the gramannuttom as he requires, I do not see the necessity for specially enacting it.

Sections 12—16.—Define with great elaboration the rights of settled and occupancy raiyats. I do not understand the necessity for these confusing distinctions, and would provide for the whole question by one short clause conferring on the tenant a permanent, heritable and transferable interest in the land he cultivates as a tenant, provided he pays the rent due upon the land in his occupation.

Section 50, *Proviso*.—A practical illustration should be given of the working of this proviso, which, as it stands, is extraordinarily intricate and obscure.

Section 73 (1).—Expressly saves settled and occupancy raiyats from suits for ejectment for non-payment of arrears. I think this is a mischievous concession which should be cancelled. Let their interest be as permanent as Government can make it, but there should be a condition attached, to-wit, punctual payment of rent.

CHAPTER VI.—Section 92.—The words "and no landlord" succeeding "than a year" in the second line, make nonsense, and are probably a clerical error. No cause has been shown for depriving landlords of their present power of distraint, which, so far as my experience goes, they do not abuse. The tenants are sufficiently protected by their privilege of appeal which they are not backward in utilising. The innovation will throw an immensity of work upon the already overwrought taluk offices, and for this reason alone I should condemn it in the absence of overwhelming evidence that landlords habitually abuse their power of distraint.

Section 97 (1). The permission to "any person" to reap "any" distrained produce is very apt to lead to disputes and breaches of the peace: the concession is far too general.

Section 119.—The words "or act in" in the first line seem to be a clerical error.

# RESOLUTION—dated 1st September 1884, No. 3050.

With their Proceedings read again above the Board referred to all Collectors, for their observations, the Draft Tenancy Bill communicated with G.O., dated 6th February 1884, Mis. No. 569. Subsequently the Board asked for a copy of the Honorable Mr. Carmichael's minute and of the Statement of Objects and Reasons of the Bill, to which request Government replied by forwarding, confidentially, Mr. Carmichael's minute, dated 9th December 1883, and said that no Statement of Objects and Reasons had been drawn up.

2. The following is a summary of the criticisms made by the several Collectors and by others whom they have consulted on the subject.

3. *Ganjam*.—The Collector, Mr. J. G. Horsfall, after stating that the object of the Bill appears to be to secure the tenure, &c., of the cultivating ryot, proceeds to record his opinion that the measure, if passed into law, will be obnoxious in the extreme to the Zemindars and other landed proprietors throughout the northern districts of the Presidency; that it will give rise to endless disputes between landlord and tenant, involving constant resort to the Revenue Courts, which will be inundated with suits which will arise under the enactment. He further remarks that the Bill ignores the

fact that there exists a large body of intermediate renters, whose position, both in regard to proprietor and cultivator, needs to be recognized and defined. Commenting upon the details of the Bill, the Collector objects to some of the distinctions as being obscure and unintelligible, and considers some of the distinctions to be unnecessarily complicated. Sections 25 and 27 he regards as arbitrary and harsh, and thinks Sections 29 and 33 impose needless restrictions upon the landlord, while Section 34 would entail the confiscation of a large portion of the landlord's present income. He considers Sections 41 to 46, regarding enhancement and reduction of rent, to be unworkable and likely to lead to endless litigation; and Sections 50 and 51, relating to payment of rent in instalments, to be needlessly restrictive. Further, Mr. Horsfall protests against the provisions of Section 54, imposing penalties for omitting to deliver receipts, puttass and muchilikas, and would omit Sections 55 to 59, relating to deposit of rent. After some further criticism of details he maintains, in regard to Chapter VI, that there is no sufficient reason for depriving a landlord of the power which he has long possessed to distrain his tenant's property.

4. *Vizagapatam*.—The Acting Collector, Mr. Johnson, notices the absence of any Statement of Objects and Reasons of the Bill, and says that in such case it is by no means easy to criticise its provisions. It has the appearance of having been drafted in haste; and one result of this would seem to be that an existing intermediate tenancy-holder is ignored. It seems doubtful, in the Collector's opinion, whether the sub-tenant of Government ryotwari land will be able to take advantage of the Bill; and to disregard the middleman, however desirable in theory, is impossible in practice. If the Bill is intended to secure the position of the cultivator in zemindari lands alone, it will prove but a half measure and must, hereafter, be taken up again. Mr. Johnson thinks that to confer upon the occupancy ryot the right of free sale will be a doubtful boon, as it will tempt him to utilise to the utmost his power of borrowing, and eventually he will be sold up by the Sowkar and become the servant of his creditor—his tenant at a rack-rent. In view of such results the right of pre-emption, as in the Bengal Bill, should be given to the landlord. As it stands the Bill will be ruinous to small namdars who have rented out their lands, as the maximum rent payable under its provisions would be probably less than half what they are now receiving, and yet they could not re-enter. The Collector then goes on to examine the sections in detail. As regards improvements, he points out that some tribunal should be established for determining whether or not a work is an improvement; and provision should be made to enable a landlord to carry out an improvement when the tenant raises objections. Regarding Section 34 he observes that the limit of rent is so low as to make the Bill confiscatory; that this result must ensue if we go beyond the condition of things at the date of the permanent settlement. Mr. Johnson considers that the ryot's share at that time was from  $\frac{2}{3}$  to  $\frac{1}{3}$  of the gross produce. In conclusion, he records a strong dissent from the proposal to take away from landlords the power to distrain, and urges that the provisions of the Bill on this point will throw an enormous quantity of additional work upon the Revenue establishments.

The Principal Assistant Collector, Mr. MacCartie, also objects to withdrawing from landlords the power to distrain.

5. *Godavari*.—The Acting Collector, Mr. Happell, while approving the principle of the Bill, thinks that it treats the landlord with unnecessary harshness. He would divide landlords into three classes, in order to distinguish between large and small proprietors; and tenure-holders should be recognized as in the Bengal Bill. After making some suggestions upon the sections in their order, Mr. Happell comes to Section 34, and, while recording his opinion that rack-renting requires to be stopped, expresses a doubt whether the limit of rent fixed by the Bill is not too low. In a table he gives the existing settlement rates parallel with those which would obtain under the provisions of the Bill, the latter being decidedly lower. He deprecates the attempt to fix by letter of the law the proportion of produce which should be claimable as rent, and considers it should be settled by a Commissioner for each village. Regarding procedure and specially as to appeals, the Collector makes various suggestions. He approves of the provisions of the Bill in regard to distraint, which deprive the landholder of the right to distrain which he now possesses. Mr. Happell concludes by remarking that the Bill is a copy almost *verbatim* of the first Bengal Tenancy Bill, and suggests that

it might be well to compare it with the latest edition of that measure; and he observes that nothing is gained by pedantic spelling of long-current vernacular terms.

6. *Kistna*.—The Collector, Mr. Austin, complains that the Bill was sent down for report unaccompanied by any Statement of Objects and Reasons, and that the general tendency of its provisions is to substitute arbitrarily devised rights for ancient existing tenures. He regards its terminology as awkward and confusing and would simplify the language, while defining with greater precision. As to definitions, he enumerates several terms which seem to need explanation, but which find no place in the interpretation clause. He suggests certain other minor points for consideration, and recommends that the landlord be allowed to distrain under restrictions at present imposed.

7. *Nellore*.—The Collector, Mr. Lee-Warner, commences his report by saying that the Bill is unnecessary, inequitable and unworkable. He maintains that no such radical measure is called for; that some years ago Mr. H. J. Stokes drew attention to certain defects in the present Act (VIII of 1865) which, if remedied, would supply all that is needed for the tenant's security. That in spite of the judgment in the Chockalingam case, the Rent Recovery Act has worked well on the whole, whereas this Bill, should it become law, will disturb all existing relations between landlord and tenant, and place two classes, whom the Government must wish to live in harmony, in a state of chronic antagonism, one to another. Speaking from his own experience, Mr. Lee-Warner denies that the existing law has proved a failure, or that any case is made out for the invention of a new Act with fantastic descriptions of degrees of tenancy and a twelve-year rule. Regarding the procedure under the Bill he objects that the work proposed to be thrown upon Collectors will be overwhelming, and maintains that there is no reason for depriving landlords of their powers of distraint. In regard to immoveable property distrained, the law might, however, reserve the power to deal with it to the Revenue Courts. After all, if the ryots are not sufficiently protected by Act VIII of 1865, the fault is in themselves, their backwardness and ignorance, not in the Act. The Collector goes on to say that he has studied with care the different classes of "raiya" whom the Bill proposes to create, but his studies have been so far unavailing that "the settled raiya" remains a shadow that he cannot grasp. On the subject of improvements Mr. Lee-Warner quotes some pertinent criticisms by the Special Deputy Collector, which touch especially on the provisions of the Bill which give restrictive power to the occupancy-ryot, and the impracticability of the proprietors obtaining consent of ryots in the case of large tanks. As to the provisions of Sections 29—33, restricting measurement of holdings, the Collector, in deprecating them, says the legislature should not manufacture causes of disagreement between landlords and their tenants.

Regarding the prescription of a maximum amount of money—rent, the Collector, after expressing his inability to guess how the figure  $\frac{1}{8}$  is arrived at, proceeds to point out the practical injustice which must ensue to a landlord whose estate is unsurveyed and unsettled, and where from time immemorial special rates have been paid on special products. After some further remarks upon the intermediate sections, Mr. Lee-Warner observes that Section 113, regarding division of crop, ought to place heavier penalties upon delay, and concludes by saying that many of the provisions of the Bill are too minute and interfering, while the proprietors are often treated with considerable harshness. On the other hand, if this Bill be passed, it will, like its predecessor, remain to a great extent a dead letter until, at some distant date, the ryots begin to understand what has been done for them. In other words, the measure, being uncalled for, is likely to be useless. In continuation of his own report, the Collector submits an elaborate criticism of the Bill by Mr. W. J. Tate, the Sub-Collector. This criticism is very full, and the writer has carefully studied the draft; it would be difficult to summarise the remarks and suggestions made upon the sections in succession; it is sufficient to say that they are so numerous, and the amendments proposed would involve such material change as to necessitate practically the entire re-drafting of the Bill. Mr. Tate concludes his examination of the provisions of the measure with the following remarks upon its object and effect:—

"I cannot say that I am satisfied with the Bill. In the matter of aiding and relieving the tenant, it certainly goes far, but, on the other hand, its provisions are so numerous and complicated that it will be years before the ordinary tenant will understand and avail himself

of them; whilst to the educated and aggressive tenant (and such are to be found in some of the petty zemindaris of the south, for instance in Chingleput) the Bill, if passed into law as it stands, will afford innumerable grounds for litigation and innumerable pretexts for harassing a too careless landlord. It will be seen that I am altogether against the new provisions for distraint in less landlord. It will be seen that I am altogether against the new provisions for distraint in realization of arrears, and that in the interests of both parties; that I doubt the necessity of the troublesome procedure in Sections 55—59 inclusive and in Sections 48 and 49; that I consider the 'ordinary raiyat' is very hardly treated, while his 'occupancy' brother receives benefits hitherto undreamed of, and that some of the clauses of the Bill are, to my mind, absolutely and unnecessarily penal and severe. In times of peace and prosperity a country like India naturally becomes litigious, and nothing is more satisfactory to litigious people than to have the power of perpetually harassing an adversary. It seems to me that the Bill before me unintentionally supplies this power in great profusion, and I would respectfully submit that the sound policy of the State should rather be the upbuilding of a class of contented and powerful landlords ruling over contented and industrious tenants than the introduction of all possible 'bones of contention' between the two parties. Determine the rights of the tenant if you will, but do not exaggerate those rights or refuse him (under sufficient safeguard) all power of amicably agreeing with his landlord.

"In fine, I humbly think that the Bill fails in the most important requisites of such a Bill—(1) clearness, (2) simplicity, and (3) fairness; that it needs the most careful redrafting, if not recasting, and that it would be the greatest mistake to pass it into law till the fullest possible criticism has been invited on every one of its provisions."

8. *Bellary*.—The Collector, Mr. Goodrich, commences his report by suggesting that the position of Zemindars holding under sanad should first be defined. Proceeding to the examination of details, he points out that to require a complete survey with the introduction of the Act would tend to make it unworkable. He then inquires whether all systems of joint association by villagers *inter se* are to be at once swept away, such arrangements being often conducive to the mutual benefit of landlord and tenant. Mr. Goodrich would also stipulate for the maintenance of all contracts antecedent to the present year, and would permit the transfer by sale of the status of settled ryot freely, allowing the landlord to become the purchaser. He would forbid subletting of settled holding, but would allow guardians to grant a lease during term of a minority. As regards improvements, he suggests that in case of objection, upon notice given, the Collector, with an Engineer as assessor, should decide the dispute.

Regarding these penal sections it may be observed that to recite in a local enactment that if a man does a certain act he shall be deemed to have committed an offence under a certain section of the Penal Code is a mere *brutum fulmen*. It does not make the man guilty under the Code, who would not be so otherwise.

Respecting rates of rent, Mr. Goodrich seems to think that the proposed rate ( $\frac{1}{8}$ ) is too low, and that exceptions must be made to meet the case of cultivators who enter in succession to persons holding on favorable rents for specific causes. He objects to Section 39 (2) and would strike it out, as well as Sections 110 and 116, last clauses.

Mr. Goodrich then suggests that Government should take power to enhance peishcush in consequence of permanent improvements, such as railways, &c. After some further observations on sections in detail the Collector concludes by remarking that the mode of dealing with existing arrears—a very large subject—is untouched by the draft Bill.

9. *Anantapur*.—The Collector, Mr. Roupell, commences his letter by saying that the Bill creates fundamental changes in the status and relations of landlord and tenant, and while the latter is to be benefited beyond his fondest dreams, the former will ultimately be reduced to a mere annuitant upon his estate, over which he is no longer to have any control, his long-enjoyed rights being swept away without warning and for ever. In Bengal—the province which has furnished the model of the present Bill—a ground for legislation was found in the strained relations between landlord and tenant, and the resultant discontent and disturbances which ensued, while in Madras the necessity for such a radical change is not shown. No Statement of Objects and Reasons is furnished, and even the Honorable framer's minute is not circulated. So far as his experience goes, Mr. Roupell thinks the condition of the ryot in relation to the landlord varies in different districts, and although in some zemindaris the intervention of the legislature may be called for, it does not follow that interference is necessary in all. Some of the provisions of the Bill are good, e.g., those relating to statement of account, to deposit

of rent, Sections 52-59; ejectment, Section 79; and distraint, Chapter VI; but to the measure, as a whole, the Collector objects as being of a confiscatory character and rendering void innumerable engagements duly executed and registered & the free consent of the parties. Chapter III "Raiyats" assumes that at present all tenures are utterly insecure, and consequently that improvements are unknown. Mr. Roupell questions the correctness of this assumption and the wisdom and equity of granting to numbers of persons proprietary rights without any consideration whatever. He doubts the practicability of fixing a legal limit of rent and thinks the  $\frac{1}{4}$  rule would be evaded by mutual consent. After some further remarks upon details, the Collector concludes by deprecating the passing of so sweeping a measure without the most cogent proof of its necessity.

10. *Kurnool*.—The Collector, Mr. Glenny, explains why he has been unable to prepare a report upon the subject himself, and forwards a memorandum on the Bill drawn up by the Head Assistant, Mr. Tremenhoe. After commenting upon certain sections preceding, the Head Assistant Collector, referring to Section 46, expresses the opinion that a Zemindar ought not to be allowed to charge rent on homesteads, and Section 52, that the tender of a putta ought to be a condition precedent to suit. He would eliminate the Magistrate's jurisdiction (Section 54 (3)) replacing it by that of the Collector. The provisions of Section 75 (2) are too strict. The limit of time, 15 days, too short. On the whole, Mr. Tremenhoe approves of the Bill.

11. *Cuddapah*.—The Collector, Mr. Bird, offers no remarks upon the general principles of the Bill; his observations contain detailed criticisms of some of the sections and are mostly verbal. The Sub-Collector, Mr. Farmer, after some preliminary remarks, suggests that, together with Madras Act VIII of 1865, Madras Act II of 1871 should be also repealed. He would eliminate all vernacular terms as being indefinite and often imperfectly understood; he would place all definitions in one place in the Bill and would maintain throughout the draft the order in which the ryots are classed at the beginning. Regarding the acquisition of land, Mr. Farmer suggests that in non-ryotwari villages the darkhast rules modified, if necessary, should be applied; he objects to the hard and fast rule as to surrender by the "ordinary ryot" and would leave some discretion to the Collector. In common with several other officers the Sub-Collector remarks upon the need for amplifying the list of definitions, e.g., Section 50 "tenure-holder," "under-tenant," &c., and upon Section 119 he suggests that any landlord should be allowed to delegate his powers to an agent, but the latter should be registered in the Collector's office and the former should be precluded from taking action himself in such case. Mr. Farmer would limit the provisions of Section 120 by simply empowering Government to extend the application of the Act in the direction indicated. In conclusion the Sub-Collector offers some general remarks upon the Bill and its provisions. While admitting the need for legislation and that the intention of the framer is good, he regards the proposed machinery as altogether defective; and suggests that, before proceeding further with the measure, it would be well to appoint a Committee to recast the Bill and to visit some of the zemindari tracts with a view to ascertain how the proposed measure would be likely to work in practice, and whether the object enunciated in the preamble would be likely to be attained by it. Like other officers, Mr. Farmer complains of not being furnished with a copy of the Honorable Mr. Carmichael's minute.

12. *Madras*.—The Collector, Mr. Maclean, does not report at length, but expresses his opinion generally that the Bill goes far beyond the necessities of the case.

13. *Chingleput*.—The Collector, Mr. Price, commences by pointing out that, where-as the object of the Bill is stated to be to place Zemindari ryots on the same footing as Government ryots, it will not serve this end, inasmuch as it creates several classes of ryots having different privileges a distinction unknown among those holding directly from Government. In the second place the Collector protests against the enormous increase of work which will be thrown upon revenue officers in the event of the Bill becoming law. In the third place, he objects to the sections of the Bill, Mr. Price follows other critics in objecting to the use of unintelligible native terms and to the want of definitions. Regarding Section 5 he says he would relieve the Curnam and make the landlord responsible

for the preparation of registers; to Section 25 he objects as being too severe upon the "ordinary ryot"; the proposed law regarding improvements might be amended with advantage; Section 97, allowing the right to reap, appears unnecessary and likely to produce much quarrelling; and Section 120, as it stands, is dangerous. The Collector considers that the proposal to withdraw from landlords the power to distraint is inexpedient and unnecessary, and he quotes figures furnished by the Deputy Collector, Mr. Pinto, to show that the existing system works without abuse. Finally, he expresses the opinion that the Bill is far too elaborate, providing for much which needs no provision and abolishing much which is useful and ought to be retained. The Tenancy Bill as drawn is a bewildering piece of legislation.

The Deputy Collector, Mr. Pinto, criticises in detail many of the sections, and as to withdrawing power to distraint from landlords, he maintains that there is no sufficient ground for doing so. In his division of the District there are 170 proprietary estates, and out of 659 distraints annually, only 78 are contested. Under the Bill all work of distraint would be thrown on the Revenue officers. One necessary consequence of this measure passing into law would be that Revenue establishments must be largely increased.

The Sub-Collector, Mr. R. Sewell, has examined the Bill at length and criticised it freely. He objects to the duty of trying suits under it being assigned to Collectors instead of to the Civil Courts, and suggests that provision should be made for enabling persons to acquire waste land, i.e., as by the Government Durkhast Ru'cs. He also suggests that Section 52 regarding the contents of the putta should be amplified by the addition of the words "and nothing else," as the restriction of the provisions of a putta is of practical importance.

14. *North Arcot*.—The Collector, Mr. A. J. Stuart, considers that the change proposed in the status and relations of landlord and tenant is too sudden. Moreover, the Bill is defective in that it allows a class of ordinary ryots without privileges, and this class would tend to increase as privileged holders might vacate from time to time. He would therefore ratify by legislation the privileges of those who have enjoyed them or derived them by purchase, &c., from those who have so enjoyed them for twenty years continuously; and in regard to other tenants, he would make the rights, which the Bill proposes to confer, to accrue after the lapse of twenty years from the date of passing the enactment. This, he considers, would be only just to the landlord by giving him due warning what to expect. Mr. Stuart would suggest that the Bill do not extend to Inamdars other than holders of whole villages. Turning to the details of the Bill, he would modify the definition of private land and would provide that a tenant under a renter be considered as a tenant under the proprietor, and that land cultivated by a renter be regarded as land held by him as a tenant. As to improvements, the Collector points out that Section 27 would render it necessary that all the ryots under a large tank must give their consent to enable the proprietor to repair it; and he doubts the justice of giving to the occupancy ryot the first right to benefit by all improvements. Section 29 he regards as too sweeping a measure, and would omit altogether Section 46. After some further remarks the Collector concludes by saying that the power to distraint should be left to the landlords as at present. Memoranda by Deputy Collector Muhammad Azim Ghatala Sahib and Qadir Navaz Khan Sahib, by the Collector's Sheristadar and the Tahsildar of Arcot, are enclosed.

The Sub-Collector, Mr. Fawcett, makes remarks upon the provisions of the Bill, of which the principal relate to Section 13, which he regards as dangerous as being likely to deprive ryots who have been wrongfully ejected from obtaining restitution. Section 21 requires to be made clearer by declaring in what manner a proprietor can acquire occupancy right and to be amplified by enabling the "ordinary" ryot to acquire it by purchase from the proprietor. Section 25 Mr. Fawcett would omit. As regards Section 54, he objects to the criminal liability imposed upon a ryot for failure to give a muchilika, and also (Section 61) to suits for recovery of rent being withdrawn from the Civil Courts. Section 77 (1), he regards as harsh and unnecessary. In common with many other officers, the Sub-Collector sees no sufficient ground for withdrawing the right to distraint from proprietors and throwing this duty upon the Revenue establishments.

The Head Assistant Collector, Mr. J. Andrew, objects to the Bill as a whole, being of opinion that so radical a measure is uncalled for, and that what is needed could be supplied by some amendment of the present Act (VIII of 1865). He doubts whether in its present complex shape it could possibly be understood by the tenants who will be affected by it, and if this be so, they would fail to derive the benefit which it is the purpose of the Bill to afford them. Mr. Andrew makes further some observations on the details of the Bill.

15. *Salem*.—The Collector, Mr. Martin, begins by making remarks upon the details of the Bill, the chief of which are:—That some control over the Curram is needed and some penalty should be attached to abuse of power by him, Section 5. That the Zemindar will strive to become his own ryot in regard to all unoccupied land in his estate, Section 18. That a ryot can always make Section 25 inoperative by paying a very small portion of his rent. That (Section 72, Clause 1d) if a ryot doubles the produce by an improvement, he gets the whole benefit of the increase, while if a proprietor effects this, he is to get only two-fifths, while the ryot, who has done nothing towards the improvement, gets three-fifths. That (Section 72, Clause 2) the rent of a holding of an occupancy ryot should be liable to be raised to the extent of the improvement made by the proprietor, minus 20 per cent.; there is no reason why, in return for his bare consent, the ryot should get the lion's share. That the provisions regarding distraint are neither desirable nor workable (Sections 93 to 106). Regarding the general principles of the Bill, Mr. Martin, after pointing out that it is a new departure both in ideas and procedure, goes on to express doubts as to the expediency of investing the ryot with the rights which will be conferred by the Bill *per saltum* at the present time, and to show that the effect will not accord with the preamble since the Zemindari ryot will under this measure become invested with rights of property far in excess of those which Government ryots possess. For the present there is no particular demand for such a Bill; it can be enacted when it is wanted. The Collector would prefer to see introduced an Amending Act to improve the Rent Recovery Act of 1865; and he particularly objects to the withdrawal from landlords of the power of distraint and the relegation of this process to the Collector. But the chief defect in the Bill in Mr. Martin's opinion is the absence of distinct provisions regarding the disposal of land not in occupation at the time it may become law. A brief report by the Sub-Collector is enclosed.

16. *Coimbatore*.—The Collector, Mr. Leman, observes that, while professing to have for its object the placing of the Zemindari ryot on the same footing as the Government ryot, it does not effect this, but distinctly prevents the former from sub-letting on the terms which a Government ryot is free to impose by agreement on his tenant. Again, if the Bill is to apply to petty Inamdars, it will ruin many of them. Upon Section 18 he remarks that every proprietor will always eject just before the term ends which would give occupancy rights. Regarding the rent chargeable, Mr. Leman considers  $\frac{1}{4}$  of staple grain crop far too low in many cases; and illustrates his opinion by forcible example. He criticizes in detail many other provisions of the Bill, especially those relating to procedure to distraint.

17. *Nilgiris*.—The Collector, Mr. Burrows, writes that as he has had very little experience of the practical working of Act VIII of 1865, he is not prepared to express an opinion as to the value of the measure which is proposed in its stead; and the Collector of Malabar, Mr. Galton, abstains from examining the Bill as a special enactment is in contemplation for regulating the relations between landlord and tenant in that district.

18. *South Canara*.—The Collector, Mr. Sturrock, commences by saying that beyond a short preamble no statement of objects and reasons is afforded; and, after some further remarks as to how far the Bill is likely to affect his district, he proceeds to consider whether—

- 1.—It is necessary to fix a limit of rent;
- 2.—Is  $\frac{1}{4}$  of gross produce a suitable limit; and
- 3.—Is it necessary to supersede existing contracts.

In reply to the first question, Mr. Sturrock, while doubting the immediate need for action, so far as Canara is concerned, is not disposed to object to the principle; but in answer to the second he maintains that the proposed limit is not in accordance with

the ancient customs of the district, and points out that in the course of discussion in Committee of the Bengal Tenancy Bill, a similar provision was abandoned; and while not himself inclined to favor the fixing of a limit such as that proposed, he emphatically protests, whatever limit may ultimately be adopted, against its being extended to existing contracts. Touching the new rules regarding distraint, the Collector says that in Canara, at all events, the privileges enjoyed under the existing Act have not been abused; and he concludes by recommending that it be made clear that certain assignees of land revenue are not to become proprietors of Inam estates under the Bill.

19. *Trichinopoly*.—The Collector, Mr. H. Sewell, does not discuss the general provisions of the Bill, and makes only a few brief remarks upon some of the sections, the chief of which relate to the fixing of a maximum rent, which provision, he says, will upset existing arrangements and provoke disputes; and upon Chapter VI, which he apprehends will render increased Revenue establishments necessary.

20. *South Arcot*.—The Collector, Mr. Cruickshank, says he has no remarks to offer on the Bill as it seems to him to meet all the difficulties which have hitherto been experienced in rent-recovery cases. However, the Collector forwards reports from his subordinate officers. The Head Assistant Collector, Mr. Manavedan Raja, is of opinion that the Bill is quite uncalled for, and that it proceeds on a false assumption regarding the insecurity and the sufferings of the Zemindari ryot. He suggests that instead of this Bill, the present Rent Act be amended by adding to it provision for payment of value of improvements to ejected tenants and for prohibiting the revision of rents oftener than once in sixty years. The Deputy Collector, K. Subba Row Gáru, objects to the Bill being sent for report without a full statement of objects and reasons, and then proceeds to point out that its provisions do not fulfil the purpose set forth in the preamble. He pleads for the most careful inquiry and full discussion before any such measure is passed into law, and examines in detail the several sections of the draft, suggesting numerous amendments. The taxing of homestead lands and the proposal to fix the proportion of rents he altogether objects to, and he argues that the contemplated maximum rent of  $\frac{1}{4}$  is far below what is now frequently paid with willingness, and that to fix such a limit would be very unfair upon the landlord; and he insists that the expression "impositions" requires a very liberal and clear definition. He objects to existing contracts being set aside and would maintain them. The restrictions regarding instalments of rent will bear hardly upon both landlord and tenant, who should be allowed to make their own arrangements in the matter. Finally, the Deputy Collector urges that the procedure laid down for distraint will be unworkable and must remain a dead letter. Reports are also submitted from the Sub-Collector, Mr. Weld, and the Assistant Collector, Mr. Sujaat Ali Khan.

21. *Tanjore*.—The Collector, Mr. Pennington, begins, like so many other officers, by objecting to being called upon to report on so important a measure without being furnished with a full statement of its objects and reasons as is usual in such cases. He takes exception to the distinction invented between the "ordinary" and "occupancy" ryot as having no foundation in the customary law of the Presidency. The creation of the ordinary ryot he characterises as a revolutionary measure, the reasons for which he would like to know; so far as the "ordinary" ryot of a Zemindari is concerned, the purpose in the preamble is not fulfilled. Protesting strongly against the principles of the Bill and against the importation of Bengal enactments into a Presidency to the requirements and conditions of which they are quite unsuited, he expresses the hope that the objections to the Bill will be so numerous and weighty as to necessitate its withdrawal at an early date. After pointing out some necessary corrections, Mr. Pennington concludes by observing that much additional work will be thrown upon Collectors, who already have more than they can do properly.

The Sub-Collector, Mr. Hebbert, maintains that the Bill is founded upon a wrong estimate of the position of a Zemindari ryot, and the distinction made between different classes of ryots is likely to prove disturbing and mischievous. He then goes on to examine the sections in detail; his remarks relate chiefly to the right of landlord of village-site, the provision for ejectment in Section 25, the restrictions on amount of rent, the meaning of "waram," the power to raise rents, and the procedure in Collectors' Courts.

The Deputy Collector, Narrainsawmi Nayudu Gáru, thinks there are grave reasons for questioning the soundness of the policy of the proposed legislation; and having made this preliminary remark he argues that it is unwise to throw the work on the Revenue Courts, and that the parties affected would certainly prefer to have their cases tried in the Civil Courts. The Deputy Collector also examines the sections in detail.

22. *Madura.*—The Collector, Mr. Crole, writes that the draft Bill, while professing to rehabilitate the Zemindari ryot by placing him on the same footing as the Government ryot, does a great deal more. It creates entirely new and extremely complicated tenures; it recasts the existing rent law and provides a hundred and twenty sections of fat feeding for lawyers. As drafted the measure is unnecessary, inconsistent, inappropriate and unjust. The Collector himself doubts whether any legislation on the subject is required at all. After reciting authorities to prove the ryot's proprietary right in the soil and showing how, at the time of the permanent settlement, the position of the State in regard to the soil was wrongly described as being paramount, Mr. Crole says that it now "remains for Government, in the interest of the country at large, to decide in what manner the position of the ryot-proprietary of the country may be most effectively vindicated, and the correct legal status of the cultivator be settled and declared once for all;" and the question is whether the draft Bill does this. Mr. Crole says, no. He maintains strongly that all the interest in the land which a Zemindar possesses has been derived from the Government; that the interest which the Government ever possessed was in no sense a proprietary one, but only the right to a proportion of the produce, and consequently the right of a Zemindar is that of an assignee of the Government share and nothing more. The land itself belongs to the cultivator of the soil. Holding this view the Collector argues that the Bill, instead of improving, directly weakens the ryot's position, while pretending to strengthen it. He objects altogether to the ejection provisions, and shows by figures that since the permanent settlement in Madura, for instance, the income of the Zemindars has doubled and trebled; so that they can well afford the loss which may occasionally be entailed by "untenantlike behaviour" on the part of a few ryots. Mr. Crole approves the limitation of rent and would provide for the maintenance of irrigation works and compel the grant of remission for waste. On the other hand, in the interest of the landlords, he would provide for the assessment forming a first charge on the land, and that a sale for arrears should carry an unencumbered title; that the sale of the land should, in certain events, be allowed before the close of the year; and he would lay down rules to prevent the clandestine removal of crops and allow tender of putta to be made and proved by postal registration. Regarding the procedure for distraint and for redress generally, Mr. Crole says that the whole burden is cast upon the Collector and that the Revenue staff would simply be overwhelmed. In all the strife which would be engendered by this Bill, the longest purse would necessarily win, and the lot of the ryot would be hard indeed. And, in alluding to the fact that the Bill is sent forth naked, without explanation or comment, he opines that no plea of necessity is sustainable, and argues that the existing law works fairly well. But if any legislation is called for, all that is required is a brief amending Act to the present law. The Collector trusts that the measure may be abandoned.

Enclosed are reports from the following officers:—

Sub-Collector, General Deputy Collector, Temporary Deputy Collector, Honorary Deputy Collector and Manager of Ramnad Estate, Mr. Kotaswami Tevar, Sub-division Zemindar and Mr. S. Subbaramaniya Aiyar, High Court Vakil. Of these the first three do not require particular notice.

Mr. Rájardm Row, the Manager of Ramnad, observes that the tenancies which the Bill proposes to legalize are not now in existence in the Ramnad Zemindari, and it is not advisable to introduce them, as they would only lead to complications. The procedure laid down would overburden the Revenue Courts and prove most inconvenient to the parties. More precise rules are required in regard to the acquisition of waste land by cultivators. The manager then goes on to criticise some of the Sections of the Bill. In regard to Section 25 he points to a practice, which obtains in the Ramnad Zemindari, under which wet lands left waste do not pay "waram;" and urges that, in the case of occupancy ryots, non-cultivation for three years ought to be

construed as a surrender of the holding. Regarding the restriction on measurement of lands, he points out that rent is often payable upon the area cultivated each year, and he objects altogether to the provisions of Section 39 relating to impositions. Quoting the experience gained in the estate of which he is in charge, the Manager advises that power be given for commuting into money payments, with the consent of parties and the sanction of the Revenue Board, the "warum" rents now paid. Finally he objects to withdrawing from landlords the power of distraint.

Mr. P. Kotaiswami Devar considers the Bill, as revolutionizing the relations between landlord and tenant in this presidency and introducing several kinds of novel holdings, will excite a feeling of general disaffection, and trusts that the existing law may not be repealed in favor of this new enactment. Regarding Section 18, he observes that "private lands" are often purchased by the proprietor for a price, and it is unreasonable that a ryot, who is merely a lessee, should be allowed to acquire by mere lapse of time a title for which the Zemindar has paid. The rules regarding measurements are also most objectionable, and the penal provisions of Sections 39 and 40 are unnecessary and inequitable. The provisions relating to the enhancement of rent also require modification, though there is no objection to limits being imposed. In conclusion, the Zemindar protests against the withdrawal of the power to distraint, and points out that provision is required for the transfer of puttahs.

Mr. S. Subiramaniya Aiyar commences his observations on the Bill by stating that it does not embody the common law of the country, and it enacts rules which will lead to endless litigation and the eventual ruin of both landlords and tenants. That a Bill founded, as it appears to be, upon the theory of the Bengal Settlement should have been drawn up in Madras is certainly remarkable. It proceeds upon wrong assumptions as to the origin and existence of classes of ryots as contemplated innovations. Instead of the elaborate refinements of classes of ryots as contemplated in the Bill, what is needed is a declaration that all ryots now holding "raiya" lands shall hold them with power to transmit to their heirs and assigns so long as they pay the rent due, and that they shall not be liable to be ejected except after a sale of their interest under a Civil Court decree or a decree for arrears of rent. No ground exists for withdrawing the power to distraint, and the provision of Section 94 (2) is intolerably harsh. If the framer of the Bill had deliberately set about to invent a plan for ruining the tenants, he could not have hit upon a more effectual device than the abolition of private distraint and the consequent levy of an iniquitous court-fee stamp-duty on distraints through public officers. It seems to be forgotten that the punctual payment of peishcush depends upon the prompt realization of kists by the Zemindar; yet this was well understood when the preamble to Regulation XXXIII of 1802 was drawn up. The Vakil then proceeds to comment upon the absence of any provision for requiring Zemindars to keep irrigation works in repair, and upon the sections bearing upon enhancement of rent. He would restrict the landlord's power in the latter case to imposing additional assessment on account of improvements made by him, and to recoup himself for increased demands by Government. And he concludes by saying that some slight amendments to Act VIII of 1865 would afford a far more satisfactory solution of the difficulty to be met.

23. *Tinnevely.*—The Collector, Mr. Atkinson, states that he has not had sufficient time to study the Draft Bill in such a manner as to admit of his making any suggestions of value. He forwards reports from some of his subordinate officers, one of which, namely, that by the Sub-Collector, Mr. Tremeneere, is noticed above under *Kurnool*.

The Head Assistant Collector, Mr. Broadfoot, after examining some of the details of the Bill, condemns its principles on much the same ground as the Collector of Madura. If the principles which underlie the measure could be carried to their legitimate conclusion, he thinks the better plan would be for Government to displace the landlord altogether, and, after collecting the rents fixed, hand over to him his share thereof.

The General Deputy Collector, Mr. Tiruvirarayan Rajah, while approving the provision which withdraws from the Zemindar the power to distraint, considers that the procedure laid down in the Bill will be very costly and entail a vast amount of work upon the revenue officers. He thinks the distinction between the different classes of ryots

is not sufficiently clear, and that the rule regarding ejectment (Section 25) is likely to bear hardly on the tenants. The proviso regarding remeasurement should be struck out altogether. He objects to the provisions of Section 31 and suggests that the "ayacut" rates be taken as the maximum, or, if unknown, that the rates prevailing in the neighbourhood be accepted. Section 39, regarding "impositions," will bear very hardly on the landlord. Tahsildars should be authorized to make distraint.

The Huzur Sheristadar, Mr. D. Narrainasawmi Mudally, who is also a Mittadar, is of opinion that no good reason exists for passing so revolutionary a measure, and that the radical change in the relations which exist between landlord and tenant is quite uncalled-for. The present law, though not incapable of amendment in some respects, works sufficiently well, and is tolerably well understood; the new Bill, if passed, would lead to endless litigation and expense, and Collectors' time will be occupied in trying suits under it to the detriment of other important work. Regarding the distinction drawn between ryot and ryot, the Sheristadar says it would be better to attempt nothing of the kind, but to declare that a ryot holding a putta cannot be ejected "except under the provisions of this Act," and that the private land of the proprietor can, except in certain cases, be held only by a tenant-at-will. This would comprise the only two classes of tenants known in Tinnevely. As regards improvements, it might be enacted that, in cases where the landlord is willing to effect them, an agreement may be made with his tenants before the Collector, and the document, setting forth the terms, be deposited in the cutcherry. At present, the well-understood rule is that the tenant has full benefit of his own improvements. The provisions of the Bill as drafted will create fresh difficulties and unsettle what is now established. Regarding Section 34, &c., he observes that the arbitrary fixing of rents is undesirable and the non-recognition of existing contracts will deal a very severe blow at the existing pacific relations between landlord and tenant. In conclusion, the Sheristadar argues that the restrictions on distraint will practically often force a landlord to have recourse to money-lenders.

24. Mr. H. J. Stokes, Acting Collector of Coimbatore, has also favored the Board with a memorandum on the provisions of the Bill. He commences by saying that it is a careless copy of parts of the Bengal Tenancy Bill of 1883, and he goes on to show how many of the sections of that Bill, which have since been modified or withdrawn, find a place in the draft enactment under consideration. After examining the sections of the draft in detail, this officer, who, it may be observed, has given special attention to the working of Madras Act VIII of 1865, concludes his remarks by setting forth the several objects which, in his judgment, should be aimed at in legislating in regard to the relations of landlord and tenant in this presidency. The Board would invite special attention to the observations at the close of his memorandum. After recording his opinion that, seeing the circumstances and history of this presidency are widely different from those of Bengal, it is most improbable that an enactment framed to meet the requirements of the latter province could be copied in Madras without great danger, Mr. Stokes concludes by saying that in the three capital points, viz., payment of rent, fixity of rent, and security of tenure, the Draft Bill would place us in a worse position than that which we now occupy, and it would be hard to say whether the injury, which might be expected to flow from the measure should it become law, would fall more heavily on the landlord or on the tenant.

25. The foregoing résumé of opinions goes to show that the Bill is generally disapproved by district officers. The following are the principal objections raised:—

- (1) The whole principle of the Bill is condemned, as not embodying the common law of the country, but creating classes of tenants, with rights more or less definite, hitherto unknown; as proceeding on false assumptions and containing mischievous innovations. The measure is characterized in severe terms, such as confiscatory, unnecessary, unworkable, uncalled-for, inequitable, inappropriate, revolutionary and unjust.
- (2) The purpose of the Bill as set forth in the preamble will not be fulfilled if the measure is passed into law, but something very different will be the result.

- (3) It will give rise to widespread discontent, and lead to endless disputes and constant litigation, resulting in the impoverishment of both Zemindars and their ryots.
- (4) The procedure laid down will entail a burden upon the revenue establishments which they will be unable to bear.
- (5) No objects and reasons having been stated, it is uncertain what is intended to be enacted and what ground exists for so radical a change.

And as regards the details of the Bill, it is urged that—

- (1) The effect upon small Inamdars will be ruinous;
- (2) The limit of rent, supposing it to be desirable to impose a limit, which is not admitted by all, is fixed far too low;
- (3) Existing contracts ought not to be annulled summarily;
- (4) The taxing of "homestead" land is an innovation which ought not to be allowed;
- (5) The provisions regarding the execution of works of improvement are not well devised;
- (6) Provision is wanting for regulating the manner in which new lands are to be taken up; and
- (7) The proposed withdrawal of the landlord's right to distraint is generally objected to on the ground that (a) experience has not shown such a step to be needed, and (b) additional expense and trouble would be entailed on both parties. On this question of distraint, however, district officers are not unanimous.

26. Having thus passed in review the opinions of the district officers, the Board proceed to give a brief history of the origin of the present measure, and to show upon what representations, and from what source derived, it has been deemed expedient to amend the present Act VIII of 1865. In order to make the subject complete, it is necessary to go back to the time when that enactment was under discussion in 1864.

27. Now in looking back, it is instructive to compare the Honorable Mr. Carmichael's Minute upon the Bill now under consideration with the views expressed in his letter\* to the Board, dated 17th September 1864, when the present Rent Recovery Act was before the Legislative Council, and to read in this connection the remarks of Mr. Johnson, the Acting Collector of Vizagapatam, upon, for instance, the limitation of rent to five-sixteenths of the gross produce, which is now proposed. On this subject, Mr. Carmichael, in 1864, wrote, from this very district—"Now if cannot be too generally known that to limit the landholder's demand to the rates of the permanent settlement would at once impoverish every Zemindar in the district. Surely what the ryot now pays, and has cheerfully paid, perhaps for years, may be accepted as an equitable rent. Who is to discover the various agreements and conditions under which the rent has gone up since 1802? *Volenti non fit injuria.* To go back at one leap to the rates of the permanent settlement (unless by rates is meant the rates of the shares in the crops to be turned into money at the prevailing market price) would be a highly revolutionary measure." And the writer goes on to suggest the appointment of a Commission to inquire into the "actual rights" of landlord and tenant. As pointed out by the Acting Collector of Vizagapatam, the provisions of the present Bill, for which it appears Mr. Carmichael is solely responsible, would reduce the rents payable to the Zemindars far below those obtaining at the date of the permanent settlement. There is nothing before the Board to show the ground for Mr. Carmichael's change of opinion on this subject.

28. After prolonged discussion, the Bill of 1864 became law as Act VIII of 1865 (Madras); and, on the eve of its coming into force, the Board addressed a circular\* to Collectors inviting attention to its provisions and concluding their instructions regarding the administration of the new law with the remark that the

\* No. 8206, dated 20th December 1865.

Board believe it "to be well calculated to secure the just rights of all parties concerned and to add value to property in land."

29. The Act came into force in 1866, and no serious fault was found in it until, in 1871, the High Court ruled, in Special Appeal No. 9 of 1870, that neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration, secured by express or implied terms of the contract creating it; that, therefore, in the case in point, a landlord could eject at the end of a fasli. At this judgment the Board at once took alarm, and addressed Government on the subject in their Proceedings, dated 8th May 1871, No. 3876. They pointed out that the decision arrived at by the Judges was altogether at variance with the intention of the framers of the Act, and, quoting from the discussions in and out of the Legislative Council, when the measure was brought forward, showed that so far from contemplating an annual tenure terminable at the end of the fasli, at the will of the landlord, the Legislature clearly intended to confirm the tenant in permanent occupation of his holding on certain conditions, and, in view of the danger which they anticipated from the ruling of the High Court, the Board urged upon Government the necessity of at once amending the Act by passing "an enactment affirming this right in unmistakable terms." They added, however, that it might be a matter for consideration whether the right of permanent occupancy should be held to belong to every ryot or only to certain classes. The Government deferred passing orders on this

\* G.O., dated 13th March 1876, No. 366. appeal until March 1876,\* when they directed the Board to ascertain how far their fears had been realized. Accordingly, the Board consulted all Collectors, with the result that it was shown that, although the effect of the High Court's judgment had been very limited, it had been relied on successfully in certain cases, and was likely to be cited more freely when it became better known. The Board † then went on

† Proceedings, dated 7th March 1879, No. 618. to express their opinion that the whole question of the position of Zemindars as landlords was on an unsatisfactory footing, and they indicated the following subjects as needing consideration—their relations to their tenants, their liabilities in times of famine, their responsibilities in regard to public works, the status of village officers in Zemindaries, the maintenance of village accounts, and collection of statistics; and they recommended the appointment of a Commission to conduct an inquiry. These

‡ G.O., dated 18th March 1881, No. 475. Proceedings were disposed of (after a further reference to the Board ‡ and to the position of tenants in this presidency) by the appointment of a Committee of the following Gentlemen: Honorable Mr. Carmichael, Honorable Mr. Sullivan, Honorable Mr. Webster, Mr. H. E. Stokes, and the Government Pleader. And the Government Order quoted lays down general instructions as to the policy which the Government wished to be followed in drafting the enactment.

30. As shown above, the opinions of most Collectors are adverse to the Bill as drawn up by the Honorable Mr. Carmichael, and some of them have condemned the measure in unqualified terms; but it seems to the Board that, in the sight of Government, the worst condemnation of the Bill is contained in the Government Order quoted, which indicates with some precision their policy in the matter. It would be difficult to devise a legislative measure drawn in greater contrast to the instructions of Government here conveyed to the Committee than the Draft Bill prepared by the Honorable Mr. Carmichael.

31. The Board do not suppose that, in view of the general expression of disapproval on the part of their revenue officers almost without exception—and the justice of most of the criticisms must be admitted—the Government will be disposed to proceed further with the Bill. The Board would recommend that it be laid aside and that a new measure be drawn up adapted to the requirements of the case. What those requirements are has been sufficiently indicated before, and it is unnecessary

to recapitulate them; but in connection therewith, attention is invited to the Board's Proceedings noted in the margin, as No. 2187, dated 12th November 1872, in showing the opinion of the Board, as constituted in 1872, as to the sufficiency, for G. O., dated 6th January 1873. the recovery of rent, of the most important purpose for which it was enacted, viz., the recovery of rent, of Madras Act VIII of 1865, which it is now proposed summarily to abolish, to make room for the Bill under consideration. The Proceedings referred to were passed at a time when Mr. Carmichael was a Member of the Board, and he was a party to them.

(True Copies and Extract.)

Secretary.

To the Secretary to Government, Revenue Department.  
"all Collectors.

Exd. C. Venkatasubbaiyar.

REVENUE DEPARTMENT.

1884.

Board of Revenue,  
MADRAS.

Printed September th.

Proceedings, 1st September 1884, No. 3050.

Submitting to Government, with remarks,  
reports of Collectors and others on the *Draft  
Tenancy Bill* drawn up by the Honorable  
D. F. Carmichael.

15TH JULY 1885, No. 827, REVENUE.

GOVERNMENT OF MADRAS.  
REVENUE DEPARTMENT.

READ—again G.O., dated 29th April 1882, No. 437, Revenue:—  
ABSTRACT.—Passing remarks on papers relating to the proposals of the Famine Commis-  
sion on certain questions connected with the position of the tenants in the Madras Presidency.

READ—again G.O., dated 6th February 1884, Mis. No. 569, Revenue:—  
ABSTRACT.—Requesting the Board of Revenue to submit, with their remarks, the opinions  
of Collectors on the Draft Tenancy Bill.

READ—also Proceedings of the Board of Revenue, dated 1st September 1884,  
No. 3050:—  
ABSTRACT.—Submitting to Government, with remarks, reports of Collectors and others on  
the *Draft Tenancy Bill* drawn up by the Honorable D. F. Carmichael.

ORDER—dated 15th July 1885, No. 827, Revenue.

Miscellaneous.

Members.

The Honorable Mr. Master, President.

" " Webster.

" " Goodrich.

Mr. J. H. Garstin, c.s.i.  
" " S. Subramaniya Aiyar.

H. J. Stokes.

The Government Pleader.

Mr. P. Rajaratna Moodelliar, Board's Sheristadar.

J. Lakshmikanta Rao, Deputy Director, Revenue  
Settlement.

Adakki Sudarsana Rao, Deputy Collector.  
Kanchi Subba Rao, Deputy Collector.

Secretary.

Mr. T. Venkasami Rao, First Assistant, Revenue  
Secretariat.

scales even between the land-lord and tenant.

(True Extract.)

(Signed) W. WILSON,  
Ag. Secretary to Government.

To the Honorable C. G. Master.

E. F. Webster.

H. St. A. Goodrich.

S. Subramaniya Aiyar.

To J. H. Garstin, Esq., c.s.i.

H. J. Stokes, Esq.

M.R.Ry. P. Rajaratna Moodelliar Avergal.

J. Lakshmikanta Rao Garu.

Adakki Sudarsana Rao Garu.

Kanchi Subba Rao Garu.

T. Venkasami Rao Garu.

To the Government Pleader, Madras,  
Board of Revenue.

Legislative Department.

Exd. A. Aubert.

80 Copies.

W. WILSON, Ag. Secretary to Government.

Govt. of (1885) Madras.  
REVENUE.

Issued

Recd.

Encl.

G.O., 15th July 1885, No. 827.

JULY.

Draft Tenancy Bill.

Board's Proceedings on the — referred to.  
Committee for consideration and report with  
reference to the object of the contemplated  
revision of the Rent Recovery Act as enunciated  
in the former Proceedings of Government.

*Handwritten notes:*  
27/8/85  
20/8  
129  
Dear Wilson  
Will you record  
ingly add to V. closed  
Bhaskar Singh's name to the committee appointed  
by G.O. 15 July 1885 No 827 Rev.  
was since  
20/8

*Handwritten:* Question

*Handwritten:* ing, and many others

*Handwritten:* 9-1

Gobt. of (1885) Madras.  
REVENUE.

GOVERNMENT OF MADRAS.

Revenue Department,

Ootacamund,

14<sup>th</sup> August 1885.

Issued

Recd.

G.O., 1

My Dear Madam  
There is  
Sullivan's answer to  
my note on grounds of  
his earnings date -  
Do you agree?

Yr. Svy

W. L. L. L.

Draft Tenancy Bill.

Board's Proceedings on the - referred to.  
Committee for consideration and report with  
reference to the object of the contemplated  
revision of the Rent Recovery Act as enunciated  
in the former Proceedings of Government.

Govt. of 188

REVE

14-8-85  
14-8-85  
14-8-85  
Dear Wilson, 131-X

Read enclosed  
I'm sending it to  
Sullivan say  
what you think.  
I will not do to  
make the Commit.  
too too big

Yours sincerely  
Quarstein

14/8

D  
Board's Pr  
Committee for  
reference to  
revision of the  
in the former

Govt. of

R

156.

14-8-85

133

My Dear Sir,

The Committee is  
already large and is a  
very strong one.

The only other matter I should  
be disposed to recommend  
is to have a larger number  
of members of officials  
may be had without  
making them members of  
the Committee.

Yours truly  
W. H. Williams

Board  
Committee  
reference  
revision  
in the fo

W. H. Williams

Gobt. of

R

10/15/83  
Dear Wilson  
G.O. 15 July 1883  
No 527 New

I thought it was  
quite settled that  
both members of  
Council were to be  
on this Committee  
& that Mr. Sullivan  
is to preside  
I was merely  
quoting

3/5

Wm. L. Sullivan

Board's  
Committee  
reference  
revision  
in the for

Govt. of  
RE

141  
127 to Webster

After Council to - known  
by

not for R. G. 137  
The Council has been by Council  
in the Council has been by Council

FROM CIRCULATION  
WITHOUT  
REMARKS.

D/MS

gested by the Council  
will be in the Council  
Also the Reference  
itary for the time  
ing, and W. H. S. S. S.

Board  
Committee  
reference  
revision  
in the fo

Gobt. o

Board  
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in the f

141  
V. 27 Mr Webster

After Council to - known  
to  
14-7-85

FROM CIRCULATION  
WITH  
REMARKS.

P/W

would certainly  
be given a  
letter by the Board  
will be  
Also the Revenue  
return for the time  
being, and Mr J. Stokes

Govt. of

Board  
Commit  
reference  
revision  
in the f

141  
Mr. Webster is  
likely to be leaving India  
for a time he may  
not care to serve on  
this Committee. Such  
in any case) should  
like to see made much  
stronger.  
I would certainly  
add the Evolution and  
suggested by the Hon.  
the William.  
Also the Reverence  
Secretary for the time  
being, and Mr. J. St. John

Capt. d

Who has given much  
attention to the  
subject.

It would be well  
to have in the Commission  
some of our most  
experienced Deputy  
Collectors.

The names of.

Adhi Sudarman Rao

Kanchi Subba Rao Pantulu

occur to me. Mr Wilson  
may be able to suggest  
others.

The Board's Secret

Comm  
referen  
revisio  
in the

193  
dars J. Lakshminkar  
Kai Rao Pantulu of the  
Settlement Depart-  
ment, would give  
valuable opinions.

The Hon. S. Subraman  
yam has written  
a good paper and w  
be of use.

I think some of  
not all, of these gen-  
tlemen might be  
nominated.

I see my name is  
down. I hardly think  
I shall be of much use.  
It is more in Mr Sullivan's  
line than mine 14/7

Govt.

Handwritten notes:

The Committee also

of the original named with

the following address

1. 1. 1. 1. 1. 1.

2. The first name was

the second name was

the third name was

the fourth name was

At the time of the

the name was

the name was

for the name was

the name was

187-88

Comm  
referen  
revisio  
in the

145

Handwritten notes:

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the name was P. (the first)  
the name was immediately

after the first name  
the name was in the

187-88

9-7-

Govt.

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refered  
revisio  
in the

147  
The Honorable H. E. SULLIVAN.

The Honorable C. G. MASTER.

9-7-88

## THE MADRAS TENANCY BILL.

In their order, dated the 29th April 1882, No. 437-438, Revenue department, Government observed that Act VIII of 1865 of the Madras Code has failed to assure to raiyats holding under assignees of the public revenue that permanency of tenure as well as security against exaction and oppression which that enactment as likewise the Regulations of 1802 and 1822 which it consolidated, contemplated and intended to assure to them. A committee was appointed to draft a bill calculated to remove all doubt as to the conditions of a raiyat's tenure of land. Messrs. Hutchins and Ramana Pantulu were subsequently added to the committee.

2. The settlement of the Zemindari tracts of this Presidency having been practically conducted on the same principles as Lord Cornwallis' settlement of Bengal, I have, after a careful consideration of the history of that Settlement, and the various enactments which have been passed since 1859 with a view to give the Bengal raiyat that permanency of tenure of land which it has always been the object of the British Government to secure to them, and also the provisions of the Bengal Tenancy Bill now pending before the Council of the Governor-General for making Laws and Regulations, drafted with the invaluable assistance of Mr. Ramana Pantulu, the accompanying bill, which follows the lines of that bill with such modifications as seemed to me to be suited to the conditions and requirements of this Presidency.

3. The bill is in my opinion calculated to attain the objects aimed at by Government, and to place the assignees of public revenue and the raiyats under them on the same footing with corresponding classes in other parts of British India.

4. Pressure of other business has prevented me from having the bill considered by the committee appointed under the G.O. already cited.

5. I submit it for such orders as His Excellency the Governor in Council may deem fit to pass thereon.

D. F. CARMICHAEL.

9th December 1883.

C. no. 6802 &amp; 8113.

For orders

The <sup>first</sup> paper is the report of the Board on the Tenancy bill. They recommend that in view of the general disapproval which the bill has elicited from all the officers consulted it be abandoned & that a new bill more adapted to the requirements of the case be drawn up.

2 In the second paper the High Court bring to notice that village munsiffs are being taken advantage of by Zemindars to have questions asked to land lords and tenants decided & recommend early legislation with a view to depriving village munsiffs of power to decide such questions. Even incidentally in the course of suits for money claims they further suggest that

I have circulated this with a separate note dated 14<sup>th</sup> June. 85. H.V.

The specific recommendation of the High Court is that suits for arrears of rent should be

Act VIII of 1865 Madras  
in matters in which it  
has been found defective, viz. Arindly House.

3. Under sec 61. of the  
Tenancy bill suits for  
the recovery of rent are  
terminable by law in  
suits before the Collector  
& not otherwise.

4. With reference to the  
suggestion of the High  
Court in regard to  
amendment of Act  
VIII of 1865, a system is  
being collection is being  
made of the decisions  
of the High Court and  
it is suggested that  
certain cases and  
which may be asked  
forward a collection  
of cases decided by  
the lower Courts illustrating  
the difficulties experienced  
in working Act VIII  
of 1865.

I submit that the Bill as  
it stands, unsupported by any  
Statement of Objects and  
Reasons stands unimpaired by

183  
that was Mr Casimichack's humble  
of the ~~Bill~~ of Dec. 1883 can  
be accepted as a sufficient explanation  
of the ~~Bill~~ its raison d'être.

If there is a land question -  
Madras let it be stated and its  
features explained. But it is known  
that on the whole of the present  
system it is upon the Treasury side  
or Tribal. Let the provisions  
of this Bill be calculated to  
solve them.

The Bill was never apparently  
submitted to the criticism of  
the Committee of the  
No 437-28 of 29-4-85 before  
it was sent for the opinion of  
the Board and Collectors.

I ~~submitted~~ to the  
is the ~~matter~~ - If it had  
been considered by the Committee  
it would be all probably - and  
can take for public criticism.

66

the scales even between

the land-lord and

tenant  
W. H. Bar

9-7-85

~~From the~~

Notes

C P 8713 which, it is  
stated, contains the High Com  
Suggestions for the amendment  
of the rent Act is not in  
the packet sent down  
from Ooty, and it is  
presumed that it is  
circulating and that  
it is intended to deal  
with it separately.

It has been separately  
disputed of and transferred to  
the Legislative Dept with  
No. N<sup>o</sup> 747, 20<sup>th</sup> June 1885.

Tenancy Bill.

From Antiquities  
- - - The notes

44577

Members.

Hon'ble Mr. Sullivan - President

Teacher

" " " We broken

" " Good night

The . . . S. Subramanyam

Rev. J. H. Garretts

7/1 H. J. Strover.  
A. Pleader.

The former name of  
Mr. P. Chetani, Ravi  
P. Chetani, Ravi

Yusuf I. Kazaratna  
Box 8' Shar

" J. Lakshminikanta Rao  
Res. Secy

By Director, *has*

\* Adakki Sitaravanna  
Collector.

Wm. C. Black River

By Calculator

U. Shanyan (Yungang) Hsiao

Secretary

Mr. J. Venkataswami Rao  
 Secy. to Govt. Secy. to Govt.

fresh acc. Nov. 1891

827 of 15.7.85-3

Read again for a/29 Apr

1882. no 437 and 6. Febr. 8.

no 569 wide. 159

Read also Brooks Prog

date d 1<sup>re</sup> Sept<sup>r</sup>/84, n<sup>o</sup> 3050.

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The Bill with the

criticisms embodied in

of the Board of

Read above his

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he referred to  
the gentle

Composed of the  
the margin

named \_\_\_\_\_ and \_\_\_\_\_

for consideration.

report with reference

object of the Contempera

revision of the ventral

as enunciated in the

Proceedings of Socy in the

Department

1881 29<sup>th</sup> April 1881

dated 7/1/37

91 Pitt Storable

The Negro

W. Wilson

15<sup>th</sup> July 1885

The Honble C. J. Pollard  
 " S. F. Webster  
 " H. St. A. Goodrich  
 " S. S. Ramaniya Nijar  
 J. H. Garstin Esq. C. S. I.  
 H. J. P. Taylor Esq.  
 W. R. Esq. S. Rajaratna Mudaliyar  
 " J. Pakoburikantu Esq.  
 " Adakki Sundaresan Esq.  
 " Kanaki Subba Esq.  
 " V. Narayana Murthy Esq.  
 " V. Venkataswami Esq.  
 The Commr of Cochin District  
 164 Board of Revenue  
 80 Legislative Dept.

15.9 at 102  
18/10/10  
6.8.24V

Juanes Barb

80.112 827000  
15<sup>th</sup> 9<sup>th</sup> 1<sup>st</sup>

1577

Series  
2C