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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 881 Press Mrs.

Dated 14th September 1867.

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NOTE FOR THE SECRE .RY.

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REVENUE DEPARTMENT

To

THE SECRETARY TO GOVERNMENT,

REVENUE DEPARTMENT.

SIR,

Introduction.—We, the Committee appointed by G.O., dated 15th July 1885, No. 827, R.D., to consider and report on the draft of the Madras Tenancy Bill drawn up by the Hon'ble D. F. Carmichael, have the honor to submit the following report:—

The instructions conveyed to us refer us, for the object of the contemplated revision of the rent law, to G.O., dated 29th April 1882, No. 437, and the object is there enunciated to be to distinctly lay down that—

"the raiyat and his heirs or assigns possess a right of continuous occupancy subject only to the condition of payment to the Sirkar or its assignee of the Sirkar share of the crop or its value as established by proved custom, mutual agreement or decision of competent authority, and evidenced by the pattá and muchilikà, unless these documents have been dispensed with by proved mutual agreement—with liberty to dispose of such right by sale, gift or otherwise, until evicted by due course of law for failure to discharge such legally-established and limited charge on the land or to enter into an agreement in the form prescribed by law with respect to such limited charge."

We have also had the sentiments of Government conveyed to us, that "the Bill should deal only with acknowledged evils, avoiding unnecessary changes and holding the scales even between the landlord and tenant."

2. To aid us in our deliberations, our Secretary made a collection of all papers relating to the history of legislation on rent law in this presidency, and also prepared a digest of decided cases, illustrating the defects of the existing Act, so far as they could be collected from published reports and other available materials.

3. *The Hon'ble Mr. Carmichael's Bill not adopted.*—First, as regards the Bill referred to us for consideration, we have to observe that it was drawn up chiefly on the lines of the original Bengal Bill; but that Bill was superseded by two others, and the Act finally passed differs very materially from it. Further, the Madras Bill had been so generally condemned, that we thought that it would serve no useful purpose to enter into a consideration of its provisions in detail, and that the best course for us to adopt was to draw up a new Bill.

4. *A new Bill drawn up on the model of the Bengal Act.*—Having thus decided to frame a new Bill, the next question for consideration was, whether it should be cast on the same model as the existing Madras Act, or on any other improved and more perfect model; and after careful consideration we came to the conclusion, that we could not do better than adopt the new Bengal Act as a pattern, so far as it is applicable to the circumstances of this presidency. The latter enactment was the product of much lengthened discussion and mature deliberation, during which the interests of both the landlord and tenant received the fullest consideration. It excludes all the objectionable portions of the original Bengal Bill, reproduced in the Madras draft, which elicited the adverse comments so generally passed on it. At the same time, it amply provides for the protection of the proprietary tenant, and, indeed, we doubt whether

any provisions, not substantially similar to those adopted by the Supreme Legislature for Bengal, would effectually meet the object enumerated in the Proceedings of the Madras Government, dated 29th April 1882, No. 437, without at the same time materially affecting vested interests opposed to those of the tenant.

5. *Portions of the Bengal Act omitted and of Madras Act, VIII of* 1865, *retained.*—We have omitted those provisions of the Bengal Act (Chapter III) which refer to the peculiar tenures intermediate between those of zamindars and raiyats, which exist in that presidency, as well as those * which are otherwise unnecessary or inapplicable to the less complicated relation of landlord and tenant in this presidency. At the same time, we have retained those portions of Madras Act VIII of 1865, which are specially adapted to this presidency, only amending such of them as have been found to be defective or ambiguous.

* Chap. II (Classes of tenants).
Chap. IV (Raiyats holding at fixed rates).
Sec. 39. (Price lists).
Chap. VII (Under raiyats).
Chap. VIII (General provisions as to rent). Secs. 50—54, 57, 60 and 69—71.
Chap. IX, Secs. 90—106. (Measurements and managers).
Chap. X (Record of rights and settlement of rents).
Chap. XII (Distraints). Secs. 122—125, 127, 138 and 141.
Chap. XIV (Sale for arrears under decree). Secs. 160—168 and 174—177.
Chap. XV (Contract and custom). Secs. 179—181.
Chap. XVII (Supplemental). Secs. 189—196.

6. The provisions which we have taken from the Bengal Act, with such modifications as we considered necessary, are chiefly those relating to—

(1) Protection of occupancy rights. (Secs. 20—23, 25, 26 and 65.)
(2) Restriction of contracts adverse to those rights. (Sec. 178.)
(3) Enhancement and reduction of money-rent, as well as commutation to a fixed money-payment of rent payable in kind or otherwise liable to fluctuation. (Secs. 27—30, 32—34, 36—38 and 40.)
(4) Restriction of distraint to crops unstored and in the possession of the defaulter. (Sec. 121.)
(5) Tenants' rights to make improvements and compensation therefor in cases of eviction. (Secs. 76—84.)
(6) Survey and record of landlords' private lands. (Secs. 116—120.)
(7) Abolition of summary jurisdiction and transfer to ordinary courts of the power, with certain exceptions, of hearing and adjudicating all suits having reference to the relation of landlord and tenant. (Secs. 143—152 and 154—157.)

The provisions of the Madras Act (VIII of 1865) which we have retained are mainly those relating to—

(1) Exchange of pattás and muchlikás. (Secs. 3, 4, 6, and 7—10.)
(2) Rates of rent where there is no question of enhancement or reduction. (Sec. 11.)

On minor matters, we have adopted, with the necessary modifications, the provisions contained in either the Bengal or the Madras Act, according as they appeared more suitable and appropriate.

7. *Protection of occupancy right and restriction of contracts adverse thereto. Chap. II and XI.*—Of the provisions taken from the Bengal Act, (1) and (2) are by far the most important and require to be considered together. The substance of these provisions is this:—Every tenant of the landlords† mentioned in section 3, clause (*a*) of the Bill shall be presumed to have a right of occupancy in his holding until the contrary is proved; and every such tenant who has held continuously for twelve years shall, except where the term of the tenancy is limited by a contract dating prior to 1st May 1871, be held to have a right of occupancy in all land for the time being held by him in the village; the date specified being that of the High Court's decision in Chokkalinga Pillai's case (6. Madras High Court Reports, page 164), which has placed the status of the proprietary tenant in this presidency in jeopardy, necessitating the legislation now undertaken. Even older contracts cannot bar in perpetuity the acquisition of occupancy right, or take it away where such right existed at the date of the contract. It is not necessary that the same land should have been held continuously for twelve years; occupation of different lands at different times without a break in the period of twelve years being sufficient

† All zamindárs, shrotriyamdárs, muttahdárs, jaghirdárs, páligyngárs and inámdárs; also usufructs, mortgagees with possession, and purchasers of the interest of any of the above persons, and all persons farming rents from the above persons or farming the land revenue under Government.
Bill, Secs. 4, 5 and 103.

to confer a right of occupancy. The object of this provision is to guard against the tenant being shifted from field to field—an expedient which was resorted to by zamindars in Bengal upon the passing of Act X of 1859, which gave the status of occupancy raiyat to every tenant who held the *same* land continuously for twelve years. Moreover, the occupation may be by the particular tenant himself or by others through whom he claims, and it may also be in conjunction with co-sharers. There is, in the case of an occupancy tenant, to be no eviction except in execution of a decree passed on the ground that the tenant has used the land in a manner which renders it unfit for the purposes of tenancy, or that he has broken a condition, not inconsistent with the provisions of the Act, on breach of which he is, under the terms of a contract, liable to be ejected.

Sec. 7.

8. *Reasons for invalidating stipulations for the extinction or non-accrual of a right of occupancy.*—The reasons for which it was decided in Bengal to invalidate stipulations for the extinction or non-accrual of a right of occupancy are explained in Sir Evelyn Baring's speech on the first Bill as follows *:—

* Abstract of the Proceedings of the Legislative Council, dated 13th March 1883, page 342.

"I should certainly be the last to press for the interference of the State in the regulation of any maters which can, without detriment to the public welfare, be left to settle themselves without any such interference. . . . . But I conceive that nothing is more likely to check the advance of sound economic knowledge in India than the misapplication of the canons of political economy. To quote a single trite instance of such a misapplication:—If scarcity arises in any district of India, the surplus food from other districts will, provided there be roads, be poured into that district, in order to meet the demand. That is what political economy means when it says that the supply will follow the demand. But, if no roads exist, the supply will not, and cannot, follow the demand, and mortality from starvation will ensue, as it has before ensued. So also, when political economy speaks of freedom of contract, it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth. There are, according to the Famine Commissioners, 9,752,000 tenants in Bengal, of whom 2,789,000 pay a rent of from Rs. 5 to 20, and no less than 6,136,000 pay a rent of less than Rs. 5, which latter rate, I may observe, implies a holding of from two to three acres. Can any one who is acquainted with the facts say, in respect to the majority of these tenants, that their education, their knowledge of law and the circumstances under which they till the soil, are of a nature to admit of that free and intelligent choice which is in the essence of the economical, as it is of the legal, theory of freedom of contract? I venture to think that any such contention cannot be maintained. The mass of the raiyats are uneducated. . . . . Many raiyats are ignorant of their legal rights, and others, when cognisant of those rights, are afraid to make any attempt to enforce them. Agriculture forms, and must continue to form, their only means of gaining a livelihood.

"Under these circumstances, it is idle for the present generation to think of establishing freedom of contract as the economic basis on which the relations between landlord and tenant in Bengal can be made to rest. The legislature must recognise the facts with which it has to deal, and the leading fact with which it has to deal is, that custom, and not contract, has in the main governed the relations between the zamindars and raiyats in Bengal from time immemorial, and that custom, and not contract, must in the main continue in the future to govern those relations."

We need here scarcely add, that the description of the condition of the Bengal raiyats in the above extract is, to a great extent if not wholly, applicable to Madras.

The provisions, as finally adopted in regard to contracts, are succinctly described in Sir Steuart Bayley's speech on the introduction of the final Bill † thus:—

† Extra supplement to the Gazette of India, dated 14th March 1885, page 68.

"First I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limitations into three classes, the first one referring to all contracts, whether past or future, the second to quite recent contracts, the third to future contracts only. In the first-class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy rights, to destroy occupancy rights already in existence, to allow ejectment without process of law, to prohibit improvements. The second-class deals with contracts purporting to bar the accrual of occupancy rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to. In the third-class, which only restricts future contracts, we have simply put in legal form the general statement that neither the accrual of the occupancy right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease."

9. *Private lands of landlords excepted from restrictions on contracts.*—From the provisions described in para. 7, however, are excepted cases of tenants cultivating the private lands of landlords, known as *kambattam, khás, séri, pannai*, or lands of which the occupancy right has become vested in the landlord by transfer, succession or otherwise; also cases of reclamation leases and of leases of lands reclaimed at the expense of the landlord. In the former of the last two cases, the tenant may acquire an occupancy right on the expiration of the term of the lease if it is for twelve years or more; but in the latter case, the terms of a contract can preclude the tenant acquiring a right of occupancy during a period of thirty years from the date on which the land or part is first let to him.

Sec. 103 proviso.

10. *Enhancement, Reduction and Commutation of rent.*—The enhancement, reduction and commutation of rent will be more appropriately considered under the head of rates of rent.

11. *Distraint for arrears. Chapter VIII, Sec.* 55.—In regard to distraint for arrears of rent, the only important modification we have made in the existing law is, that we have restricted it to crops grown on the defaulter's holding and remaining thereon and in his possession, whether gathered or ungathered. This restricted provision was adopted in Bengal Act X of 1859 after the fullest consideration, and appears to us necessary to guard against oppression and abuse on the part of the landlord. It is here to be observed, that there is nothing to prevent the landlord proceeding by regular or small cause suit to realise his dues by sale of the defaulter's other moveables. The question which engaged the committee's special consideration in this connection was, whether the landlord should have the power, as at present, to distrain of his own authority, or whether he should, as the new Bengal Act provides, make the distraint through the courts. After much discussion the committee decided to maintain the power now vested in the landlord.

12. *Improvements and compensation for those made by the tenant.*—It is a defect of the existing law that it makes no provision in respect of tenants' improvements and their right to be compensated therefor in cases of eviction.

* Secs. 112—119.

Ample provision * is made under this head, defining what shall be deemed an improvement; giving the occupancy-tenant a prior right, where both he and his landlord wish to make an improvement, provided that another holding under the same landlord is not affected; and vesting in the Collector the power of deciding, in cases of dispute, the question as to the right to make, and as to whether a particular work is, an improvement. The principles on which compensation to be made to the tenant in cases of eviction is to be calculated, are clearly laid down. To prevent future disputes as to the fact of an improvement having been made or as to its nature, provision is made for the registration of improvements by the Collector, after due inquiry, on the application of either the landlord or the tenant. In the chapter on rates of rent, the landlord is precluded (sec. 27) from enhancing the rent on the ground of an improvement made by him unless he shall have registered it.

13. *Survey and record of landlord's private land. Chapter XIV.*—We have stated (para. 9) that, from the provisions which ensure continuous occupancy to the proprietary tenant are excepted the private or demesne lands of the landlord. In the case of these, the Bill gives the landlord the right of exercising absolute ownership and bars the accrual of occupancy right. The principles on which such lands are to be defined are enunciated, and to facilitate the settlement of disputes which may arise as to whether certain land is the landlord's private land or not, provision is made for a survey and record by a Revenue officer of all such lands in a specified local area where the Governor-in-Council considers this necessary, as also for an inquiry being made and the result recorded by such officer, under rules prescribed by Government, in individual cases, on the application and at the expense of either the landlord or the tenant. The lands which the Revenue officer is to record as private lands are—(1) cultivated land recognised by village usage as such under the designation of *kambattam, séri, pannai* or *khás*, and (2) land proved to have been cultivated by the landlord himself by hired labor for twelve continuous years before the passing of the Act. In addition to these two descriptions of land, the Revenue officer may record as private land any other which he may consider to be such, having regard to local custom, to the question whether the land was, before 1st May 1871 (the date of the

High Court's decision in Chokkalinga Pillai's case), specifically let as private land, and to any other evidence produced. Those rules are to guide also the decision of disputed questions in Civil Courts.

14. Lands surrendered by occupancy tenants and those of which the proprietary-tenancy has been acquired by the landlord by purchase or otherwise, would not necessarily come under the definition of 'private lands,' except where the condition which constitutes the second of the two heads into which they are divided as above specified, is satisfied. Where this condition is not satisfied, land lapsing as above mentioned would ordinarily come under the same category as communal land which, in Bengal, is designated *rayati* in distinction from *khámár* or private land. Such land the landlord will be at liberty to take into cultivation himself and retain in his own hands so long as he likes; but if he gives it for cultivation to a tenant, it would, in like manner with the ordinary communal land and subject to the provision mentioned in the concluding part of the preceding para., be subject to the provisions of the Act in regard to the accrual of occupancy right. The principle of the distinction here indicated is clearly expounded in the report of the Government of Bengal on the Select Committee's Draft Bill (*vide* extra Supplement to the *Calcutta Gazette* of the 15th October 1884, page 147) thus:—

"There is no prohibition against landlords cultivating lands which, from whatever cause, may lapse into their hands. There is no injunction or obligation imposed on them by the Bill to let such lands to raiyats; they are perfectly free agents in the matter to let the lands to raiyats, or to cultivate them themselves as they please. What the Government say to landlords in this chapter is broadly this:—Your estates may be regarded as made up of two sorts of land, *khámár* or demesne, and *rayati* or communal land. The former comprises all the land which, according to the ancient custom of the country, or according to any local practice, has been recognised as private land, *plus* all the land which, before the commencement of this Act, you have given evidence of a wish to permanently cultivate yourself. You are not entitled as of right to the latter. But we recognise the logic of facts, and we desire to terminate this strife by a liberal concession to you. The communal or *rayati* land will include the rest of your estate. You may bar the accrual of the occupancy *status* in your *khámár* or private land. In reference to it you are given the fullest freedom of contract. But in reference to *rayati* land, you may not bar the growth of tenant right, unless in accordance with the provisions of this Act. As regards all *rayati* land which may have lapsed, you may hold and cultivate the same yourself as long as you wish; but if you do let it to tenants, you must allow those rights to accrue to your tenants (subject to the payment of a fair rent) which this Act guarantees; you must not deprive them of that security which, in the public interests, it is desirable they should have."

The object of thus circumscribing the limits of landlord's demesne lands is, that the area of communal land available for the wants of the increasing agrarian population may not be materially curtailed. On this subject, reference is solicited to the observations of the Honorable Mr. Reynolds and Sir Steuart Bayley in the debates at the final reading of the Bengal Bill (*vide* Supplement to the *Gazette of India*, dated 9th May 1885, pages 768 and 769).

15. Having regard to the importance which must attach to the record made by a Revenue officer as above described, provision is made for a draft thereof being published, and for any objections, which may be made to any entry therein or to any omission therefrom, being heard and considered before the final publication of the record. Provision is made also for the appointment by the Governor-in-Council of a special Judge or Judges to hear appeals from the decisions of Revenue officers under this chapter and for a final appeal to the High Court. In Bengal, presumably, it is intended that Revenue Commissioners should be the special Judges for this purpose; in this presidency these appellate functions might be assigned to Collectors of districts, the original powers being vested necessarily in divisional officers.

16. To meet the particular requirements of this presidency, we have placed in the same category as landlord's private lands *inám* lands of which the holders are themselves proprietary tenants; as, for instance, where the original grant consisted of waste land and necessarily conveyed the right of occupancy, or where it consisted of a remission of the Government revenue in favor of the proprietary tenant. The rules reproduced from the Bengal Act for a record of private lands are of course inapplicable to this class of rights, and adverting to the difficulty which exists in laying down

specific rules for the determination of the question of what tenures are of this description, and seeing also that disputes in regard to such tenures are not likely to be, if at all, of frequent occurrence, we have left such disputes for determination in ordinary course by civil tribunals.

17. *Abolition of summary procedure and transfer of all suits under the Rent Act to ordinary courts.*—The summary procedure provided by the existing Rent Act is the necessary consequence of the jurisdiction being vested in Collectors; but the question the committee had to consider was, whether the adjudication of suits in relation to the rights and liabilities of landlord and tenant should devolve on the Collectors or the ordinary courts. After careful consideration, the committee came to the conclusion that the latter course would be the best. This would involve the abolition of the existing system of summary procedure.

18. It is to be observed that, under the early regulations, Collectors had no jurisdiction whatever in rent cases, and that it was by Regulation V of 1822 that summary powers of check over the proceedings of landlords were vested in those officers. The reasons for this were, that the powers which the landlords had were prompt and summary, while redress for the abuse of those powers had to be sought by regular suit. In his minute, dated 12th February 1817, Mr. Fullerton, Member of Council, explains the object of the legislation then contemplated, thus:—

"If the power of land-holders be direct and summary, so should the means of remedy be against abuse to the ryot, and that can only be done by interposing the summary and interlocutory jurisdiction of Collectors, *not to decide finally, but to guard the ryot against abuse, to maintain him in his possession where there appears no just ground for his ejection*, leaving the burthen of law process to the party the best able to bear it."

Now, however, by the Bill, the powers of landlords are materially restricted; distraint is limited to crops, and provision is made for every matter connected with the relation of landlord and tenant being judicially investigated and adjudicated upon. Such being the case, there seems to be very little need to provide summary remedies or to employ the agency of the overworked Revenue establishments. Some of the reports* on the Honorable Mr. Carmichael's Bill, embodied in the Proceedings of the Board of Revenue, dated 1st September 1884, No. 3050, forcibly point out that that Bill, if it became law, would impose upon the divisional officers an amount of work for which they can scarcely be supposed to be better qualified than district munsifs, and which they would hardly be able to perform without neglecting their ordinary duties. Mr. R. Sewell, Acting Sub-Collector of Chingleput, says:—

* Letters of — Page.
Mr. Pinto, Deputy Collector, Chingleput .. 28
Mr. R. Sewell, Ag. Sub-Collector of Chingleput .. 30
Mr. Rajaram Row, Manager of the Ramnad estate .. 69
Mr. Narainasamy Naidu, Temporary Deputy Collector, Tanjore .. 102

"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' . . . . . 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. . . . 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."

19. Indeed, from the statistics given in the High Court's Administration Report for 1885, we do not see that we can calculate upon rent cases being dealt with with greater promptitude by Revenue courts. The relative rates of speed at which summary suits in Revenue courts under Act VIII of 1865 and regular and small cause

suits in the courts of district munsifs were disposed of during that and the previous year, are given as under:—

Courts.	Uncontested Suits.		Contested Suits.		Average pendency of Applications for execution.	
	1884.	1885.	1884.	1885.	1884.	1885.
	DAYS.	DAYS.	DAYS.	DAYS.	DAYS.	DAYS.
1. Revenue courts	58	94	120	151	71	124
2. District Munsifs' courts, ordinary suits	73	75	163	171	64	54
3. Small causes in District Munsifs' courts	33	32	51	46		

The proportion of contested to uncontested suits and of appealed to unappealed cases, as also the results of appeals, under both heads, appear thus:—

Courts.	Percentage of		Percentage of		Percentage of
	Contested.	Uncontested.	Appealed.	Unappealed.	Decisions affirmed.
Revenue courts	66·37	33·63	31·42	68·58	54·23
District Munsifs' courts ..	36·04	63·96	22·48	77·52	60·15

20. We think it sufficient here to add that the question of the adaptability of summary procedure to rent suits has been exhaustively discussed, and the idea definitively abandoned, in Bengal. On this subject the Rent Law Commission expressed their opinion (their Report, paragraph 174) as follows:—

"In order that justice may be done, truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favor of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure, under which rights were hastily and perfunctorily adjudicated upon. . . . . We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice but, of choking off litigation, and we cannot recommend the adoption of any summary procedure for rent suits which would involve even a partial renewal of it."

* Abstract proceedings of the Legislative Council of India, dated 2nd March 1883.

The Honorable Mr. Ilbert, in his speech on the introduction of the first Bill, expressed his concurrence emphatically in the above remarks,* and added—

"There is no royal road to the discovery of facts, and most short cuts are mere delusions." . . . . . "The reason why rent suits are apt to be long and troublesome is not because the procedure is defective, but because the rights involved are obscure and uncertain and the facts are difficult to ascertain. No amendments of procedure will cure these evils."

21. To meet the requirements of particular tracts, such, for instance, as the Ramnad division in the district of Madura, power is reserved* for the Governor in Council to invest any Revenue officer with the powers of a Civil court in respect of all or any classes of suits or proceedings under the Act in particular local areas. The Bill, it is further to be observed, vests in the Collector exclusively such functions as require revenue experience, to wit: the carrying out of its provisions in respect of the commutation of rent,† the adjudication of disputes with regard to, and the settlement of compensation for, as well as the record of, improvements,‡ and the investigation of disputes in regard to, and the record of, landlord's private or home-farm lands,§

* Sec. 82.
† Sec. 34.
‡ Secs. 112—119.
§ Secs. 128—136.

22. While making most of the provisions of the Code of Civil Procedure applicable to the trial of suits under the Rent Act, the Bill provides for the simplification of the procedure where possible. The first summons to the defendant may be for final hearing *; a written statement is not to be filed by the defendant without the leave of the Court †; and the Court may, when passing decree, order execution on the oral application of the decree holder, unless it is for ejectment for arrears.‡ Further, the High Court may, with the approval of the Governor in Council, exclude any particular sections of the Code of Civil Procedure in regard to all or any particular classes of suits.

* Sec. 88 (c).
† Sec. 88 (f).
‡ Sec. 88 (g).

23. *Pattás and muchilikás. Chap. III.*—The most important provisions in the existing Madras Act, which we have retained, are those relating to the exchange of pattá and muchiliká and to rates of rent. Of course these are restricted to occupancy tenants. The utility of the provision for the exchange of written agreements between the landlord and the tenant is so apparent, that any argument in support of it seems hardly called for. In Bengal this provision has been abandoned; but there the obligation imposed by the early enactments in this respect has from the first been a dead letter; whereas in this presidency it has, at least since the passing of Act VIII of 1865, been more or less strictly complied with, and has afforded to the tenant that protection which his comparatively helpless condition obviously requires. No doubt, in many cases, grasping zamindars, taking advantage of the High Court's ruling of 1871, have contrived to exact undue terms in the shape of muchilikás; but this was due to the absence of adequate legislative protection in other respects, which is secured to the proprietary tenant by the provisions made in the Bill under the head of Contract and Custom (*vide* Chapter XI).

24. The only points in the detail of the chapter on pattás and muchilikás which call for notice are the following:—We have omitted the provision in the existing Act (section 7), which allows of pattá and muchiliká being dispensed with by the mutual consent of the landlord and tenant. This mutual consent must, in the nature of the case, be extremely difficult to prove, and the provision necessarily leaves an opening for a great deal of false swearing. Indeed, this provision virtually rescinds the obligation to exchange written engagements, and as practically the option thus given has been, to a great extent, if not entirely, inoperative, it does not seem that there will be any great hardship in making the requirement strictly obligatory. (Reference is solicited to the remarks under this head in the Digest of Rulings compiled by our Secretary, page 13.)

25. We have supplied certain obvious imperfections in the existing law by expressly allowing that the written engagement may be for one or more years, and that the terms of the engagement shall remain in force until it is renewed. In view, further, of the difficulty likely often to arise in ascertaining whether or not a pattá was tendered, we have provided for its being, if necessary, tendered by filing in Court.

Sec. 13.
Sec. 17.
Sec. 10.

26. We have further, with reference to the Proceedings of the Board of Revenue, dated 16th January 1884, No. 134 (collection of papers, page 323), expressly limited the scope of the provision for the exchange of pattá and muchiliká so as to render a compliance therewith necessary only to enable a landlord to proceed under this Act, leaving his right to recover by a regular suit in ordinary course unaffected.

27. *Rates of rent. Chap. IV.*—The question of rent on which depends to a great extent the value of the tenant's proprietary interest in land, is a very difficult one, and under the operation of the existing law which, in its main features, is the same as was introduced at the permanent settlement, the pressure of rent in relation to the produce of the land has, in different classes of cases, been extraordinarily unequal (*vide* general remarks in the Digest of Rulings under this head, pages 24—28). But it is now hardly possible to prescribe general rules which will secure to the tenant the benefit of fair rents in all cases, without at the same time disturbing rights which have grown up out of the existing relation of landlord and tenant. We have therefore retained in the main the provisions of the existing law with such modifications and

improvements as seemed desirable and unobjectionable, only providing on the lines of the Bengal Act checks on future enhancements with a provision for reduction, on specified grounds. These provisions likewise necessarily refer to occupancy holdings only.

28. The provisions in regard to rates of rent are contained in sections 19 and 20 of the Bill. As respects the rates agreed upon by contract, we have, as a necessary consequence of the restrictions imposed on contracts, provided that they shall be enforced in so far only as they are consistent with the provisions of the new Act, and have at the same time explained that, where rent has been paid at a certain rate for a continuous period of not less than three years, the fact shall be presumptive evidence of a contract to pay at that rate. In regard to survey assessment which, in the absence of a contract, is to be held to be the proper rent, we have omitted the date, viz., 1st January 1859, mentioned in clause 2 of section 11 of Act VIII of 1865, as we have not been able to find out why such assessment is declared to be an authoritative standard in those cases only where the survey took place prior to that date, and as, so far as we can perceive, no reason appears for thus drawing a line. We have omitted local usage as the third alternative, seeing the indefinite character of this standard and the difficulty there must always be in ascertaining it satisfactorily, and have substituted therefor rates established and paid for neighbouring lands of similar description and with like advantages. While retaining the provision in the existing Act, which allows the landlord to arrange his own terms of rent in respect of unoccupied land at his disposal, we have specifically included mining and quarrying among the purposes for which he may grant favorable leases. The most important provision we have newly introduced is, that, in the case of irrigable land, the landlord shall not be entitled to demand any rent where, in consequence of his neglect to keep the irrigation work, on which the land depends in repair, there has been a failure of crop, or the crop has been secured by means of irrigation provided by the tenant at his own expense. The reasonableness of such a provision for the protection of the tenant from an unjust exaction is obvious, and the necessity for it is shown sufficiently clearly in the Digest of Rulings (pages 20, 21 and 25). This provision accords to the tenant of a proprietary estate no more relief than what the Government raiyat enjoys.

Sec. 19 (1).

Note of explanation appended to Section 19 (1).

Sec. 21.

29. *Enhancement of rent.*—The provisions for enhancement are restricted to rent fixed in money, and have for their basis a rebuttable presumption that what is for the time being payable is fair and equitable rent. Rent may be enhanced by contract or by suit. An enhancement by contract is subject to the following conditions, viz.:—

Secs. 22—31.

(1) The contract must be in writing and registered;

(2) The rent previously payable shall not be raised by more than two annas in the rupee; and

(3) It shall not be raised at shorter intervals than fifteen years.

At the same time, a tenant shall not be allowed to object to rent which he has actually paid continuously for three years or more. The limit of two annas in the rupee shall not apply where a tenant binds himself by a contract to pay an enhanced rent in consideration of an improvement made by the landlord.

30. An enhancement of rent may be obtained under a Court's decree on any of the following grounds, viz.:—

Sec. 25.

(1) Rise in the prices of staple food crops;

(2) Increase in the productive powers of the land by the landlord's improvements;

(3) Increase in the productive powers of the land by a Government work accompanied by an increased revenue demand on the landlord;

(4) Increase in the productive powers of the land by fluvial action; *e.g.*, a change in the course of a river, rendering irrigation practicable where it was not so before.

Clear rules are prescribed for the determination of the increase of rent allowable on each of these grounds, and power is given to the Court, where it sees reason to do so, to direct that the enhancement decreed shall take effect by annual increments within a period not exceeding five years.

Secs. 26—29.

Sec. 30.

31. The only point calling for notice in the foregoing provisions is the apparent inconsistency in the limitation of enhancements by contract during a period of fifteen years to 2 annas in the rupee; while no such restriction is imposed on those obtainable by suit on the ground of a rise in prices. The considerations on which it has been found necessary thus to restrict enhancements out of Court are succinctly explained by Sir Steuart Bayley in his speech at a later stage of the debates on the Bengal Bill. The Honorable Speaker, while admitting the force of the arguments adduced against the 2-anna limit, points out* :—

* Extra supplement to the *Gazette of India*, dated 14th March 1885, page 49.

"On the other hand, it is urged that 12½ per cent. (a fraction which allows of the rent being enhanced 25 per cent. every 30 years, or by 100 per cent. in less than 90 years) is as much as a moderate landlord would ever be likely to ask as an addition to the rent; that it is quite reasonable, if the landlord wants a larger enhancement than this, to send him to the Courts for it, where he can prove its reasonableness; that the scheme encourages moderate enhancements and discourages any large enhancements; that in some parts of the country, and precisely in those parts where the raiyats are least able to protect themselves and most likely to agree, under pressure, to any terms which their landlords may impose, the rents are already so high, that no sufficient margin for subsistence is left to the raiyat, and a single bad season suffices to break him down; and consequently that, in the absence of the checks which the committee have removed from enhancement by the Courts, it is imperatively necessary, for the very existence of the raiyat, that enhancement by contract should be restricted within comparatively narrow limits." * * * * * "Whatever doubts there may be as to the efficiency in practice of this particular check (here the speaker refers to the possible evasion of the check by over-stating the previous rent), no competent observer can doubt the reality of the danger at which it is aimed."

Referring to the danger there is in this country of tenants being induced, under pressure, to agree to undue terms, the Honorable the Lieutenant-Governor of Bengal points† to the evidence collected in Behar and elsewhere, which shows that the raiyat requires that protection in respect of enhancement of rent, which a sifting examination of facts on both sides in Court would alone secure for him.

† Extra supplement to the *Gazette of India*, dated 2nd May 1885, page 21.

There shall not be more than one enhancement on the first of the grounds specified in the preceding paragraph within a period of fifteen years.

Sec. 32.

32. *Reduction of rent.*—The grounds on which a tenant may obtain a reduction of rent are :—

(1) Deterioration of the soil;

(2) Fall in the prices of the staple food crops; and

(3) Undue enhancement within 20 years before suit.

The justice of a reduction on the first two of these grounds is obvious. That on the second ground is in consonance with the corresponding provision under the head of enhancement, and, in like manner with it, bars a suit for abatement within fifteen years of the last reduction. The third ground has been inserted with special reference to the effect of the High Court's ruling in Chokkalinga Pillai's case, which is known in many cases to have enabled grasping zamindars to exact arbitrary terms by threats of eviction.‡

Sec. 33.

‡ *Vide* G.O., dated 29th April 1882, No. 437, paragraph 3.

We have further provided a clause giving the Court a general power, in a suit for reduction of rent, to grant such abatement as may appear to it fair and equitable.

Sec. 32 (2).

33. *Commutation of rent.*—The uncertainty which the sharing system attaches to the tenant's liability and its effects in repressing industry are so manifest (*vide* Digest of Rulings, page 25), that no argument is needed in support of the provision for the commutation of rent, where it is liable to fluctuation, to a fixed money payment. The Bill accordingly provides that, in such cases, the Collector may, on the application of either the tenant or his landlord, fix the rent in money. Of course the Collector must be vested with some discretion in granting or disallowing the application for commutation, as well as in determining the amount of money payment: but all the points, which need to be considered by him in order to secure a fair result, are specified. The Collector's decision on the latter head is made subject to appeal to the District Court.

Sec. 34.

34. We will now proceed to consider such of the noticeable points, not embraced under the general heads set out in paragraph 6, as the Bill deals with.

35. *Non-occupancy tenants—Chapter V.*—In Chapter V are comprised rules to regulate the relation between landlords and non-occupancy tenants, to wit: those who do not possess the status of occupancy tenants as defined in paragraph 7 *supra*. A non-occupancy tenant is liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission to the occupation of land; but subsequent enhancements to be binding on him must be by registered agreement or by agreement obtained through the Court. In the latter case, the enhanced rent is to be what the Court considers to be fair and equitable, and the tenancy at such enhanced rent is to extend to a term of five years only. He can be ejected under a Court's decree and on any of the following grounds only, viz.:—

Secs. 35—40.

Secs. 36, 37.

Sec. 39.

Sec. 38.

(1) That he has made default in the payment of rent;

(2) That he has used the land so as to render it unfit for the purposes of the tenancy;

(3) That the term of his lease (where registered) has expired; and

(4) That he has refused to agree to an enhanced rent determined by the Court as above mentioned, or that the term of five years at which he was holding at such enhanced rent has expired.

Clear rules are provided for the landlord securing an agreement to pay enhanced rent, and for such rent being determined by Court.

Sec. 30.

36. *Government raiyats and other holders of land not included in clause (a) section 3, —Chapter VI.*—In Chapter VI is inserted the existing provision to enable holders of land specified in clause (*b*), section 3, viz., Government raiyats and others not included in clause (*a*), to proceed to recover rent under the Act, provided they shall have secured written agreements.

37. *Arrears of rent. Consquences of default in payment of—Chapter VII.*—In Chapter VII are embodied the usual provisions as to when an arrear of rent shall accrue, with rules for the grant of, and penalty for withholding, receipts for payments made; the rate of interest chargeable on arrears is specified, and certain further provisions are inserted in order to enable the tenant, in cases of refusal by the landlord, or of doubts as to the title of the person claiming to receive, to deposit the rent in Court. In this chapter are distinctly set out the consequences of default in the payment of rent. It has been seen (paragraph 7) that an occupancy tenant cannot be ejected for non-payment of rent; but an important defect in the existing law pointed out in the correspondence printed in G.O., dated 18th July 1885, No. 841, has been removed by declaring rent to be a first charge on the land. A non-occupancy tenant is of course liable to be ejected for non-payment of rent, but only subject to the

Secs. 42—46.

Sec. 53.

Secs. 47—50.

Sec. 61.

rules and restrictions already mentioned, under a Court's decree. Another provision introduced from the Bengal Act is the power given to Courts to award damages where rent is withheld, or a suit for rent is brought, without reasonable cause.

Sec. 54.

38. *Distraint—Chapter VIII.*—In Chapter VIII is detailed the procedure to be observed in distraining crops for arrears of rent. We have retained the provisions in the existing Act in respect to time for distraining, liabilities of distrainer for loss or damage arising from irregularities in making the distraint, penalty for fraudulent conveyance of produce in view to preventing distress or for forcibly or clandestinely taking away distrained crops, and inquiry into claims of third parties. Adverting to G.O., Judicial Department, dated 29th September 1879, No. 2506, we have to observe that the Bill allows the tenant every opportunity to represent to the Court, before the distrained produce is brought to sale, any objections he may have thereto. The distrainer, besides serving a notice of distress on the tenant, and fixing up a copy in the village, is required, within twenty-four hours, to send another copy to the Court, and the tenant is allowed to show cause, within fifteen days from the service of notice from the Court, why the distraint should be withdrawn. No appeal however, is allowed from the Court's final order, but the tenant has the liberty, in cases of wrongful distraint, to recover compensation by suit, for which the time allowed by the Limitation Act is one year. One important provision made in the Bill is, that the tenant shall have full access to a growing crop distrained, and shall be at liberty to do all that is necessary to mature, reap or gather and to store and preserve it.

Sections of Act VIII of 1865.	Corresponding sections of Bill.
25	69
17	67
20	68
26	71
27	72
32	70

Secs. 56—59.

Schedule II, Article 28.

63.

39. *Judicial procedure—Chapter IX.*—Chapter IX deals with the procedure to be observed in the trial and determination of suits for rent, as likewise those in respect of other matters touching the relation of landlord and tenant. The several sections of this chapter explain themselves.

40. *Sale of land for arrears under decree—Chapter X.*—Chapter X contains provisions for the sale of the defaulting tenant's interest in the land for arrears of rent. As we have said, the Bill makes rent a first charge on the land, and in this chapter provision is further made for its sale, free of all incumbrances, with a saving in the case of those created before the passing of this Act, as also in the case of any right or interest, (such as that held under a sub-lease,) which the tenant shall have created with the landlord's written permission. As these provisions give the landlord all reasonable security for the realisation of his dues, we have not considered it necessary to adopt the suggestion of the Board of Revenue in their Proceedings printed in G.O., dated 18th July 1885, that the sale should carry an absolutely unincumbered title in all cases.

Sec. 97.

41. The Bill, in deviation from the Bengal provision, allows of the sale of a portion only of the defaulting tenant's holding, and the justice of this provision seems to us obvious, as in this presidency there are often holdings of considerable extent, of which it would be hard to deprive the tenant of possession of the whole, while the sale of a portion only would have sufficed to liquidate the arrear of rent. Moreover, there is very little difference between eviction and the sale of a tenant's interest in his entire holding.

42. This chapter also contains provisions for the discharge from the proceeds of sale of all incidental charges as well as of subsequently accruing rent; for the determination of disputes in regard to the latter; for any person holding a lien upon, or any other interest in, the land, preventing the sale by paying the arrear of rent with the incidental charges into Court, securing for his claim on the land a priority over all charges other than an arrear of rent; and also for an inferior tenant, whose interest would be voidable upon the sale, preventing such result in like manner, obtaining for the payment made by him a set-off against

Secs. 98—101.

any rent due by him to the defaulting superior tenant. At a sale of land for arrears under this chapter, the landlord may, but the defaulting tenant may not, bid.

Sec. 102.

43. *Limitation for suits under the Act—Chapter XII, sections* 106 *and* 107.—Chapter XII refers to limitations for suits under the Act, and we consider it necessary, in reference to it, only to advert to paragraph 10 of G.O., R.D., dated 5th October 1882, No. 1080 A., in which the Government refer, for the consideration of the Committee appointed to amend the Rent Recovery Act by the G.O., of 29th April preceding, the remark of the Madras Famine Code Committee, that the provisions of the existing Rent Act preclude any indulgence being shown by a landlord in time of distress to his tenants in the way of a temporary suspension of his demand. We beg to point out that the Famine Code Committee were under a misapprehension. Act VIII of 1865 does not prescribe any period of limitation for filing a suit for the recovery of rent, but leaves the matter to be governed by the ordinary law of limitation, which allows three years * for such suits. This admits of the landlord granting a temporary relief to his tenant in the way indicated, without "foregoing his claim altogether" by not taking process *within one year* from the time when the rent becomes due. The limitation to one year (section 2) refers to the summary process to be taken under the Act, viz., distress of moveables, and the present Bill, which restricts distraint to crops, adopts the same period from the Bengal Act.

* Act XV of 1877. Sch. II, Art. 110.

44. *Miscellaneous provisions—Chapter XIII.*—Chapter XIII contains various miscellaneous provisions. Of these, those relating to improvements and compensation for those made by tenants have been already noticed (paragraph 12). Of the other provisions which call for notice, the main features are as follow:—

Acquisition of land for useful purposes.—Provision is made for the acquisition by the landlord, through the Court, on payment of full compensation to the tenant, of land required for the improvement of his estate or of a holding therein, or for any work of public utility.

Sec. 120.

Sub-letting.—A tenant may sub-let only by a registered instrument or with the landlord's consent, and the term of sub-lease may not exceed nine years.

Sec. 121.

Surrender.—A tenant not bound by contract for a fixed period may, at the end of a revenue year, surrender his holding or, with the consent of the landlord, any part thereof. He is, however, liable to indemnify the landlord against any loss of rent for the year next following, unless he gives three months' notice of surrender. Cases are specified in which the Court is to presume, until the contrary is shown, that such notice was given. The effect of surrender is, that the landlord may either let the land to another tenant or take it into cultivation himself. Where the land is subject to an incumbrance secured by a registered instrument, the surrender shall not be valid unless made with the consent of the landlord and the incumbrancer (*confer with the provision in paragraph 40 supra*). Subject to this last mentioned condition, any terms in respect of surrender arranged between the landlord and the tenant by mutual consent shall be valid.

Sec. 122.

Abandonment of holding.—If a tenant voluntarily abandons his residence without giving notice to his landlord and without arranging for the cultivation of his holding or payment of rent, the landlord may enter upon the land and deal with it as empowered in the case of surrender. Before so doing, however, he should file a notice in the Collector's office in view to its being duly published, and the tenant may thereupon sue, within a time prescribed, and recover possession if he succeeds in satisfying the Court that he did not voluntarily abandon his holding. Where a sub-tenant has been let in by a registered instrument, the landlord shall, before entering on the holding, offer it to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant himself, and on condition of his paying up all outstanding arrears. If the sub-lessee refuses or neglects, the sub-lease shall be voidable, and the landlord shall be at liberty to proceed as above mentioned.

Sec. 123.

Sub-division of tenancy.—A sub-division of a holding, except in accordance with the law of inheritance or under a Court's decree, shall not be binding on the landlord, unless it is made with his consent in writing, and in the cases excepted, an apportionment of rent may be obtained by suit.

Sec. 124.

Notice of transfer.—In case of a transfer of a tenant's interest in the land, notice in writing should be given to the landlord by both the transferer and the transferee. Where notice is not so given, all proceedings taken against the former shall be binding on the latter. A corresponding provision is made in the case of a transfer of the landlord's interest, notice being required to be given to every one of the tenants affected.

Sec. 125.

Sec. 126.

45. *Questions separately referred to the Committee.*—We will now proceed to consider the several questions referred to us while we were employed in framing the Bill now submitted.

46. *Farmers of rent.*—With regard to the position of lessees, such as those referred to in the Proceedings of the Board of Revenue, communicated to us in G.O., Revenue Department, dated 24th March 1886, No. 1933, Mis., they come within the definition of 'landlord' and not of 'tenant' as given in the Bill. The word 'tenant' is defined as meaning "a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person"; but explanation (2) appended says, that "the payments to be made by a farmer of rents to a landlord are not rent." If, therefore, the payment is not rent, the payer cannot be a tenant. Consequently, under sections 32 and 41 of the Revenue Recovery Act (II of 1864, Madras), taken with the above definition of 'tenant,' favorable leases granted by zamindars and others to such middlemen will not, in case of attachment or sale of land for arrears of revenue, be binding on the Collector or the purchaser.

47. The Board of Revenue speak of 'tenure-holders,' a Bengal term; but we have not considered it necessary to introduce in our Bill this class of intermediaries between the zamindar and the raiyats, who hold a peculiar proprietary status, and, for whom, from such intermediaries being there very common, the Bengal Act makes elaborate provision. The lessees referred to in the Salem case in question were farmers of a mutthádár's rights, and, since the purchase of the mutthá villages by Government at a sale for arrears of revenue, have become farmers of revenue under Government. In either character, however, they come distinctly within the definition of 'landlord,' and as such are liable to be proceeded against under the Revenue Recovery Act.

48. *Market fees.*—The question mooted by the Board of Revenue and referred to us in G.O., Revenue Department, dated 10th June 1886, No. 459, is, whether zamindars should not be restrained from exacting exorbitant fees for the use of land in their estates for holding markets. On this question we beg to observe, that an enactment to regulate the relation of landlord and tenant seems to us to be hardly a proper place to regulate the fees to be paid to the owner of land by traders using it for markets once in a week or so. In our opinion, the matter is one dependent solely on the mutual consent of the parties concerned, since obviously a zamindar has no right to compel any one to use his land for the purpose and to pay for it. If, however, it is considered desirable, in the interests of trade, to provide for suitable accommodation, at reasonable rates, being available for periodical markets in proprietary estates, there is, as pointed out by the Board themselves, adequate legislative authority* for the acquisition of the required land and for its appropriation to that purpose under the direction of the Local Board.

* Madras Local Board's Act. Sec. 153.

49. *Scheduled districts.*—As regards the question of the applicability of the Rent Act to scheduled districts, referred to in the Proceedings of the Judicial Department, communicated to us in Revenue G.O., dated 16th November 1886, No. 6923, Mis., this paper reached us after our sittings were closed. In the Bill, as finally adopted at our last meeting, we have left a blank for the local areas to which the Act shall or shall not apply, and we submit for the consideration of Government whether it would not be best to provide that it shall be extended to, or withdrawn from, specific areas by a notification of the Governor in Council.

50. *Suggestion to circulate the Bill for opinions.*—In conclusion, we beg to suggest that the Bill, before its introduction into the Legislative Council, be referred to the Honorable the Judges of the High Court and to the Board of Revenue, in view to eliciting the remarks and criticisms of all Judicial and Revenue officers competent to pronounce an opinion on its provisions, as well as of all zamindars and others interested.

51. The Bill herewith submitted has been adopted by the Committee, subject to the dissents of some of the members on particular points which will be found in appendix B.

The Hon'ble Mr. Goodrich.
Mr. Garstin, C.S.I.
Mr. H. J. Stokes.
Mr. Rajaratna Mudaliar, Rai Bahadur.
Mr. Lakshmikanta Rao Pantulu, Dewan Bahadur.
Mr. Kanchi Subba Rao.

52. A copy of the collection of papers and of the digest of decided cases referred to in paragraph 2 of this report, as also of a file of the Proceedings of the meetings held by us, accompany.

We have the honor to be
Sir,
Your most obedient Servants,

To

THE SECRETARY TO GOVERNMENT,

REVENUE DEPARTMENT.

SIR,

Introduction.—We, the Committee appointed by G.O., dated 15th July 1885, No. 827, R.D., to consider and report on the draft of the Madras Tenancy Bill drawn up by the Hon'ble D. F. Carmichael, have the honor to submit the following report:—

The instructions conveyed to us refer us, for the object of the contemplated revision of the rent law, to G.O., dated 29th April 1882, No. 437, and the object is there enunciated to be to distinctly lay down that—

"the raiyat and his heirs or assigns possess a right of continuous occupancy subject only to the condition of payment to the Sirkar or its assignee of the Sirkar share of the crop or its value as established by proved custom, mutual agreement or decision of competent authority, and evidenced by the pattá and muchilká, unless these documents have been dispensed with by proved mutual agreement—with liberty to dispose of such right by sale, gift or otherwise, until evicted by due course of law for failure to discharge such legally-established and limited charge on the land or to enter into an agreement in the form prescribed by law with respect to such limited charge."

We have also had the sentiments of Government conveyed to us, that "the Bill should deal only with acknowledged evils, avoiding unnecessary changes and holding the scales even between the landlord and tenant."

2. To aid us in our deliberations, our Secretary made a collection of all papers relating to the history of legislation on rent law in this presidency, and also prepared a digest of decided cases, illustrating the defects of the existing Act, so far as they could be collected from published reports and other available materials.

3. *The Hon'ble Mr. Carmichael's Bill not adopted.*—First, as regards the Bill referred to us for consideration, we have to observe that it was drawn up chiefly on the lines of the original Bengal Bill; but that Bill was superseded by two others, and the Act finally passed differs very materially from it. Further, the Madras Bill had been so generally condemned, that we thought that it would serve no useful purpose to enter into a consideration of its provisions in detail, and that the best course for us to adopt was to draw up a new Bill.

4. *A new Bill drawn up on the model of the Bengal Act.*—Having thus decided to frame a new Bill, the next question for consideration was, whether it should be cast on the same model as the existing Madras Act, or on any other improved and more perfect model; and after careful consideration we came to the conclusion, that we could not do better than adopt the new Bengal Act as a pattern, so far as it is applicable to the circumstances of this presidency. The latter enactment was the product of much lengthened discussion and mature deliberation, during which the interests of both the landlord and tenant received the fullest consideration. It excludes all the objectionable portions of the original Bengal Bill, reproduced in the Madras draft, which elicited the adverse comments so generally passed on it. At the same time, it amply provides for the protection of the proprietary tenant, and, indeed, we doubt whether

any provisions, not substantially similar to those adopted by the Supreme Legislature for Bengal, would effectually meet the object enumerated in the Proceedings of the Madras Government, dated 29th April 1882, No. 437, without at the same time materially affecting vested interests opposed to those of the tenant.

* Chap. II (Classes of tenants).
Chap. IV (Raiyats holding at fixed rates).
Sec. 30. (Price lists).
Chap. VII (Under raiyats).
Chap. VIII (General provisions as to rent). Secs. 50—54, 57, 60 and 69—71.
Chap. IX, Secs. 90—100. (Measurements and managers).
Chap. X (Record of rights and settlement of rents).
Chap. XII (Distraint). Secs. 122—126, 127, 138 and 141.
Chap. XIV (Sale for arrears under decree). Secs. 160—168 and 174—177.
Chap. XV (Contract and custom). Secs. 179—181.
*Chap. XVII (Supplemental). Secs. 189—196.

5. *Portions of the Bengal Act omitted and of Madras Act VIII of* 1865 *retained.*—We have omitted those provisions of the Bengal Act (Chapter III) which refer to the peculiar tenures intermediate between those of zamindars and raiyats, which exist in that presidency, as well as those * which are otherwise unnecessary or inapplicable to the less complicated relation of landlord and tenant in this presidency. At the same time, we have retained those portions of Madras Act VIII of 1865, which are specially adapted to this presidency, only amending such of them as have been found to be defective or ambiguous.

6. The provisions which we have taken from the Bengal Act, with such modifications as we considered necessary, are chiefly those relating to—

(1) Protection of occupancy rights. (Secs. 20—23, 25, 26 and 65.)
(2) Restriction of contracts adverse to those rights. (Sec. 178.)
(3) Enhancement and reduction of money-rent, as well as commutation to a fixed money-payment of rent payable in kind or otherwise liable to fluctuation. (Secs. 27—30, 32—34, 36—38 and 40.)
(4) Restriction of distraint to crops unstored and in the possession of the defaulter. (Sec. 121.)
(5) Tenants' rights to make improvements and compensation therefor in cases of eviction. (Secs. 76—83.)
(6) Survey and record of landlords' private lands. (Secs. 116—120.)
(7) Abolition of summary jurisdiction and transfer to ordinary courts of the power, with certain exceptions, of hearing and adjudicating all suits having reference to the relation of landlord and tenant. (Secs. 143—152 and 154—157.)

The provisions of the Madras Act (VIII of 1865) which we have retained are mainly those relating to—

(1) Exchange of pattás and muchilikás. (Secs. 3, 4, 6, and 7—10.)
(2) Rates of rent where there is no question of enhancement or reduction. (Sec. 11.)

On minor matters, we have adopted, with the necessary modifications, the provisions contained in either the Bengal or the Madras Act, according as they appeared more suitable and appropriate.

† All zamindárs, shrotriyamdárs, muttahdárs, jaghirdárs, pálayagárs and inámdárs; also usufructs, mortgagees with possession, and purchasers of the interest of any of the above persons, and all persons farming rents from the above persons or farming the land revenue under Government.
Bill, Secs. 4, 5 and 103.

7. *Protection of occupancy right and restriction of contracts adverse thereto. Chap. II and XI.*—Of the provisions taken from the Bengal Act, (1) and (2) are by far the most important and require to be considered together. The substance of these provisions is this:—Every tenant of the landlords† mentioned in section 3, clause (*a*) of the Bill shall be presumed to have a right of occupancy in his holding until the contrary is proved; and every such tenant who has held continuously for twelve years shall, except where the term of the tenancy is limited by a contract dating prior to 1st May 1871, be held to have a right of occupancy in all land for the time being held by him in the village; the date specified being that of the High Court's decision in Chokkalinga Pillai's case (6. Madras High Court Reports, page 164), which has placed the status of the proprietary tenant in this presidency in jeopardy, necessitating the legislation now undertaken. Even older contracts cannot bar in perpetuity the acquisition of occupancy right, or take it away where such right existed at the date of the contract. It is not necessary that the same land should have been held continuously for twelve years; occupation of different lands at different times without a break in the period of twelve years being sufficient

to confer a right of occupancy. The object of this provision is to guard against the tenant being shifted from field to field—an expedient which was resorted to by zamindars in Bengal upon the passing of Act X of 1859, which gave the status of occupancy raiyat to every tenant who held the *same* land continuously for twelve years. Moreover, the occupation may be by the particular tenant himself or by others through whom he claims, and it may also be in conjunction with co-sharers. There is, in the case of an occupancy tenant, to be no eviction except in execution of a decree passed on the ground that the tenant has used the land in a manner which renders it unfit for the purposes of tenancy, or that he has broken a condition, not inconsistent with the provisions of the Act, on breach of which he is, under the terms of a contract, liable to be ejected.
Sec. 7.

8. *Reasons for invalidating stipulations for the extinction or non-accrual of a right of occupancy.*—The reasons for which it was decided in Bengal to invalidate stipulations for the extinction or non-accrual of a right of occupancy are explained in Sir Evelyn Baring's speech on the first Bill as follows *:—

* Abstract of the Proceedings of the Legislative Council, dated 13th March 1883, page 342.

"I should certainly be the last to press for the interference of the State in the regulation of any maters which can, without detriment to the public welfare, be left to settle themselves without any such interference. . . . . But I conceive that nothing is more likely to check the advance of sound economic knowledge in India than the misapplication of the canons of political economy. To quote a single trite instance of such a misapplication:—If scarcity arises in any district of India, the surplus food from other districts will, provided there be roads, be poured into that district, in order to meet the demand. That is what political economy means when it says that the supply will follow the demand. But, if no roads exist, the supply will not, and cannot, follow the demand, and mortality from starvation will ensue, as it has before ensued. So also, when political economy speaks of freedom of contract, it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth. There are, according to the Famine Commissioners, 9,752,000 tenants in Bengal, of whom 2,789,000 pay a rent of from Rs. 5 to 20, and no less than 6,136,000 pay a rent of less than Rs. 5, which latter rate, I may observe, implies a holding of from two to three acres. Can any one who is acquainted with the facts say, in respect to the majority of these tenants, that their education, their knowledge of law and the circumstances under which they till the soil, are of a nature to admit of that free and intelligent choice which is in the essence of the economical, as it is of the legal, theory of freedom of contract? I venture to think that any such contention cannot be maintained. The mass of the raiyats are uneducated. . . . . Many raiyats are ignorant of their legal rights, and others, when cognisant of those rights, are afraid to make any attempt to enforce them. Agriculture forms, and must continue to form, their only means of gaining a livelihood.

"Under these circumstances, it is idle for the present generation to think of establishing freedom of contract as the economic basis on which the relations between landlord and tenant in Bengal can be made to rest. The legislature must recognise the facts with which it has to deal, and the leading fact with which it has to deal is, that custom, and not contract, has in the main governed the relations between the zamindars and raiyats in Bengal from time immemorial, and that custom, and not contract, must in the main continue in the future to govern those relations."

We need here scarcely add, that the description of the condition of the Bengal raiyats in the above extract is, to a great extent if not wholly, applicable to Madras.

The provisions, as finally adopted in regard to contracts, are succinctly described in Sir Steuart Bayley's speech on the introduction of the final Bill † thus:—

† Extra supplement to the Gazette of India, dated 14th March 1885, page 68.

"First I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limitations into three classes, the first one referring to all contracts, whether past or future, the second to quite recent contracts, the third to future contracts only. In the first-class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy rights, to destroy occupancy rights already in existence, to allow ejectment without process of law, to prohibit improvements. The second-class deals with contracts purporting to bar the accrual of occupancy rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to. In the third-class, which only restricts future contracts, we have simply put in legal form the general statement that neither the accrual of the occupancy right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease."

9. *Private lands of landlords exceptd from restrictions on contracts.*—From the provisions described in para. 7, however, are excepted cases of tenants cultivating the private lands of landlords, known as *kambattam, khás, séri, pannai*, or lands of which the occupancy right has become vested in the landlord by transfer, succession or otherwise; also cases of reclamation leases and of leases of lands reclaimed at the expense of the landlord. In the former of the last two cases, the tenant may acquire an occupancy right on the expiration of the term of the lease if it is for twelve years or more; but in the latter case, the terms of a contract can preclude the tenant acquiring a right of occupancy during a period of thirty years from the date on which the land or part is first let to him.

Sec. 103 proviso.

10. *Enhancement, Reduction and Commutation of rent.*—The enhancement, reduction and commutation of rent will be more appropriately considered under the head of rates of rent.

11. *Distraint for arrears. Chapter VIII, Sec.* 55.—In regard to distraint for arrears of rent, the only important modification we have made in the existing law is, that we have restricted it to crops grown on the defaulter's holding and remaining thereon and in his possession, whether gathered or ungathered. This restricted provision was adopted in Bengal Act X of 1859 after the fullest consideration, and appears to us necessary to guard against oppression and abuse on the part of the landlord. It is here to be observed, that there is nothing to prevent the landlord proceeding by regular or small cause suit to realise his dues by sale of the defaulter's other moveables. The question which engaged the committee's special consideration in this connection was, whether the landlord should have the power, as at present, to distrain of his own authority, or whether he should, as the new Bengal Act provides, make the distraint through the courts. After much discussion the committee decided to maintain the power now vested in the landlord.

12. *Improvements and compensation for those made by the tenant.*—It is a defect of the existing law that it makes no provision in respect of tenants' improvements and their right to be compensated therefor in cases of eviction.

* Secs. 112—119.

Ample provision * is made under this head, defining what shall be deemed an improvement; giving the occupancy-tenant a prior right, where both he and his landlord wish to make an improvement, provided that another holding under the same landlord is not affected; and vesting in the Collector the power of deciding, in cases of dispute, the question as to the right to make, and as to whether a particular work is, an improvement. The principles on which compensation to be made to the tenant in cases of eviction is to be calculated, are clearly laid down. To prevent future disputes as to the fact of an improvement having been made or as to its nature, provision is made for the registration of improvements by the Collector, after due inquiry, on the application of either the landlord or the tenant. In the chapter on rates of rent, the landlord is precluded (sec. 27) from enhancing the rent on the ground of an improvement made by him, unless he shall have registered it.

13. *Survey and record of landlord's private lands. Chapter XIV.*— We have stated (para. 9) that, from the provisions which ensure continuous occupancy to the proprietary tenant are excepted the private or demesne lands of the landlord. In the case of these, the Bill gives the landlord the right of exercising absolute ownership and bars the accrual of occupancy right. The principles on which such lands are to be defined are enunciated, and to facilitate the settlement of disputes which may arise as to whether certain land is the landlord's private land or not, provision is made for a survey and record by a Revenue officer of all such lands in a specified local area where the Governor-in-Council considers this necessary, as also for an inquiry being made and the result recorded by such officer, under rules prescribed by Government, in individual cases, on the application and at the expense of either the landlord or the tenant. The lands which the Revenue officer is to record as private lands are —(1) cultivated land recognised by village usage as such under the designation of *kambattam, séri, pannai* or *khás*, and (2) land proved to have been cultivated by the landlord himself by hired labor for twelve continuous years before the passing of the Act. In addition to these two descriptions of land, the Revenue officer may record as private land any other which he may consider to be such, having regard to local custom, to the question whether the land was, before 1st May 1871 (the date of the

High Court's decision in Chokkalinga Pillai's case), specifically let as private land, and to any other evidence produced. Those rules are to guide also the decision of disputed questions in Civil Courts.

14. Lands surrendered by occupancy tenants and those of which the proprietary-tenancy has been acquired by the landlord by purchase or otherwise, would not necessarily come under the definition of 'private lands,' except where the condition which constitutes the second of the two heads into which they are divided as above specified, is satisfied. Where this condition is not satisfied, land lapsing as above mentioned would ordinarily come under the same category as communal land which, in Bengal, is designated *rayati* in distinction from *khámár* or private land. Such land the landlord will be at liberty to take into cultivation himself and retain in his own hands so long as he likes; but if he gives it for cultivation to a tenant, it would, in like manner with the ordinary communal land and subject to the provision mentioned in the concluding part of the preceding para., be subject to the provisions of the Act in regard to the accrual of occupancy right. The principle of the distinction here indicated is clearly expounded in the report of the Government of Bengal on the Select Committee's Draft Bill (*vide* extra Supplement to the *Calcutta Gazette* of the 15th October 1884, page 147) thus:—

"There is no prohibition against landlords cultivating lands which, from whatever cause, may lapse into their hands. There is no injunction or obligation imposed on them by the Bill to let such lands to raiyats; they are perfectly free agents in the matter to let the lands to raiyats, or to cultivate them themselves as they please. What the Government say to landlords in this chapter is broadly this:—Your estates may be regarded as made up of two sorts of land, *khámár* or demesne, and *rayati* or communal land. The former comprises all the land which, according to the ancient custom of the country, or according to any local practice, has been recognised as private land, *plus* all the land which, before the commencement of this Act, you have given evidence of a wish to permanently cultivate yourself. You are not entitled as of right to the latter. But we recognise the logic of facts, and we desire to terminate this strife by a liberal concession to you. The communal or *rayati* land will include the rest of your estate. You may bar the accrual of the occupancy *status* in your *khámár* or private land. In reference to it you are given the fullest freedom of contract. But in reference to *rayati* land, you may not bar the growth of tenant right, unless in accordance with the provisions of this Act. As regards all *rayati* land which may have lapsed, you may hold and cultivate the same yourself as long as you wish; but if you do let it to tenants, you must allow those rights to accrue to your tenants (subject to the payment of a fair rent) which this Act guarantees; you must not deprive them of that security which, in the public interests, it is desirable they should have."

The object of thus circumscribing the limits of landlord's demesne lands is, that the area of communal land available for the wants of the increasing agrarian population may not be materially curtailed. On this subject, reference is solicited to the observations of the Honorable Mr. Reynolds and Sir Steuart Bayley in the debates at the final reading of the Bengal Bill (*vide* Supplement to the *Gazette of India*, dated 9th May 1885, pages 768 and 769).

15. Having regard to the importance which must attach to the record made by a Revenue officer as above described, provision is made for a draft thereof being published, and for any objections, which may be made to any entry therein or to any omission therefrom, being heard and considered before the final publication of the record. Provision is made also for the appointment by the Governor-in-Council of a special Judge or Judges to hear appeals from the decisions of Revenue officers under this chapter and for a final appeal to the High Court. In Bengal, presumably, it is intended that Revenue Commissioners should be the special Judges for this purpose; in this presidency these appellate functions might be assigned to Collectors of districts, the original powers being vested necessarily in divisional officers.

16. To meet the particular requirements of this presidency, we have placed in the same category as landlord's private lands inám lands of which the holders are themselves proprietary tenants; as, for instance, where the original grant consisted of waste land and necessarily conveyed the right of occupancy, or where it consisted of a remission of the Government revenue in favor of the proprietary tenant. The rules reproduced from the Bengal Act for a record of private lands are of course inapplicable to this class of rights, and adverting to the difficulty which exists in laying down

specific rules for the determination of the question of what tenures are of this description, and seeing also that disputes in regard to such tenures are not likely to be, if at all, of frequent occurrence, we have left such disputes for determination in ordinary course by civil tribunals.

17. *Abolition of summary procedure and transfer of all suits under the Rent Act to ordinary courts.*—The summary procedure provided by the existing Rent Act is the necessary consequence of the jurisdiction being vested in Collectors; but the question the committee had to consider was, whether the adjudication of suits in relation to the rights and liabilities of landlord and tenant should devolve on the Collectors or the ordinary courts. After careful consideration, the committee came to the conclusion that the latter course would be the best. This would involve the abolition of the existing system of summary procedure.

18. It is to be observed that, under the early regulations, Collectors had no jurisdiction whatever in rent cases, and that it was by Regulation V of 1822 that summary powers of check over the proceedings of landlords were vested in those officers. The reasons for this were, that the powers which the landlords had were prompt and summary, while redress for the abuse of those powers had to be sought by regular suit. In his minute, dated 12th February 1817, Mr. Fullerton, Member of Council, explains the object of the legislation then contemplated, thus:—

"If the power of land-holders be direct and summary, so should the means of remedy be against abuse to the ryot, and that can only be done by interposing the summary and interlocutory jurisdiction of Collectors, *not to decide finally, but to guard the ryot against abuse, to maintain him in his possession where there appears no just ground for his ejection*, leaving the burthen of law process to the party the best able to bear it."

Now, however, by the Bill, the powers of landlords are materially restricted; distraint is limited to crops, and provision is made for every matter connected with the relation of landlord and tenant being judicially investigated and adjudicated upon. Such being the case, there seems to be very little need to provide summary remedies or to employ the agency of the overworked Revenue establishments. Some of the reports* on the Honorable Mr. Carmichael's Bill, embodied in the Proceedings of the Board of Revenue, dated 1st September 1884, No. 3050, forcibly point out that that Bill, if it became law, would impose upon the divisional officers an amount of work for which they can scarcely be supposed to be better qualified than district munsifs, and which they would hardly be able to perform without neglecting their ordinary duties. Mr. R. Sewell, Acting Sub-Collector of Chingleput, says:—

* Letters of— Page.
Mr. Pinto, Deputy Collector, Chingleput .. 28
Mr. R. Sewell, Ag. Sub-Collector of Chingleput .. 30
Mr. Rajaram Row, Manager of the Ramnad estate .. 69
Mr. Narainsamy Naidu, Temporary Deputy Collector, Tanjore .. 102

"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'. . . . . 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. . . . 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."

19. Indeed, from the statistics given in the High Court's Administration Report for 1885, we do not see that we can calculate upon rent cases being dealt with with greater promptitude by Revenue courts. The relative rates of speed at which summary suits in Revenue courts under Act VIII of 1865 and regular and small cause

suits in the courts of district munsifs were disposed of during that and the previous year, are given as under:—

Courts.	Uncontested Suits.		Contested Suits.		Average pendency of Applications for Execution.	
	1884.	1885.	1884.	1885.	1884.	1885.
	Days.	Days.	Days.	Days.	Days.	Days.
1. Revenue courts	58	94	120	151	71	124
2. District Munsifs' courts, ordinary suits	73	75	163	171	64	54
3. Small causes in District Munsifs' courts	33	32	51	46		

The proportion of contested to uncontested suits and of appealed to unappealed cases, as also the results of appeals, under both heads, appear thus:—

Courts.	Percentage of		Percentage of		Percentage of
	Contested.	Uncontested.	Appealed.	Unappealed.	Decisions affirmed.
Revenue courts	66·37	33·63	31·42	68·58	54·23
District Munsifs' courts ..	36·04	63·96	22·48	77·52	60·15

20. We think it sufficient here to add that the question of the adaptability of summary procedure to rent suits has been exhaustively discussed, and the idea definitively abandoned, in Bengal. On this subject the Rent Law Commission expressed their opinion (their Report, paragraph 174) as follows:—

"In order that justice may be done, truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favor of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure, under which rights were hastily and perfunctorily adjudicated upon. . . . . We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice but of choking off litigation, and we cannot recommend the adoption of any summary procedure for rent suits which would involve even a partial renewal of it."

* Abstract proceedings of the Legislative Council of India, dated 2nd March 1883.

The Honorable Mr. Ilbert, in his speech on the introduction of the first Bill, expressed his concurrence emphatically in the above remarks,* and added—

"There is no royal road to the discovery of facts, and most short cuts are mere delusions." . . . . . "The reason why rent suits are apt to be long and troublesome is not because the procedure is defective, but because the rights involved are obscure and uncertain and the facts are difficult to ascertain. No amendments of procedure will cure these evils."

21. To meet the requirements of particular tracts, such, for instance, as the Ramnad division in the district of Madura, power is reserved* for the Governor in Council to invest any Revenue officer with the powers of a Civil court in respect of all or any classes of suits or proceedings under the Act in particular local areas. The Bill, it is further to be observed, vests in the Collector exclusively such functions as require revenue experience, to wit: the carrying out of its provisions in respect of the commutation of rent,† the adjudication of disputes with regard to, and the settlement of compensation for, as well as the record of, improvements,‡ and the investigation of disputes in regard to, and the record of, landlord's private or home-farm lands.§

* Sec. 82.

† Sec. 34.

‡ Secs. 112—119.

§ Secs. 126—136.

22. While making most of the provisions of the Code of Civil Procedure applicable to the trial of suits under the Rent Act, the Bill provides for the simplification of the procedure where possible. The first summons to the defendant may be for final hearing *; a written statement is not to be filed by the defendant without the leave of the Court †; and the Court may, when passing decree, order execution on the oral application of the decree holder, unless it is for ejectment for arrears.‡ Further, the High Court may, with the approval of the Governor in Council, exclude any particular sections of the Code of Civil Procedure in regard to all or any particular classes of suits.

* Sec. 88 (c).
† Sec. 88 (*c*).
‡ Sec. 88 (*d*).

23. *Pattás and muchilikás. Chap. III.*—The most important provisions in the existing Madras Act, which we have retained, are those relating to the exchange of pattá and muchiliká and to rates of rent. Of course these are restricted to occupancy tenants. The utility of the provision for the exchange of written agreements between the landlord and the tenant is so apparent, that any argument in support of it seems hardly called for. In Bengal this provision has been abandoned; but there the obligation imposed by the early enactments in this respect has from the first been a dead letter; whereas in this presidency it has, at least since the passing of Act VIII of 1865, been more or less strictly complied with, and has afforded to the tenant that protection which his comparatively helpless condition obviously requires. No doubt, in many cases, grasping zamindars, taking advantage of the High Court's ruling of 1871, have contrived to exact undue terms in the shape of muchilikás; but this was due to the absence of adequate legislative protection in other respects, which is secured to the proprietary tenant by the provisions made in the Bill under the head of Contract and Custom (*vide* Chapter XI).

24. The only points in the detail of the chapter on pattás and muchilikás which call for notice are the following:—We have omitted the provision in the existing Act (section 7), which allows of pattá and muchiliká being dispensed with by the mutual consent of the landlord and tenant. This mutual consent must, in the nature of the case, be extremely difficult to prove, and the provision necessarily leaves an opening for a great deal of false swearing. Indeed, this provision virtually rescinds the obligation to exchange written engagements, and as practically the option thus given has been, to a great extent, if not entirely, inoperative, it does not seem that there will be any great hardship in making the requirement strictly obligatory. (Reference is solicited to the remarks under this head in the Digest of Rulings compiled by our Secretary, page 13.)

25. We have supplied certain obvious imperfections in the existing law by expressly allowing that the written engagement may be for one or more years, and that the terms of the engagement shall remain in force until it is renewed. In view, further, of the difficulty likely often to arise in ascertaining whether or not a pattá was tendered, we have provided for its being, if necessary, tendered by filing in Court.

Sec. 13.
Sec. 17.
Sec. 10.

26. We have further, with reference to the Proceedings of the Board of Revenue, dated 16th January 1884, No. 134 (collection of papers, page 323), expressly limited the scope of the provision for the exchange of pattá and muchiliká so as to render a compliance therewith necessary only to enable a landlord to proceed under this Act, leaving his right to recover by a regular suit in ordinary course unaffected.

27. *Rates of rent. Chap. IV.*—The question of rent on which depends to a great extent the value of the tenant's proprietary interest in land, is a very difficult one, and under the operation of the existing law which, in its main features, is the same as was introduced at the permanent settlement, the pressure of rent in relation to the produce of the land has, in different classes of cases, been extraordinarily unequal (*vide* general remarks in the Digest of Rulings under this head, pages 24—28). But it is now hardly possible to prescribe general rules which will secure to the tenant the benefit of fair rents in all cases, without at the same time disturbing rights which have grown up out of the existing relation of landlord and tenant. We have therefore retained in the main the provisions of the existing law with such modifications and

improvements as seemed desirable and unobjectionable, only providing on the lines of the Bengal Act checks on future enhancements with a provision for reduction, on specified grounds. These provisions likewise necessarily refer to occupancy holdings only.

28. The provisions in regard to rates of rent are contained in sections 19 and 20 of the Bill. As respects the rates agreed upon by contract, we have, as a necessary consequence of the restrictions imposed on contracts, provided that they shall be enforced in so far only as they are consistent with the provisions of the new Act, and have at the same time explained that, where rent has been paid at a certain rate for a continuous period of not less than three years, the fact shall be presumptive evidence of a contract to pay at that rate. In regard to survey assessment which, in the absence of a contract, is to be held to be the proper rent, we have omitted the date, viz., 1st January 1859, mentioned in clause 2 of section 11 of Act VIII of 1865, as we have not been able to find out why such assessment is declared to be an authoritative standard in those cases only where the survey took place prior to that date, and as, so far as we can perceive, no reason appears for thus drawing a line. We have omitted local usage as the third alternative, seeing the indefinite character of this standard and the difficulty there must always be in ascertaining it satisfactorily, and have substituted therefor rates established and paid for neighbouring lands of similar description and with like advantages. While retaining the provision in the existing Act, which allows the landlord to arrange his own terms of rent in respect of unoccupied land at his disposal, we have specifically included mining and quarrying among the purposes for which he may grant favorable leases. The most important provision we have newly introduced is, that, in the case of irrigable land, the landlord shall not be entitled to demand any rent where, in consequence of his neglect to keep the irrigation work, on which the land depends, in repair, there has been a failure of crop, or the crop has been secured by means of irrigation provided by the tenant at his own expense. The reasonableness of such a provision for the protection of the tenant from an unjust exaction is obvious, and the necessity for it is shown sufficiently clearly in the Digest of Rulings (pages 20, 21 and 25). This provision accords to the tenant of a proprietary estate no more relief than what the Government raiyat enjoys.

Sec. 19 (1).
Note of explanation appended to Section 19 (1).
Sec. 21.

29. *Enhancement of rent.*—The provisions for enhancement are restricted to rent fixed in money, and have for their basis a rebuttable presumption that what is for the time being payable is fair and equitable rent. Rent may be enhanced by contract or by suit. An enhancement by contract is subject to the following conditions, viz.:—

Secs. 22—31.

(1) The contract must be in writing and registered;

(2) The rent previously payable shall not be raised by more than two annas in the rupee; and

(3) It shall not be raised at shorter intervals than fifteen years.

At the same time, a tenant shall not be allowed to object to rent which he has actually paid continuously for three years or more. The limit of two annas in the rupee shall not apply where a tenant binds himself by a contract to pay an enhanced rent in consideration of an improvement made by the landlord.

30. An enhancement of rent may be obtained under a Court's decree on any of the following grounds, viz.:—

Sec. 25.

(1) Rise in the prices of staple food crops;

(2) Increase in the productive powers of the land by the landlord's improvements;

(3) Increase in the productive powers of the land by a Government work accompanied by an increased revenue demand on the landlord;

(4) Increase in the productive powers of the land by diurnal action, e.g., a change in the course of a river, rendering irrigation practicable where it was not so before.

Secs. 26—29. Clear rules are prescribed for the determination of the increase of rent allowable on each of these grounds, and power is given to the Court,

Sec. 30. where it sees reason to do so, to direct that the enhancement decreed shall take effect by annual increments within a period not exceeding five years.

31. The only point calling for notice in the foregoing provisions is the apparent inconsistency in the limitation of enhancements by contract during a period of fifteen years to 2 annas in the rupee; while no such restriction is imposed on those obtainable by suit on the ground of a rise in prices. The considerations on which it has been found necessary thus to restrict enhancements out of Court are succinctly explained by Sir Stewart Bayley in his speech at a later stage of the debates on the Bengal Bill. The Honorable Speaker, while admitting the force of the arguments addduced against the 2-anna limit, points out* :—

* Extra supplement to the *Gazette of India*, dated 14th March 1885, page 49.

"On the other hand, it is urged that 12½ per cent. (a fraction which allows of the rent being enhanced 25 per cent. every 30 years, or by 100 per cent. in less than 90 years) is as much as a moderate landlord would ever be likely to ask as an addition to the rent; that it is quite reasonable, if the landlord wants a larger enhancement than this, to send him to the Courts for it, where he can prove its reasonableness; that the scheme encourages moderate enhancements and discourages any large enhancements; that in some parts of the country, and precisely in those parts where the raiyats are least able to protect themselves and most likely to agree, under pressure, to any terms which their landlords may impose, the rents are already so high, that no sufficient margin for subsistence is left to the raiyat, and a single bad season suffices to break him down; and consequently that, in the absence of the checks which the committee have removed from enhancement by the Courts, it is imperatively necessary, for the very existence of the raiyat, that enhancement by contract should be restricted within comparatively narrow limits." * * * * * "Whatever doubts there may be as to the efficiency in practice of this particular check here the speaker refers to the possible evasion of the check by over-stating the previous rent), no competent observer can doubt the reality of the danger at which it is aimed."

Referring to the danger there is in this country of tenants being induced, under pressure, to agree to undue terms, the Honorable the Lieutenant-Governor of Bengal points† to the evidence collected in Behar and elsewhere, which shows that the raiyat requires that protection in respect of enhancement of rent, which a sifting examination of facts on both sides in Court would alone secure for him.

† Extra supplement to the *Gazette of India*, dated 2nd May 1885, page 21.

There shall not be more than one enhancement on the first of the grounds specified in the preceding paragraph within a period of fifteen years.

Sec. 32. 32. *Reduction of rent.*—The grounds on which a tenant may obtain a reduction of rent are:—

(1) Deterioration of the soil;

(2) Fall in the prices of the staple food crops; and

(3) Undue enhancement within 20 years before suit.

The justice of a reduction on the first two of these grounds is obvious. That on the second ground is in consonance with the corresponding provision under the head of enhancement, and, in like manner with it, bars a suit for abatement within fifteen

Sec. 33. years of the last reduction. The third ground has been inserted with special reference to the effect of the High Court's ruling in Chokkalinga Pillai's case, which is known in many cases to have enabled grasping zamindars to exact arbitrary terms by threats of eviction.‡

‡ *Vide* G.O., dated 29th April 1882, No. 437, paragraph 3.

We have further provided a clause giving the Court a general power, in a suit

Sec. 32 (2). for reduction of rent, to grant such abatement as may appear to it fair and equitable.

33. *Commutation of rent.*—The uncertainty which the sharing system attaches to

Sec. 34. the tenant's liability and its effects in repressing industry are so manifest (*vide* Digest of Rulings, page 25), that no argument is needed in support of the provision for the commutation of rent, where it is liable to fluctuation, to a fixed money payment. The Bill accordingly provides that, in such cases, the Collector may, on the application of either the tenant or his landlord, fix the rent in money. Of course the Collector must be vested with some discretion in granting or disallowing the application for commutation, as well as in determining the amount of money payment: but all the points which need to be considered by him in order to secure a fair result, are specified. The Collector's decision on the latter head is made subject to appeal to the District Court.

34. We will now proceed to consider such of the noticeable points, not embraced under the general heads set out in paragraph 6, as the Bill deals with.

35. *Non-occupancy tenants—Chapter V.*—In Chapter V are comprised rules to

Secs. 35—40. regulate the relation between landlords and non-occupancy tenants, to wit: those who do not possess the status of occupancy tenants as defined in paragraph 7 *supra*. A non-occupancy tenant is liable to pay such rent as may be agreed on between himself and his landlord at the time of his

Secs. 36, 37. admission to the occupation of land; but subsequent enhancements to be binding on him must be by registered agreement or by agreement obtained through the Court. In the latter case, the enhanced rent is to

Sec. 39. be what the Court considers to be fair and equitable, and the tenancy at such enhanced rent is to extend to a term of five

Sec. 38. years only. He can be ejected under a Court's decree and on any of the following grounds only, viz.:—

(1) That he has made default in the payment of rent;

(2) That he has used the land so as to render it unfit for the purposes of the tenancy;

(3) That the term of his lease (where registered) has expired; and

(4) That he has refused to agree to an enhanced rent determined by the Court as above mentioned, or that the term of five years at which he was holding at such enhanced rent has expired.

Sec. 39. Clear rules are provided for the landlord securing an agreement to pay enhanced rent, and for such rent being determined by Court.

36. *Government raiyats and other holders of land not included in clause (a) section 3, —Chapter VI.*—In Chapter VI is inserted the existing provision to enable holders of land specified in clause (*b*), section 3, viz., Government raiyats and others not included in clause (*a*), to proceed to recover rent under the Act, provided they shall have secured written agreements.

37. *Arrears of rent. Consquences of default in payment of—Chapter VII.*—In

Secs. 42—46. Chapter VII are embodied the usual provisions as to when an arrear of rent shall accrue, with rules for the grant of, and penalty for withholding, receipts for payments made; the rate of interest chargeable on

Sec. 53. arrears is specified, and certain further provisions are inserted in order to enable the tenant, in cases of refusal by the landlord, or of doubts as to the title of the person claiming to receive, to deposit the rent

Secs. 47—50. in Court. In this chapter are distinctly set out the consequences of default in the payment of rent. It has been seen (paragraph 7) that an occupancy tenant cannot be ejected for non-payment of rent; but an important defect in the existing law pointed out in the correspondence printed in

Sec. 51. G.O., dated 18th July 1885, No. 841, has been removed by declaring rent to be a first charge on the land. A non-occupancy tenant is of course liable to be ejected for non-payment of rent, but only subject to the

rules and restrictions already mentioned, under a Court's decree. Another provision introduced from the Bengal Act is the power given to Courts to award damages where rent is withheld, or a suit for rent is brought, without reasonable cause.

Sec. 54.

38. *Distraint—Chapter VIII.*—In Chapter VIII is detailed the procedure to be observed in distraining crops for arrears of rent. We have retained the provisions in the existing Act in respect to time for distraining, liabilities of distrainer for loss or damage arising from irregularities in making the distraint, penalty for fraudulent conveyance of produce in view to preventing distress or for forcibly or clandestinely taking away distrained crops, and inquiry into claims of third parties. Adverting to G.O., Judicial Department, dated 29th September 1879, No. 2506, we have to observe that the Bill allows the tenant every opportunity to represent to the Court, before the distrained produce is brought to sale, any objections he may have thereto. The distrainer, besides serving a notice of distress on the tenant, and fixing up a copy in the village, is required, within twenty-four hours, to send another copy to the Court, and the tenant is allowed to show cause, within fifteen days from the service of notice from the Court, why the distraint should be withdrawn. No appeal however, is allowed from the Court's final order, but the tenant has the liberty, in cases of wrongful distraint, to recover compensation by suit, for which the time allowed by the Limitation Act is one year. One important provision made in the Bill is, that the tenant shall have full access to a growing crop distrained, and shall be at liberty to do all that is necessary to mature, reap or gather and to store and preserve it.

Sections of Act VIII of 1865.	Corresponding sections of Bill.
25	69
17	67
20	68
26	71
27	72
32	70

Secs. 56—59.

Schedule II, Article 28.

63.

39. *Judicial procedure—Chapter IX.*—Chapter IX deals with the procedure to be observed in the trial and determination of suits for rent, as likewise those in respect of other matters touching the relation of landlord and tenant. The several sections of this chapter explain themselves.

40. *Sale of land for arrears under decree—Chapter X.*—Chapter X contains provisions for the sale of the defaulting tenant's interest in the land for arrears of rent. As we have said, the Bill makes rent a first charge on the land, and in this chapter provision is further made for its sale, free of all incumbrances, with a saving in the case of those created before the passing of this Act, as also in the case of any right or interest, (such as that held under a sub-lease,) which the tenant shall have created with the landlord's written permission. As these provisions give the landlord all reasonable security for the realisation of his dues, we have not considered it necessary to adopt the suggestion of the Board of Revenue in their Proceedings printed in G.O., dated 18th July 1885, that the sale should carry an absolutely unincumbered title in all cases.

Sec. 97.

41. The Bill, in deviation from the Bengal provision, allows of the sale of a portion only of the defaulting tenant's holding, and the justice of this provision seems to us obvious, as in this presidency there are often holdings of considerable extent, of which it would be hard to deprive the tenant of possession of the whole, while the sale of a portion only would have sufficed to liquidate the arrear of rent. Moreover, there is very little difference between eviction and the sale of a tenant's interest in his entire holding.

42. This chapter also contains provisions for the discharge from the proceeds of sale of all incidental charges as well as of subsequently accruing rent; for the determination of disputes in regard to the latter; for any person holding a lien upon, or any other interest in, the land, preventing the sale by paying the arrear of rent with the incidental charges into Court, securing for his claim on the land a priority over all charges other than an arrear of rent; and also for an inferior tenant, whose interest would be voidable upon the sale, preventing such result in like manner, obtaining for the payment made by him a set-off against

Secs. 98—101.

any rent due by him to the defaulting superior tenant. At a sale of land for arrears under this chapter, the landlord may, but the defaulting tenant may not, bid.

Sec. 102.

43. *Limitation for suits under the Act—Chapter XII, sections* 106 *and* 107.—Chapter XII refers to limitations for suits under the Act, and we consider it necessary, in reference to it, only to advert to paragraph 10 of G.O., R.D., dated 5th October 1882, No. 1080 A., in which the Government refer, for the consideration of the Committee appointed to amend the Rent Recovery Act by the G.O., of 29th April preceding, the remark of the Madras Famine Code Committee, that the provisions of the existing Rent Act preclude any indulgence being shown by a landlord in time of distress to his tenants in the way of a temporary suspension of his demand. We beg to point out that the Famine Code Committee were under a misapprehension. Act VIII of 1865 does not prescribe any period of limitation for filing a suit for the recovery of rent, but leaves the matter to be governed by the ordinary law of limitation, which allows three years * for such suits. This admits of the landlord granting a temporary relief to his tenant in the way indicated, without "foregoing his claim altogether" by not taking process *within one year* from the time when the rent becomes due. The limitation to one year (section 2) refers to the summary process to be taken under the Act, viz., distress of moveables, and the present Bill, which restricts distraint to crops, adopts the same period from the Bengal Act.

* Act XV of 1877. Sch. II, Art. 110.

44. *Miscellaneous provisions—Chapter XIII.*—Chapter XIII contains various miscellaneous provisions. Of these, those relating to improvements and compensation for those made by tenants have been already noticed (paragraph 12). Of the other provisions which call for notice, the main features are as follow:—

Acquisition of land for useful purposes.—Provision is made for the acquisition by the landlord, through the Court, on payment of full compensation to the tenant, of land required for the improvement of his estate or of a holding therein, or for any work of public utility.

Sec. 120.

Sub-letting.—A tenant may sub-let only by a registered instrument or with the landlord's consent, and the term of sub-lease may not exceed nine years.

Sec. 121.

Surrender.—A tenant not bound by contract for a fixed period may, at the end of a revenue year, surrender his holding or, with the consent of the landlord, any part thereof. He is, however, liable to indemnify the landlord against any loss of rent for the year next following, unless he gives three months' notice of surrender. Cases are specified in which the Court is to presume, until the contrary is shown, that such notice was given. The effect of surrender is, that the landlord may either let the land to another tenant or take it into cultivation himself. Where the land is subject to an incumbrance secured by a registered instrument, the surrender shall not be valid unless made with the consent of the landlord and the incumbrancer (*confer with the provision in paragraph 10 supra*). Subject to this last mentioned condition, any terms in respect of surrender arranged between the landlord and the tenant by mutual consent shall be valid.

Sec. 122.

Abandonment of holding.—If a tenant voluntarily abandons his residence without giving notice to his landlord and without arranging for the cultivation of his holding or payment of rent, the landlord may enter upon the land and deal with it as empowered in the case of surrender. Before so doing, however, he should file a notice in the Collector's office in view to its being duly published, and the tenant may thereupon sue, within a time prescribed, and recover possession if he succeeds in satisfying the Court that he did not voluntarily abandon his holding. Where a sub-tenant has been let in by a registered instrument, the landlord shall, before entering on the holding, offer it to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant himself, and on condition of his paying up all outstanding arrears. If the sub-lessee refuses or neglects, the sub-lease shall be voidable, and the landlord shall be at liberty to proceed as above mentioned.

Sec. 123.

Sub-division of tenancy.—A sub-division of a holding, except in accordance with the law of inheritance or under a Court's decree, shall not be binding on the landlord, unless it is made with his consent in writing, and in the cases excepted, an apportionment of rent may be obtained by suit.

Sec. 124.

Notice of transfer.—In case of a transfer of a tenant's interest in the land, notice in writing should be given to the landlord by both the transferer and the transferee. Where notice is not so given, all proceedings taken against the former shall be binding on the latter. A corresponding provision is made in the case of a transfer of the landlord's interest, notice being required to be given to every one of the tenants affected.

Sec. 125.

Sec. 126.

45. *Questions separately referred to the Committee.*—We will now proceed to consider the several questions referred to us while we were employed in framing the Bill now submitted.

46. *Farmers of rent.*—With regard to the position of lessees, such as those referred to in the Proceedings of the Board of Revenue, communicated to us in G.O., Revenue Department, dated 24th March 1886, No. 1933, Mis., they come within the definition of 'landlord' and not of 'tenant' as given in the Bill. The word 'tenant' is defined as meaning "a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person"; but explanation (2) appended says, that "the payments to be made by a farmer of rents to a landlord are not rent." If, therefore, the payment is not rent, the payer cannot be a tenant. Consequently, under sections 32 and 41 of the Revenue Recovery Act (II of 1864, Madras), taken with the above definition of 'tenant,' favorable leases granted by zamindars and others to such middlemen will not, in case of attachment or sale of land for arrears of revenue, be binding on the Collector or the purchaser.

47. The Board of Revenue speak of 'tenure-holders,' a Bengal term; but we have not considered it necessary to introduce in our Bill this class of intermediaries between the zamindar and the raiyats, who hold a peculiar proprietary status, and, for whom, from such intermediaries being there very common, the Bengal Act makes elaborate provision. The lessees referred to in the Salem case in question were farmers of a mutthádár's rights, and, since the purchase of the mutthá villages by Government at a sale for arrears of revenue, have become farmers of revenue under Government. In either character, however, they come distinctly within the definition of 'landlord,' and as such are liable to be proceeded against under the Revenue Recovery Act.

48. *Market fees.*—The question mooted by the Board of Revenue and referred to us in G.O., Revenue Department, dated 10th June 1886, No. 459, is, whether zamindars should not be restrained from exacting exorbitant fees for the use of land in their estates for holding markets. On this question we beg to observe, that an enactment to regulate the relation of landlord and tenant seems to us to be hardly a proper place to regulate the fees to be paid to the owner of land by traders using it for markets once in a week or so. In our opinion, the matter is one dependent solely on the mutual consent of the parties concerned, since obviously a zamindar has no right to compel any one to use his land for the purpose and to pay for it. If, however, it is considered desirable, in the interests of trade, to provide for suitable accommodation, at reasonable rates, being available for periodical markets in proprietary estates, there is, as pointed out by the Board themselves, adequate legislative authority * for the acquisition of the required land and for its appropriation to that purpose under the direction of the Local Board.

* Madras Local Board's Act. Sec. 153.

49. *Scheduled districts.*—As regards the question of the applicability of the Rent Act to scheduled districts, referred to in the Proceedings of the Judicial Department, communicated to us in Revenue G.O., dated 16th November 1886, No. 6925, Mis., this paper reached us after our sittings were closed. In the Bill, as finally adopted at our last meeting, we have left a blank for the local areas to which the Act shall or shall not apply, and we submit for the consideration of Government whether it would not be best to provide that it shall be extended to, or withdrawn from, specific areas by a notification of the Governor in Council.

50. *Suggestion to circulate the Bill for opinions.*—In conclusion, we beg to suggest that the Bill, before its introduction into the Legislative Council, be referred to the Honorable the Judges of the High Court and to the Board of Revenue, in view to eliciting the remarks and criticisms of all Judicial and Revenue officers competent to pronounce an opinion on its provisions, as well as of all zamindars and others interested.

51. The Bill herewith submitted has been adopted by the Committee, subject to the dissents of some of the members on particular points which will be found in appendix B.

The Hon'ble Mr. Goodrich.
Mr. Garstin, C.S.I.
Mr. H. J. Stokes.
Mr. Rajaratna Mudaliar, Rai Bahadur.
Mr. Lakshmikanta Rao Pantulu, Dewan Bahadur.
Mr. Kanchi Subba Rao.

52. A copy of the collection of papers and of the digest of decided cases referred to in paragraph 2 of this report, as also of a file of the Proceedings of the meetings held by us, accompany.

We have the honor to be
Sir,
Your most obedient Servants,

May 1887.

September 13th August 1887.

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THE MADRAS TENANCY ACT, 188 .

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ABBREVIATIONS.

B. T. A. = Bengal Tenancy Act.
F. B. = First Bill.

WHEREAS it is expedient to amend and declare the law regulating the relations between landlords and their tenants in the Presidency of Madras; It is enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

F.B., S. 1.

1. (1) This Act may be called the Madras Tenancy Act, 1885.

Short title.

Commencement.

(2) It shall come into force, &c.

Local extent.

(3) It shall extend, &c.

F.B., S. 2.

2. Madras Acts VIII of 1865 and II of 1871 are hereby repealed.

Repeal.

F.B., S. 3.

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

Definitions.

The term "landlord" shall be held to include—

(*a*) all Zamindárs, Shrotriyamdárs, Mutthádárs, Jaghirdárs, Pálayagárs and Inámdárs; also assignees, mortgagees with possession and purchasers of the interest of any of the above persons, and all persons farming rents from the above persons or farming the land revenue under Government;

(*b*) also all holders of land under Raiyatwar settlements or in any way subject to the payment of land revenue direct to Government, and all other registered holders of land in proprietary right.

The term "tenant" shall, for the purpose of this Act, mean a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

Explanation (1)—The payments due by a tenant to a farmer of Government land revenue are to be deemed rent.

Explanation (2)—The payments to be made by a farmer of rents to a landlord are not rent.

"Inamdar" means a person to whom a grant of land on favorable tenure or of land revenue has been made or confirmed, or in whose favor it has been recognised, by the British Government.

"Rent" means whatever is lawfully payable or deliverable in money or in kind

by a tenant to his landlord on account of the use or occupation of the land held by the tenant, and includes also money recoverable by the landlord from the tenant under any other enactment for the time being in force.

"Holding" means a parcel or parcels of land held by a tenant and forming the subject of a separate tenancy.

The word "Collector" includes any officer who is authorised to exercise the power of a Collector, or may be authorised to do so for the purposes of this Act.

"Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" when the name of the person signing is affixed by a stamp.

"Revenue year" means the year ending on the 30th June.

Words in the masculine gender shall be taken to include the feminine, and words in the singular number shall be taken to include the plural, unless the contrary shall appear by the context.

CHAPTER II.

Occupancy Right.

4. Every tenant of the landlords mentioned in clause (*a*) of the preceding section shall be presumed to have a right of occupancy in his holding until the contrary is proved or admitted.

Presumption of the existence of occupancy right.

F.B., S. 4.

5. Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a tenant under any of the landlords mentioned in section 3, clause (*a*), land situated in any village, whether under lease or otherwise, shall be deemed to have acquired on the expiration of that period, a right of occupancy in the land for the time being held by him in that village.

Occupancy right how acquired.

S. 20, B.T.A., omitting clauses (5), (6), (7). Clause (7) is provided for in section 2. The others do not appear to be necessary.

F.B., S. 5.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him in the village has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a tenant any land held as a tenant by a person whose heir or assign he is.

(4) Land held by two or more co-sharers shall be deemed, for the purposes of this section, to have been held as a tenant by each such co-sharer.

Incidents of Occupancy Right.

B.T.A., S. 23.

F.B., S. 6.

6. When a tenant has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair its value or render it unfit for the purposes of the tenancy.

Rights of occupancy tenants in respect of the use of the land.

B.T.A., S. 25.

F.B., S. 8.

7. An occupancy tenant of any of the landlords mentioned in clause (*a*) of section 3 shall not be ejected by such landlord from his holding, except in execution of a decree for ejectment passed on the ground—

Protection from eviction except on specific grounds.

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

B.T.A., S. 22.

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

Effect of acquisition of occupancy right by landlord.

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

(3) A person holding land as an ijárá dár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

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

B.T.A., S. 26.

F.B., S. 9.

9. If a tenant dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property; provided that, in any case in which under the law of inheritance to which the tenan

Devolution of occupancy right on death.

is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

CHAPTER III.

Pattas and Muchilkas.

F.B., S. 10 & 12.

10. No landlord mentioned in section 3, clause (*a*), shall have power to proceed against a tenant under this Act until he shall have entered into a written engagement with such tenant, or tendered him such engagement. The tender may be made directly to the tenant or by filing the engagement in Court; in the latter case, the Court shall cause it to be served on the tenant, at the cost of the landlord, in the manner prescribed in chapter IX of this Act for the service of summons.

Exchange of written engagements.

F.B., S. 10.

11. The engagement of the landlord shall be termed 'pattá' and that of the tenant 'muchilka' and shall be signed by the respective parties or persons duly authorised in that behalf.

Pattá and Muchilká.

F.B, S. 11.

12. The Pattá shall contain the names of the contracting parties; the local description or extent of the land; the rate or amount and nature of the rent, according as it may be payable in money, in kind, or by a share of the produce, separately specifying any fees or charges payable with it according to law or usage having the force of law; the period or periods at which such rent, fees or charges are to be paid; the date of the instrument; and all special terms by which it is intended that the parties shall be bound. The Muchilká may, at the option of the landlords, be a counterpart of the Pattá or a simple engagement to hold according to its terms.

Contents of Pattá and Muchilká.

13. Pattás and Muchilkás may be exchanged for periods of one year or more; but the exchange shall always take place within twelve months of the commencement of the period to which the transaction relates; provided that no landlord shall be bound to tender and no tenant to accept a Pattá for a period of more than one Revenue year.

Period for which Pattá and Muchilká may be exchanged.

F.B., S. 13.

14. When any of the landlords mentioned in section 3, clause (*a*) shall, for

Suits for Pattá.

three months after demand, have refused to grant such a Pattá as his tenant was entitled to receive, it shall be lawful for the tenant to sue for such a Pattá. The Court shall decide the terms of the Pattá to be granted, and if it be not granted as directed within the time specified, the decree shall be of the same force and effect as if a Pattá and Muchilká had been exchanged. The Court in its decree may award the tenant such costs or damages as may be shown to have been incurred.

F.B., S. 14.

15. When a tenant of any of the landlords mentioned in section 3, clause (*a*) shall for one month have refused to accept the Pattá tendered and to give a Muchilká in exchange, it shall be lawful for such landlord to proceed by suit to enforce acceptance of such Pattá.

Suits to compel acceptance of Pattá.

F.B., S. 15.

16. In adjudicating suits under the preceding section, the Court shall first inquire whether the party sued was bound to accept a Pattá, and, unless this be proved, the suit shall be dismissed with costs. Should the plaintiff establish the above point, the Court shall inquire whether the Pattá tendered is a proper one. If it is found to be so, the Court shall order the defendant to accept the Pattá and to execute a Muchilká in accordance with it, and to make good any damages that may have been incurred by his previous refusal. If the Court is of opinion that the Pattá tendered is not a proper one, it shall decide what the terms of the Pattá should be, and shall then order the defendant to accept such Pattá and to execute a Muchilká in accordance with it. In default of the tenant so doing, the decree shall be of the same force and effect as if a Pattá and Muchilká had been exchanged.

Procedure in adjudication of such suits.

F.B., S. 17.

17. The terms of Pattás and Muchilkás exchanged between landlords mentioned in section 3, clause (*a*), and their tenants shall remain in force until fresh Pattás and Muchilkás are exchanged or decreed.

Duration of Pattás and Muchilkás exchanged.

CHAPTER IV.

Rates of Rent.

18. In the decision of suits between landlords and their occupancy tenants involving disputes

Rules for deciding disputes as to rates of rents.

regarding rates of rent, the rules contained in the following section shall be observed.

F.B., S. 18.

19. (1) All contracts to pay rent, not inconsistent with the provisions of this Act, shall be enforced.

Contracts to be enforced.

Explanation.—When rent has been paid at a certain rate for a continuous period of not less than three years immediately preceding the period to which the suit relates, it shall be presumptive evidence of the existence of a contract to pay at that rate during the continuance of the tenancy.

(2) Where land has been surveyed and assessed by the British Government, such assessment shall be held to be the proper rent, when no contract exists.

Survey assessment.

(3) When there is no contract and no money assessment has been so fixed on the fields, the rates of rent shall be determined according to the rates established and paid for neighbouring lands of similar description and with like advantages, according to local custom.

Rent paid for similar lands.

(4) When the rates of rent cannot be ascertained as aforesaid, the Court shall fix such rates as appear to it to be fair and equitable.

F.B., S. 19.

20. (*a*) In the case of immemorial waste land or of land left waste, either through abandonment or surrender thereof by the tenant, it shall be lawful for the landlord to arrange his own rates of rent; provided that nothing in this section shall be held to affect any special rights which by law or custom having the force of law are held by any class or person in such waste or unoccupied land.

In the case of immemorial waste lands, landlord to arrange rates of rent. Savings of special rights.

(*b*) Notwithstanding any law or custom to the contrary, every *bonâ fide* grant or lease of land on favorable terms by a landlord for the purpose of erecting dwelling houses, factories or other permanent buildings, or for the purposes of mining, quarrying or bringing waste lands into cultivation, or for making any permanent improvements thereon, shall be binding on his successors in interest; provided that the terms of such grant or lease have been substantially acted up to.

Leases granted on favorable terms binding on successors in certain cases.

21. No claim to rent shall arise and no arrear of rent shall accrue in any year in respect of land irrigable by a work

No rent payable on irrigable land when the landlord neglects to keep irrigation work in proper order.

NOTE.—The words printed in italics were inserted subsequently in accordance with the conclusion arrived at at the meeting on 25th September 1856.

of irrigation, on which, in consequence of the landlord's neglect to *exercise due and proper care as a landlord to* keep such work in order, the crop has substantially failed during that year from want of water, or on which a crop has, in spite of such neglect on the part of the landlord, been raised in such year by the tenant chiefly by means of irrigation provided at his own expense.

ENHANCEMENT.

B.T.A., S. 27.

22. The rent for the time being payable by an occupancy tenant shall be presumed to be fair and equitable until the contrary is proved.

Presumption as to fair and equitable rent.

B.T.A., S. 28.

F.B., S. 20.

23. When an occupancy tenant pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Restriction on enhancement in the case of money-rents.

B.T.A., S. 29.

F.B., S. 21.

24. The money-rent of an occupancy tenant may be enhanced by contract, subject to the following conditions:—

Enhancement of money-rent by contract.

(*a*) The contract must be in writing and registered;

(*b*) The rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the tenant;

(*c*) The rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows:—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a tenant binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected by, or at the expense of, his landlord, and to the benefit of which the tenant is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the im-

provement has been effected; and, except when the tenant is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

B.T.A., S. 30.

F.B., S. 22.

Enhancement of money-rent by suit.

25. Any of the landlords mentioned in section 3, clause (*a*), may institute a suit to enhance the rent of an occupancy tenant holding at a money-rent, on one or more of the following grounds, namely :—

(*a*) that, in cases where the rent has been commuted under section 34 or by the agreement of the parties, there has been a rise in the average local prices of staple food crops during the currency of the present rent ;

(*b*) that the productive powers of the land held by the tenant have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent ;

VIII of 1865, S. 11, IV.

(*c*) that the productive powers of the land held by the tenant have been increased during the currency of the present rent by any work of irrigation or other improvement executed at the expense of Government, and the landlord has been required to pay an additional revenue or rate to Government in consequence thereof ;

(*d*) that the productive powers of the land held by the tenant have been increased by fluvial action.

Explanation.—'Fluvial action' includes a change in the course of a river rendering irrigation from the river practicable where it was not previously practicable.

B.T.A., S. 32.

F.B., S. 24.

Rules as to enhancement on ground of rise in prices.

26. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison : provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period ;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

(*d*) the average prices by which the Courts shall be guided shall be those published under the authority of Government, unless and until they are proved to be incorrect.

(*e*) the decennial periods taken for the comparison of average prices shall be periods of ten years excluding all years which the Government may notify to be or to have been famine years in respect of any local area.

B.T.A., S. 33.

F.B., S. 25.

B.T.A., S. 110.

Rules as to enhancement on ground of landlord's improvements.

27. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement, unless the improvement has been registered in accordance with this Act ;

(*b*) in determining the amount of enhancement, the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the preparation and cultivation required for utilising the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his

successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

New.

F.B., S. 26.

Rules as to enhancement on ground of improvement by Government.

28. Where an enhancement is claimed under section 25, clause (*c*), the court shall have regard to—

(i) the increase in the productive power of the land caused or likely to be caused by the improvement;

(ii) the cost of the preparation and cultivation required for utilising the improvement;

(iii) the additional payment which the landlord is required to make to Government on account of the improvement.

B.T.A., S. 34.

F.B., S. 27.

Rules as to enhancement on account of fluvial action.

29. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

B.T.A., S. 36.

F.B., S. 29.

Power to order progressive enhancement.

30. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the tenant, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years, not exceeding five, until the limit of the enhancement decreed has been reached.

B.T.A., S. 37.

F.B., S. 30.

Limitation of right to bring successive enhancement suits.

31. (1) A suit instituted for the enhancement of the rent of a holding on the ground of a rise in prices, shall not be entertained, if within the fifteen years next preceding its institution, the rent of the holding has been enhanced by a contract, or, if within the said period of fifteen years, the rent has been commuted under section 34, or a decree has been passed under this Act enhancing the rent on the ground aforesaid or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

REDUCTION OF RENT.

B.T.A., S. 38.

F.B., S. 31.

Reduction of rent.

32. (1) An occupancy-tenant holding at a money-rent may institute a suit for the reduction of rent on the following grounds:—

(*a*) on the ground that the soil of the holding has, without the fault of the tenant, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, or

(*c*) on the ground that the rate has been unduly raised within twenty years before the date of this Act.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

New.

Limitation of right to bring successive suits for reduction.

33. (1) A suit instituted for the reduction of rent on the ground of a fall in prices shall not be entertained if, within 15 years next preceding its institution, the rent has been reduced by contract, or a decree has been passed under this Act reducing the rent on the ground aforesaid or dismissing the suit on its merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

COMMUTATION.

B.T.A., S. 40.

F.B., S. 32.

Commutation of rent payable in kind.

34. (1) Where an occupancy-tenant pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of these ways and partly in another, either the tenant or his landlord may apply to the Collector to have the rent commuted to a money-rent.

(2) If the application is opposed, the Collector shall consider whether, under all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

(3) If the application is not opposed, or, if it is opposed and the objection is disallowed, the Collector shall determine the sum to be paid as money-rent, and shall order that the tenant shall, in lieu of paying the rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the Collector shall have regard to—

(*a*) the average money-rent payable by occupancy-tenants for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which alone evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made or to be made, on commutation, for continuing those charges.

(5) The order determining the sum to be paid as money-rent shall be made in writing, shall state the grounds on which it is made and the time from which it is to take effect, and shall be subject to appeal to the District Court in like manner as if it were a decree.

CHAPTER V.

Non-Occupancy Tenants.

B.T.A., S. 41.

F.B., S. 33.

35. This chapter shall apply to tenants of the landlords mentioned in section 3, clause (*a*), not having a right of occupancy, who are in this Act referred to as non-occupancy tenants.

Application of chapter.

B.T.A., S. 42

F.B., S. 34.

36. When a non-occupancy tenant is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Initial rent of non-occupancy tenant.

B. T.A., S. 43.

F.B., S. 35.

37. The rent of a non-occupancy tenant shall not be enhanced except by registered agreement or by agreement under section 39:

Provided that nothing in this section shall prevent a landlord from recovering

Conditions of enhancement of rent.

rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

B.T.A., S. 44.

F.B., S. 36.

38. A non-occupancy tenant shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

Grounds on which non-occupancy tenant may be ejected.

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 39, or that the term for which he is entitled to hold at such a rent has expired.

B.T.A., S. 46.

F.B., S. 38.

39. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy tenant unless the landlord has tendered to the tenant an agreement to pay the enhanced rent, and the tenant has, within three months before the institution of the suit, refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(2) A landlord desiring to tender an agreement to a tenant under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the tenant. The Court or officer shall forthwith cause it to be served on the tenant in the manner prescribed for service of summons, and when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a tenant on whom an agreement has been served under sub-section (2) executes it, and, within one month from the date of service, files it in the office from which it issued, it shall take effect

from the commencement of the revenue year next following.

(4) When an agreement has been executed and filed by a tenant under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the manner prescribed in chapter IX of this Act.

(5) If the tenant does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a tenant refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the tenant agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment, unless he has acquired a right of occupancy.

(8) If the tenant does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by tenants for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the revenue year in which it is passed.

B.T.A., S. 47.

F.B., S. 39.

40. Where a tenant has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of 'admitted to occupation.'

CHAPTER VI.

Landlords specified in Section 3 Clause (*b*.)

VIII of 1865, S. 13.

F.B., S. 40.

41. All landlords specified in section 3, clause (*b*), are authorized to proceed under this Act for the recovery of rent, if they have taken written agreements from their tenants specifying the rent to be paid, but not otherwise.

Recovery of rent by raiyatwari landholders.

CHAPTER VII.

Arrears of Rent.

VIII of 1865, S. 14.

F.B., S. 41.

42. When rent shall remain unpaid at the time when, according to any agreement or, in the absence of agreement, according to the custom of the country, it ought to have been paid, the amount remaining unpaid shall be deemed an arrear of rent.

Arrear of rent.

B.T.A., S. 55.

F.B., S. 43.

43. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and the instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Appropriation of payments.

Receipts.

B.T.A., S. 56.

F.B., S. 44.

44. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for the amount paid by him, signed by the landlord.

Tenant making payment to his landlord entitled to a receipt.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

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

Provided that the Governor in Council may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

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

B.T.A., S. 58.

F.B., S. 45.

45. If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 44 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

Penalty for withholding receipt.

B.T.A., S. 59.

F.B., S. 46.

46. (1) The Governor in Council shall cause to be prepared, and kept for sale to landlords, forms of receipts with counterfoils.

Forms of receipt to be prepared and kept for sale to landlords.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Governor in Council thinks fit.

DEPOSIT OF RENT.

B.T.A., S. 61.

F.B., S. 47.

47. (1) In any of the following cases, namely :—

Application to deposit rent.

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it ;

(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it ;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf ; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made ; shall state—

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

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the name of the person to whom the rent was last paid and of the person or persons now claiming it ;

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

B.T.A., S. 62.

F.B., S. 48.

48. (1) If it appears to the Court, to which an application is made under the last foregoing section, that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt granted by Court for deposit to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (*c*) of that section, by the co-sharers to whom the rent is due ; and

in case (*d*) of that section, by the person entitled to the rent.

B.T.A., S. 63.

F.B., S. 49.

49. (1) The Court receiving the deposit shall forthwith cause to be affixed, in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

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

in cases (*a*) and (*b*) of section 47, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted in some conspicuous place in the village in which the holding is situate ; and

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

B.T.A., S. 64.

F.B., S. 50.

Payment or refund of deposit.

50. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a competent Court as to the person so entitled.

(2) The payment may, if the Governor in Council so direct, be made by postal money order.

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

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

CONSEQUENCES OF DEFAULT.

B.T.A., S. 65.

F.B., S. 51.

Liability to sale for arrears in the case of occupancy holdings.

51. An occupancy-tenant shall not be liable to ejectment for arrears of rent, but his holding or part of his holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

B.T.A., S. 66.

F.B., S. 52.

Ejectment for arrears in other cases.

52. (1) When an arrear of rent remains due from a tenant not being an occupancy-tenant, on the 30th June of any year, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent, a decree passed in favor of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid within fifteen days from the date of the decree.

(3) The Court may, for special reasons, extend the period of fifteen days mentioned in this section.

B.T.A., S. 67.

F.B., S. 53.

Interest on arrears.

53. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the date on which it fell due to the institution of the suit.

B.T.A., S. 68.

F.B., S. 54.

Power to award damages on rent withheld or suit for rent brought without reasonable cause.

54. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

CHAPTER VIII.

DISTRAINT.

B.T.A., S. 121.

F.B., S. 55.

Cases in which landlord may distrain.

55. When an arrear of rent is due and has not been due for more than a year and no security has been accepted therefor, the landlord may, in addition to any other remedy to which he is entitled by law, distrain, while in the possession of the tenant,—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor, or place for treading out grain, or the like:

Provided that no distraint shall be made under this section—

(1) for the recovery of any sum in excess of the rent payable for the holding in the preceding Revenue year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act; or

(2) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

56. The distraint shall be effected, on the personal responsibility of the landlord, by serving on the tenant a written notice signed by the landlord setting forth—

Notice of distraint.

(1) the amount of the arrear due with interest, if any;
(2) the holding in respect of which it is due;
(3) the period in respect of which it is due;
(4) the nature and approximate value of the produce distrained;

and by taking charge of the produce himself or placing some other person in charge of it on his behalf:

B.T.A., S. 124, Proviso.

Provided that produce which, from its nature, does not admit of being stored shall not be distrained at any time less than 20 days before the time when it would be fit for reaping or gathering.

57. When the tenant may be absent the notice of distraint shall be deemed to have been served on him if it be left with an adult male member of his family or fastened to the outer door or wall of his usual place of residence.

How to be served.

58. A copy of the notice of distraint shall be fixed up in some conspicuous place in the village in which the land is situate in respect of which the arrear has accrued, and another copy shall be forwarded by the landlord, within 24 hours of its service on the defaulting tenant, to the Civil Court having jurisdiction.

Copy to be posted up in the village and another to be forwarded to Court.

59. On receipt of the copy of the notice of distraint forwarded by the landlord as required in section 58, the Court shall cause it to be posted in some conspicuous part of the Court-house, and shall without delay cause to be served on the tenant, whose crops have been distrained, a notice that, unless the arrear claimed, with interest and cost of distraint and service of the Court's notice, be paid into Court within 15 days of the service of the said notice, or unless within that period cause be shown to the

Notice of sale to be issued by Court.

Court why the distraint should be withdrawn, the distrained crops will be sold on a day and at a place to be fixed by the Court and set forth in the notice.

60. If no such cause be shown within such period of 15 days, or if the arrear with interest and all costs of distraint and service of Court's notice be not paid into Court within such period, the crops or products distrained shall, subject to the provisions of section 76, be sold by the Court to realise the said arrear with interest and all costs.

Sale if arrear, etc. be not paid, or cause for withdrawal of distraint shown within 15 days.

61. The sale shall ordinarily be held in the village where the produce was distrained or is stored, unless the Court is of opinion that it is likely to sell to better advantage in some neighbouring village, when it may order the sale to take place in such village. In any case the landlord shall be bound to produce the distrained produce at the time and place of sale, and the cost of the transport of such produce shall be considered part of the cost of distraint.

B.T.A., S. 128.

F.B., S. 62.

Place of sale.

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

B.T.A., S. 129.

F.B., S. 63.

When produce may be sold standing.

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

63. (1) A distraint under this chapter shall not prevent the defaulter or any person claiming through him from doing all acts necessary for the preservation and maturing of the crops or other produce distrained, or from reaping, gathering or storing the same.

B.T.A., S. 126.

F.B., S. 60.

Right to reap and preserve produce.

(2) If such person fails to do so at the proper time, the distrainer shall do all acts necessary for the preservation or maturing of such standing crops or ungathered produce, and for their being reaped or gathered when ripe, and stored and preserved in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood.

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

B.T.A., S. 130.

F.B., S. 64.

64. The produce shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the produce, the distraint shall be immediately withdrawn with respect to the remainder.

Manner of sale.

B.T.A., S. 131.

F.B., S. 65.

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

Postponement of sale.

B.T.A., S. 132.

F.B., S. 66.

66. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the produce shall be put up again and sold.

Payment of purchase-money.

VIII of 1865, S. 17.

67. The Officer appointed to sell distrained crops shall bring to the notice of the Court any material irregularity committed by the distrainer under color of this Act, and is authorised in such a case to postpone the sale pending the Court's order. When it shall come to the Court's knowledge, either through the above officer or otherwise, that the distrainer did not serve on the tenant a written notice as required by section 56, or failed to publish the notice as required by section 58, or that the distress was excessive, the Court may direct the restoration of the distrained produce to the owner. The distrainer shall not be allowed to proceed further under this Act for the recovery of the arrear of rent, and the tenant shall be at liberty to sue him for any loss or damage which he may have sustained.

Effect of irregularity in distraining.

VIII of 1865, S. 20.

68. When produce distrained may be stolen, lost, damaged or destroyed, while in the keeping of the distrainer, by reason of his

Distrainer liable for loss of, or injury to, produce.

not having taken the necessary precautions for its due preservation, he shall be responsible to the owner for the loss or damage, and the Court shall, on the application of the owner and on proof of such loss or damage, pass an order that the same shall be made good.

VIII of 1865, S. 25.

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

Time of distress.

VIII of 1865, S. 32.

70. Claims to crops distrained under clauses (*a*) and (*b*) of section 55, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim to rent due to the landlord by his defaulting tenant. But if before the day fixed for the sale, a third party appear before the Court and claims a right or interest in the crops under distraint, the Court shall hold, or cause to be held, an immediate inquiry, and if it sees sufficient cause for doing so, may postpone the sale of such crops. The Court shall adjudicate upon the claim and pass such order between the claimant and distrainer as it shall deem fit. If the claimant fails to establish his right, an order shall be issued for proceeding with the sale.

Claims by third parties.

VIII of 1865, S. 26.

71. When a defaulter may make a fraudulent conveyance of produce to prevent distress for arrears, the Court shall, on application by the distrainer and on proof of such conveyance, pass an order directing the produce to be delivered up, or its value paid, to the distrainer.

Penalty for fraudulent conveyance of produce to prevent distress.

VIII of 1865, S. 27.

72. When it may be proved to the satisfaction of the Court that any person has forcibly or clandestinely taken away the produce once distrained, the Court may, on the application of the distrainer, cause such produce to be restored, or its value paid, to the distrainer.

Penalty for forcibly or clandestinely taking away distrained produce.

B.T.A., S. 133.

F.B., S. 67.

73. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the produce purchased by him and the price paid.

Certificate to be given to purchaser.

74. (1) From the proceeds of every sale of distrained produce under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made from time to time, by the Governor in Council in this behalf.

Proceeds of sale how to be applied.

B.T.A., S. 134.

F.B., S. 68.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

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

Certain persons may not purchase.

B.T.A., S. 135.

F.B., S. 69.

76. If at any time after a distraint has been made under this chapter and before the sale of the distrained produce, the defaulter, or the owner of the distrained produce where he is not the defaulter, deposits in the hands of the officer appointed to conduct the sale the amount specified in the notice of sale served on the tenant by the Court under section 59, with all costs which may have been incurred, the officer conducting the sale shall grant a receipt for the same and the distraint shall be forthwith withdrawn. If the money be paid into Court, the Court shall grant the receipt and forthwith direct the withdrawal of the distraint, provided the money be so paid in at least 48 hours before the date appointed for the sale.

Where demand is paid before the sale, distraint to be withdrawn.

F.B., S. 70.

77. After the expiration of one month from the date of a deposit being made under the preceding section, the Court shall pay therefrom to the landlord who made the distraint the amount due to him, unless in the meanwhile the owner of the produce distrained shall have instituted a suit against the landlord contesting the legality of the distraint and claiming compensation in respect of the same.

Payment of the amount to the landlord.

B.T.A., S. 136 (4).

F.B., S. 70 (4).

78. (1) When an inferior tenant, on his produce being lawfully distrained under this chapter for the default of a superior tenant, makes any payment for the purpose of releasing such produce from distraint, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

B.T.A., S. 137.

F.B., S. 71.

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

79. When any conflict arises between the distraint of a landlord under this chapter and an order issued by a Civil Court in execution of a decree for the attachment and sale of the produce distrained by such landlord, the landlord's distraint shall prevail; but if the produce is sold by a Court in consequence of such landlord's distraint, the surplus proceeds of the sale shall not be paid under section 74 to the owner of the produce without the sanction of the Court by which the order of attachment or sale in execution of a decree was issued.

Conflict between distraint by a landlord and attachment by Court under a decree.

B.T.A., S. 139.

F.B., S. 73.

80. No appeal shall lie from any order passed by a Court under this chapter, but any person whose crops are distrained by his landlord under section 55 in any case in which such distraint is not permitted by that section, may institute a suit before a Civil Court against his landlord for the recovery of compensation.

Right to sue for compensation for wrongful distraint.

B.T.A., S. 140.

F.B., S. 74.

81. The Governor in Council may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

Power of Governor in Council to make rules.

B.T.A., S. 142.

F.B., S. 77.

CHAPTER IX.

Judicial Procedure.

82. The Governor in Council may invest any Revenue officer with all or any of the powers of a Civil Court, to be exclusively exercised within any local area, in respect of all or any classes of original suits or proceedings instituted under this Act and may withdraw such powers; and the decisions passed by such Revenue officer shall be appealable as if

Power to invest Revenue officers with the powers of a Civil Court.

they were the decisions of the Civil Court which would have taken cognizance of the suits or proceedings if the Revenue officer had not been so invested.

B.T.A., S. 143.

F.B., S. 78.

83. (1) The High Court may, from time to time, with the approval of the Governor in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits under this Act or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to restrict application of Civil Procedure Code in landlord and tenant suits. Otherwise Code of Civil Procedure to apply.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

B.T.A., S. 144.

F.B., S. 79.

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

Jurisdiction in proceedings under this Act.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the holding in connection with which the application is brought.

B.T.A., S. 145.

F.B., S. 80.

85. Every agent of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Landlord's agents.

B.T.A., S. 146.
S. 77, VIII of 1865.
F.B., S. 81.

86. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court in such form as the Governor-in-Council may, from time to time, prescribe in this behalf.

Special register of suits.

B.T.A., S. 147.

F.B., S. 82.

87. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a tenant for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent suits.

B.T.A., S. 148.

F.B., S. 83.

88. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent suits.

(*a*) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit:

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification:

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(*d*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served:

(*e*) a written statement shall not be filed without the leave of the Court:

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply,

the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

B.T.A., S. 156.

F.B., S. 90.

Rights of ejected tenants in respect of crop and land prepared for sowing.

95. The following rules shall apply in the case of every tenant of the landlords mentioned in section 3, clause (*a*), who is ejected from a holding :—

(*a*) when the tenant has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;

(*b*) when the tenant has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labor and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;

(*c*) but a tenant shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage ;

(*d*) if the landlord elects under this section to allow a tenant to retain possession of the land, the tenant shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

B.T.A., S. 157.

F.B., S. 91.

Power of Court to fix fair rent as alternative to ejectment.

96. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

CHAPTER X.

Sale of Land for Arrears under Decree.

B.T.A., S. 159.

Liabilities of purchaser as to incumbrances.

97. Where a holding or part of a holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to any right or interest which the tenant has created therein with the landlord's written permission, and subject also to any incumbrances created before the passing of this Act.

B.T.A., S. 169.

F.B., S. 93.

Rules for the disposal of the sale-proceeds.

98. (1) In disposing of the proceeds of a sale for arrears of rent, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say :—

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the holding or part of the holding to sale ;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institu-

tion of the suit and the date of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

B.T.A., S. 170.

F.B., S. 94.

Holding to be released from attachment only on payment into Court of amount of decree with cost or on confession of satisfaction by decree-holder.

99. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding or part of a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding or part of a holding in execution of such a decree has been made, the holding or part of a holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding or part of the holding on the ground that the decree has been otherwise satisfied.

(3) The judgment-debtor or any person having in the holding or part of the holding any interest voidable on the sale may pay money into Court under this section.

B.T.A., S. 171

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

100. (1) When any person having in a holding or part of a holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at 12 per centum per annum and secured by a mortgage of the holding or part of the holding to him;

(*b*) his mortgage shall take priority of every other charge on the holding or part of the holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the holding or part of the holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

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

B.T.A., S. 172.

F.B., S. 95.

Inferior tenant paying into Court may deduct from rent.

101. When a holding or part of a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

B.T.A., S. 173.

F.B., S. 96.

Decree-holder may bid at sale; judgment-debtor may not.

102. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding or part of a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding or part of the holding.

(2) The judgment-debtor shall not bid for or purchase a holding or part of a holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a holding or part of a holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any person interested in the sale, by order set aside the sale, and the cost of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor.

CHAPTER XI.

Contract and Custom.

B.T.A., S. 178.

F.B., S. 97.

Restriction on exclusion of Act by agreement.

103. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

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

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

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 1st day of May 1871, and before the passing of this Act shall prevent a tenant from acquiring in accordance with this Act an occupancy right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a tenant from acquiring in accordance with this Act an occupancy right in land ;

(*b*) take away or limit the right of an occupancy tenant to use land as provided by section 6 ;

(*c*) take away the right of a tenant to surrender his holding in accordance with section 122 ;

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

(*e*) take away the right of an occupancy tenant to sub-let subject to, and in accordance with, the provisions of this Act ;

(*f*) take away the right of a tenant to apply for a reduction of rent under section 32 ;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 34 ; or

(*h*) affect the provisions of section 53 relating to interest payable on arrears of rent :

Provided as follows :—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under section 5, be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;

(ii) when a landlord has reclaimed waste land by his own servants or hired laborers, and subsequently lets the same or a part thereof to a tenant, nothing in this Act shall affect the terms of any contract whereby a tenant is prevented from acquiring an occupancy right in the land or part during a period of thirty years from the date on which the land or part is first let to a tenant.

B.T.A., S. 182.

F.B., S. 98.

104. When a tenant holds his homestead otherwise than as part of his holding as a tenant, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a tenant.

Homesteads.

B.T.A., S. 183.

F.B., S. 99.

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

Saving of custom.

CHAPTER XII.

Limitation.

B.T.A., S. 184.

F.B., S. 100.

106. (1) The suits, appeals and applications specified in Schedule II annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively ; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule II.

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

B.T.A., S. 185.

F.B., S. 101.

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

Portions of the Indian Limitation Act not applicable to such suits, &c.

(2) Subject to the provisions of this chapter, the provisions of the Indian

Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

CHAPTER XIII.

Miscellaneous.

B.T.A., S. 186.

F.B., S. 102.

Penalties for illegal interference with produce.

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

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

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

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

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

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

B.T.A., S. 187.

F.B., S. 103.

Agents and representatives of landlords.

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

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

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

B.T.A., S. 188.

F.B., S. 104.

Joint landlords to act collectively or by common agent.

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

VIII of 1865, S. 5.

B.T.A., S. 75.

F.B., S. 105.

Illegal exactions.

111. (*a*) The landlords mentioned in section 3, clause (*a*) shall not levy any unauthorised tax on their tenants under any name or pretence. Every tenant from whom anything is exacted in excess of his rent, or other authorised charge specified in his Patta, shall be entitled to recover by suit, in addition to the amount of the exaction, such sum by way of penalty as the Court thinks fit not exceeding ten times the amount exacted.

(*b*) All stipulations and reservations for the payment of any such illegal tax or cess shall be void.

Improvements.

B.T.A., S. 76.

F.B., S. 106.

Definition of "Improvement."

112. (1) For the purposes of this Act, the term "improvement," used with reference to a tenant's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

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

(*b*) the preparation of land for irrigation ;

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

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

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

(*f*) the erection of a suitable dwelling-house for the tenant and his family, together with all necessary out-offices; and

(*g*) the plantation of trees and useful plants.

(3) But no work executed by the tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

B.T.A., S. 77.

F.B., S. 107.

113. (1) Where a tenant has an occupancy right in his holding, neither the tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvements in case of occupancy holdings.

(2) If both the tenant and his landlord wish to make the same improvement, the tenant shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

B.T.A., S. 78.

F.B., S. 108.

114. If a question arises between a tenant and his landlord—

Collector to decide question as to right to make improvement, &c.

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

B.T.A., S. 79.

F.B., S. 109.

115. (1) A non-occupancy tenant shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; and to grow trees and plants; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

Right to make improvement in case of non-occupancy holdings.

(2) A non-occupancy tenant who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

B.T.A., S. 80.

F.B., S. 110.

116. (1) A landlord may, by application to a Collector, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

Registration of landlords' improvements.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner by local inquiry or otherwise, as the Governor-in-Council from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

B.T.A., S. 81.

F.B., S. 111.

117. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the Collector, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceedings between the landlord and tenant or any persons claiming under them.

B.T.A., S. 82.

F.B., S. 112.

118. (1) Every tenant who is ejected from his holding shall be entitled to compensation for improvements which have been made in

Compensation for improvements.

respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a tenant, it shall determine the amount of compensation (if any) due under this section to the tenant for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the tenant.

(3) No compensation under this section for an improvement shall be claimable where the tenant has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a tenant between the date of first publication of the Bill, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Governor in Council may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Governor in Council thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

B.T.A., S. 83.

F.B., S. 113.

Principle on which compensation is to be estimated.

119. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value or the produce of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labor and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement; and

(*e*) in the case of trees or plants, to the probable market value of the same.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and tenant agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

ACQUISITION OF LAND FOR BUILDING AND OTHER PURPOSES.

B.T.A., S. 84.

F.B., S. 114.

Acquisition of land for building and other purposes.

120. A Civil Court may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground or for any religious, educational or charitable purpose,

and on being satisfied that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

SUB-LETTING.

B.T.A., S. 85.

F.B., S. 115.

Restriction on sub-letting.

121. (1) If a tenant of any of the landlords mentioned in section 3, clause (*a*), sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a tenant shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a tenant has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

SURRENDER AND ABANDONMENT.

B.T.A., S. 86.

F.B., S. 116.

Surrender.

122. (1) A tenant not bound by a lease or other agreement for a fixed period may, at the end of any revenue year, surrender his holding or, with the consent of the landlord, any part thereof.

(2) But, notwithstanding the surrender, the tenant shall be liable to indemnify the landlord against any loss of the rent of the holding or part thereof for the revenue year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a tenant has surrendered his entire holding, the Court shall in the following cases, for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely :—

(*a*) if the tenant takes a new holding in the same village from the same landlord during the revenue year next following the surrender ; or

(*b*) if the tenant ceases, at least three months before the end of the revenue year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The tenant may, if he thinks fit, cause the notice to be served through the Court.

(5) When a tenant has surrendered his holding or part thereof the landlord, may enter on the holding or part thereof and either let it to another tenant or take it into cultivation himself.

(6) When a holding or part thereof is subject to an incumbrance secured by a registered instrument, the surrender thereof shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a tenant and his landlord may arrange for a surrender of the whole or a part of the holding.

B.T.A., S. 87.

F.B., S. 117.

123. (1) If a tenant voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent when it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the revenue year in which the tenant so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly ; and the Collector shall cause a notice to be published in such manner as the Governor in Council, by rule, directs.

(3) When a landlord enters under this section, the tenant shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy tenant, six months from the date of the publication of the notice ; and thereupon the Court may, on being satisfied that the tenant did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that tenant. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Sub-division of Tenancy.

B.T.A., S. 88.

F.B., S. 118.

124. A division of a holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing :

Division of tenancy not binding on landlord unless made with his consent.

Provided that in case of a division of a holding effected in accordance with the law of inheritance or in execution of a decree of Court, it shall be competent to any of the parties interested to institute a suit for the apportionment of the rent on the several portions into which the holding is divided.

Apportionment of rent on sub-division under the law of inheritance or a Court's decree.

125. When a tenant of any of the landlords mentioned in section 3, clause (*a*), has a saleable interest in his holding, and transfers such interest, the tenant and the transferee shall give notice of such transfer

in writing to the landlord, and, unless and until such notice is given, all proceedings taken under this Act against the tenant shall be as effectual and binding upon the transferee as if they had been taken against the transferee himself.

Tenant to give notice to the landlord in case of transfer of his interest in the land.

126. When any of the landlords mentioned in section 3, clause (*a*) transfers the whole or a portion of his estate, the landlord and the transferee shall give notice of the transfer in writing to the tenants in the occupation of the land transferred, and, unless and until such notice is given, all proceedings taken by any of the tenants to whom no such notice was given against the landlord shall be as effectual and binding on the transferee as if they had been taken in the first instance against the transferee himself.

Landlord to give notice to tenants in case of transfer of the whole or part of his estate

EJECTMENT.

127. No tenant of any of the landlords mentioned in section 3, clause (*a*), shall be ejected from his holding except in execution of a decree.

B.T.A., S. 89.

F.B., S. 119.

No ejectment except in execution of a decree.

CHAPTER XIV.

LANDLORD'S PRIVATE LANDS.

B.T.A., S. 116.

F.B., S. 120.

128. Nothing in chapter II shall confer a right of occupancy in, and nothing in chapter V shall apply to, the private lands of the landlords mentioned in clause (*a*) section 3, known as Kambattam, Khás, Séri, Pannai, or the like, or to lands held by the tenants of Inámdárs whose inams consist of land and not merely of the assessment thereon, or to lands held by the tenants of owners of land who are themselves the inámdárs in respect of the land revenue assessment thereon.

Saving as to Private lands.

B.T.A., S. 117.

129. The Governor in Council may, from time to time, make an order directing a Revenue officer to make a survey and record of all the lands in a specified local area, which are a landlord's private lands within the meaning of the last foregoing section.

Power for Government to order survey and record of landlords' private lands.

B.T.A., S. 118.

B.T.A., S. 120.

130. In the case of any land alleged to be a landlord's private land, on the application of the landlord or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue officer may, subject to and in accordance with rules made in this behalf by the Governor in Council, ascertain and record whether the land is or is not a landlord's private land.

Power for Revenue officer to record private land on application of landlord or tenant.

131. (1) The Revenue officer shall record as a landlord's private land—

Rules for determination of private land.

(*a*) land which is proved to have been cultivated as Kambattam, Khás, Séri or Pannai by the landlord himself with his own stock or by his own servants or by hired labor for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as landlord's Kambattam, Khás, Séri or Pannai.

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

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

B.T.A., S. 105.

132. (1) When the Revenue officer has made a record under this chapter, he shall cause a draft thereof to be published in three successive issues of the District Gazette and shall receive and consider any objection which may be made to any entry therein during a period of six months from the date of the first publication of the draft of the record.

Publication of record.

(2) After the expiration of the said period of six months, the Revenue officer shall finally frame the record, and shall cause it to be published in the District Gazette, and the publication shall be

conclusive evidence that the record has been duly made under this chapter.

B.T.A., S. 106.

Disputes as to entries in record to be heard and decided.

133. If at any time before the final publication of the record under the last foregoing section, a dispute arises as to the correctness of any entry or as to the propriety of any omission, which the Revenue officer proposes to make or has made therein or therefrom, the Revenue officer shall hear and decide the dispute.

B.T.A., S. 107 modified.

Procedure to be adopted by Revenue officer.

134. In all proceedings under this chapter, the Revenue officer shall, subject to rules made by the Governor in Council under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

B.T.A., S. 108.

Appeals against Revenue officer's decisions.

135. (1) The Governor in Council shall appoint one or more persons to be special judges for the purpose of hearing appeals from the decisions of Revenue officers under this chapter.

(2) An appeal shall lie to the special judge from the decision of a Revenue officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure an appeal shall lie to the High Court from the decision of a special judge in any case under section 133 as if he were a Court Subordinate to the High Court within the the meaning of the first section of that chapter.

B.T.A., S. 109.

Undisputed entries to be presumed to be correct.

136. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

SCHEDULE I.

FORM OF RECEIPT.

Patta No. . *of Fasli*

Receipt granted to tenant of the village of in the district of

for the amount of rent, &c., paid by him for lands in his holding.

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

SCHEDULE II.

LIMITATION.

(*See Section* 106).

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenant on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
2. For the recovery of an arrear of rent when the arrear fell due before a deposit was made under Section 47 on account of the rent of the same holding.	Six months ...	The date of the service of notice of the deposit.
3. To recover possession of land claimed by the plaintiff as an occupancy-tenant	Two years ...	The date of dispossession.
4. To recover illegal or unauthorised exactions and penalties under section 111 of this Act.	One year ...	From the date of the exaction.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period beings to run.
5. From any decree or order under this Act to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years ...	(1) The date of the decree or order; or (2) Where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) Where there has been a review of judgment, the date of the decision passed on the review.

APPENDIX B.

MINUTE OF DISSENT BY THE HONORABLE H. ST. A. GOODRICH.

Section 32 (1) (*c*).

"An occupancy-tenant holding at a money-rent may institute a suit for the reduction of rent on the ground that the rate has been unduly raised within twenty years before the date of this Act."

I can conceive of no reason for limiting the right to institute a suit on this special ground to tenants holding at *money* rents. It is surely just as great a hardship to have the proportion of produce left to the cultivator diminished *unduly* (whatever unduly may mean—it is a word which promises employment to the ingenious vakil).

2. "Before the date of this Act" had better be amended to "before the date upon which this Act comes into force"; but

3. I consider the clause most inexpedient as being likely to foster litigation and to stir up strife between the whole class of landlords and the whole class of tenants.

4. The effect will be to attempt those who live by fostering litigation to induce tenants to file suits. As a rule, the tenants will hardly do this on a large scale, unless pressed by legal vermin to do so, for (section 22) the tenant will first of all have to prove that the rent he is at the time paying is unfair and inequitable.

5. I do not believe that any rate of rent which can be proved to be unfair and inequitable now can also be a rate which has been *long* paid by the tenant, and for this reason I deprecate the long period of twenty years being allowed over whose history the tenant may range for the purpose of raking in the embers of old quarrels, and reviving the fires of extinct controversies.

The tenant will not do this of his own motion, but he may be induced to do so if encouraged by this tempting clause of the proposed law. I cannot think that any but lawyers will be benefited thereby.

6. The Government will not fail to perceive that the section proposed to be enacted will legalize a large class of claims now barred by the Law of Limitation, and which were barred before that Act became law. No arguments are offered to prove the necessity of this amendment of the law under which the community has hitherto lived.

7. To enable landlords to obtain a rack rent there must be something approaching to a complete occupation of cultivable land. We who have been concerned with the administration know that enormous areas of waste land, both within and without the borders of zemindaries, exist; and that their existence limits the landlord's power of demanding a monopoly value for his land.

(Signed) H. ST. A. GOODRICH.

With this reservation I would sign the Bill as it stood drafted at the last meeting which I attended.

If section 32 (1) (*c*) stands in the Bill, I desire the above dissent to be appended to the report. I have no doubt that I shall be able to sign the report. My address is 72, Prince's Gate, S.W., London.

(Signed) H. ST. A. GOODRICH.

29th November 1886.

To the Secretary, Rent Law Commission.

MINUTE OF DISSENT BY J. H. GARSTIN, Esq., C.S.I.

I have signed the report because I agree with the greater part of what is set forth in it and in the Bill; but there are two points on which I hold opinions at variance with the majority of the Committee.

The first is as regards the inclusion of holders of land under Ryotwari settlements, direct from Government, under the definition of "landlords" in sub-head (*b*) of clause 1 of section 3 of the Bill.

I think that this is neither necessary, expedient nor just.

The Bill is one for affording landlords a summary method of realizing arrears of rents from their tenants, and the principle that appears to me to underlie it is, that such a summary method of recovery is only needed or intended to be given, as between landlords and their *tenants in the first degree*, that is, who hold directly from them. The landlords themselves are responsible for certain payments in the shape of land revenue to the Government, and it is only just and proper that, inasmuch as the Government itself has taken power by special enactment to recover its arrears of such payments from all persons holding land directly from them by summary process, a cognate power should be conferred on landlords in respect of their tenants so holding from them; but where a landlord's rent is so low that the tenant can afford to sublet the land at a higher rent and yet make a profit out of it, the necessity for any summary procedure to enable such tenant to recover from his sub-tenant ceases to exist. The ordinary Courts of law are open to him and afford sufficient protection.

Indeed, the very "explanations" appended to section 3 seem to me to support my view, for, while the payments made by a tenant to a farmer of Government revenue (that is, a Zemindar) are declared to be "rent," those made by farmer of a landlord's or Zemindar's rents are declared *not* to be "rent."

The Government appears to me to stand in the same, or a very similar, position to its ryots holding directly under a ryotwari settlement, as a Zemindar does to his tenants in the first degree—that is, to those who hold directly from him under a patta—and if there is no summary remedy provided for sub-tenants in a zemindari estate, I cannot see why such a remedy should be given to ryots holding land under Government. It appears to me that it is neither necessary nor just that it should be so—nor is it expedient—for, although the existing law, VIII of '65, provides such a procedure, it is extremely seldom that it is had resort to, and while its abrogation would produce no hardship, its continued existence tends to encourage sub-letting, which is too often only another name for rack-renting.

It is true that, under section 11 of the Bill, a ryotwari holder of land under Government can only proceed against his tenant if he has taken a written agreement from him specifying the rent to be paid; but in reality the ryot himself is a tenant as being a Government pattadar, and any lease of his holding is really a sub-letting, and as the Bill does not contemplate tenants proceeding summarily against their sub-tenants, it appears to me unfair that Government ryots should be provided with an exceptional means of proceeding summarily against their sub-tenants.

The second point is that there is no provision in the Bill for preventing the enhancement of rents paid in kind. The sections relating to the enhancement and reduction of rent are taken with little or no alteration from the Bengal Tenancy Act, and relate solely to rents in money, except perhaps section 22, which declares that the rent for the time being payable by an occupancy tenant shall be presumed to be fair and equitable until the contrary is proved, and this section may be construed to apply to any kind of rent. But I consider, seeing how large a proportion of the zemindari rents in this presidency are paid in kind, that there should be some check on their enhancement, and I would like to see a maximum proportion of the gross produce fixed by law beyond which no landlord should ever be able to raise his demand. What that proportion should be is a matter for discussion.

The question of the gross produce test as regards a money rental has been so carefully considered in the debates and correspondence on the Bengal Tenancy Bill, that it is unnecessary for me to attempt to raise the question again. The Select Committee on the Bill rejected the scheme for introducing such a test for reasons set forth at length by Sir Steuart Bayley in his speech published at pages 42 to 73 of the

Extra Supplement to the *Gazette of India* of 14th March 1885, and the Government of India, in referring the report of the Select Committee to the Bengal Government, remarked (page 806 of Supplement to *Gazette of India* of 10th May 1884): "But even if average standards of produce could be ascertained, the fact remains that rent bears no fixed relation to the gross produce. The cost of cultivation is quite as important a factor as the gross produce, and if one fact is brought out clearly by inquiry, it is the impossibility of ascertaining the cost of cultivation with any degree of accuracy."

These objections apply, no doubt, with much force to a rental based on a commutation of the value of crops into money, because, in settling the commutation rates, the determination of the cost of cultivation is a very important factor; but this point does not present itself for consideration where the rent is paid in kind, for, practically, Zemindars make no allowance at all to their tenants for the cost of cultivation, but halve the gross produce with them, after deducting such customary fees to the harvest labourers and village servants as are then payable. It is true that it is only in respect of wet lands that the rent is paid in kind. The rent of dry lands is paid in money; but, in respect of wet lands even, it seems to me that tenants require protection. At present, I believe, I am correct in saying that, as a general rule, they pay half the gross produce as rent, and the Bill proposes (section 22) to recognize this as equitable, and contains no provision to prevent this proportion being raised, beyond the provisions of section 34 (relating to commutation of rent), and it seems to me doubtful if the terms of that section afford the tenant much, if any, protection.

MADRAS, (Signed) J. H. GARSTIN.
1st November 1886.

NOTE BY Mr. H. J. STOKES.

Sec. 3. A Mokásadar. Is he a landlord?

"Inámdar." This definition is very loose and appears unnecessary. It could be made to cover all zamindars, shrotriemdars, &c., of clause (*a*); and if so taken and read with the latter part of section 128, the whole Bill is swept away. Definitions are most dangerous edged tools.

"Rent." Rent is defined to include money recoverable by the landlord from the tenant under any enactment (other than the Rent Bill) for the time being in force. What does this mean? Is it intended that a landlord is to recover a loan as rent? or a sum of money due to him by the tenant as trustee or bailee? It might be held so to mean.

"Signed." The words of the B. T. A. had better be adhered to: "it also includes 'stamped' with the name of the person referred to."

Sec. 13. The word "Revenue" should be omitted before year.

The explanation does not seem to explain anything; and is, I think, unnecessary.

Sec. 19. If rent is paid in kind it cannot be raised, so the question whether there is a contract or not will not arise; if it is paid in money, the provision here made is found also in section 24, proviso (1).

Sec. 19 (3). What is the meaning of the words "according to local custom" here introduced at the end of the sentence? The expression "established and paid" is not clear, nor is "neighbouring." If a field on one side pays more and one on the other less, which is to be the guide? This clause will have to be altered.

Sec. 21. Before this section or anything like it can possibly become law, it will have to be determined on whom the duty of keeping irrigation works in repair is incumbent, on the landlord or on the tenant or on both. In the last case, how much of the duty lies on either party? This question has not yet been settled as to Government works; and may possibly have to be decided in a different way for each irrigation work. It will certainly be variously answered in different parts of the country. Again, in Ramnad, it is quite usual to raise dry crops on wet land when, for whatever reason, there is not sufficient water available. These crops are often particularly good, and it would be absurd not to charge rent for the land. Indeed, not to do so might lead to great difficulty on the landlord's part in

keeping the tank in order. Who is to tell when the crop has "substantially failed"? The failure may occur or be alleged a few weeks after sowing time; the land is then ploughed and sown with dry crop. Nothing like this section can be enacted until after long and careful investigation.

Sec. 29. I regret very much that section 29 as it stood in the previous draft has been omitted. The reason given for omission is that it is "indefinite," a reason which I cannot understand. It is in harmony with the whole intent of the Bengal legislation (it is section 35 of the B. T. A.), which purposely left a wide discretion to the Civil Courts. I think that it should certainly be restored. It enables the Court to refuse enhancement although prices may have risen, if the rate already paid is excessive.

Sec. 31. I do not see the use of clause (2) of this section. The same clause is found in section 33 and is useless there also. Under section 373, the plaintiff is allowed to withdraw and bring a new suit. Under the section of the Bill, the suit to bar a new suit within 15 years has to be dismissed *on its merits*.

Sec. 34 (2). Is the Collector's refusal final or open to appeal? If final, why should the reasons be recorded? When may the application be renewed?

Sec. 55. *Chapter VIII.*—I was from the beginning in favor of restricting the right of distraint as much as possible, because I was of opinion that it was certain to be abused. For this reason I proposed to adopt the Bengal rules which confine all action to the Court, and do not permit the direct personal intervention of the landlord; but I failed to carry the Committee with me.

The rules now proposed differ from the Bengal rules in allowing the landlord to seize and retain in his charge, till sold by the Court, a defaulting tenant's standing crops and stored produce. Now with respect to the standing crops, there can be no need for haste, for they cannot be removed till they are ripe, and the landlord might well be expected to take timely measures to have them attached by the Court, so that as to them the difference in the proposed rule is hardly worth having. But as to reaped and garnered crops, these can only be seized when they are found on the holding or on the threshing floor. If the defaulting tenant is dishonest, it is quite certain that he will not leave his produce on his holding or threshing floor but will convey it elsewhere out of his landlord's reach; if he is not dishonest, it will be as easy for the Court to seize the property as for the landlord. Thus, in both these cases of standing and garnered produce, the departure from the Bengal rule which leaves all action to the Court seems to me unnecessary and not really in the landlord's interest * as it is intended to be.

*So also of produce which does not admit of being stored. This must be attached at least twenty days before it is ripe (section 56 proviso), so that there is abundance of time for the intervention of the Court.

Furthermore the rules proposed in the draft will be found to be unworkable. Under section 56, the landlord is to take charge of the produce himself; and under section 68 he is liable for any loss incurred by reason of his neglect to preserve it duly. But by section 63 he is not to prevent the defaulter (or "any person claiming through him") from doing all acts necessary for the preservation of the crops, which, if the defaulters fail to do at the proper time, the distrainer is to do them. When is the proper time? If the defaulter proceeds to do these acts, does he relieve the distrainer of liability; and if the defaulter at any time ceases to do them before the property is sold, does the distrainer's liability at once revive? Such questions may easily arise, and may not be found easy to answer. Difficulties may also arise under section 61 which requires sales to take place in the village, so far departing from the Bengal Act. What is the meaning of the word village? Does it mean a collection of houses, or the lands forming the possessions of a village? If the first is meant, how can standing crops, which do not admit of being stored (section 62), be produced by the landlord in the village, as the latter part of this section requires? The Bengal rule that the sale shall be held at the place where the property is simpler and better; and I would strongly recommend that the Bengal chapter be adopted instead of the draft proposals.

Section 56 needs verbal amendment.

Sec. 123. *Chapter XIV.*—The last sentence of this section excludes from the operation of this Act all "lands held by tenants of owners of land who are themselves the inámdars in respect of the land-revenue assessment thereon." What is the meaning of the word "owners"? "Inámdar" has been defined (section 3) as a person to whom a grant of land on favorable tenure or of land revenue has been made or confirmed [by whom?], or in whose favor it has been recognised by the British Government. Now all inámdars to whom a grant of land, and not merely of the assessment has been made, are excluded; and all great zemindars are persons to whom a grant of land on favorable terms or of land revenue has been made. They are therefore inámdars; and they are inámdars in respect of the land-revenue assessment. If they are owners of the land of their zamin, then they are excluded from this Act also; and the result will be that the Act is wiped out. Whether they are owners of the land, or part-owners or not owners at all are questions that have been frequently debated but never settled; and to raise them here seems very unadvisable.

An inámdar whose inám consists of land and not merely of the assessment thereon is, I suppose, undoubtedly an owner of land; and, if he is an inámdar in respect of the land-revenue assessment on his land, what is the difference between him and the inámdars dealt with in the last sentence of this section? I cannot see it.

My remarks apply mainly to alterations made after I had ceased to attend the meetings of the Committee, and to distraint, a subject on which I differed from the other members throughout. I may now add a few words with reference to the minutes recorded by Mr. Garstin and Mr. Goodrich. The Bill can hardly be called "one for affording landlords a summary method of realising arrears of rents," seeing that it very seriously restricts the powers which landlords possess at present; and the principle of the Bill is that landlords (section 3 (*a*)) are merely assignees of the right of collecting the Government assessment due from the land to Government. From this it follows that the tenant's right of occupancy must be formally recognised, which has not hitherto been done; and a presumption in favor of it is raised in every instance (section 4). This is the really important part of the Bill; and the provisions restricting the landlord's right of distraint are secondary.

There is no provision directly forbidding the enhancement of rents paid in kind; but there is no provision enabling the landlord to enhance, and he will not be able to do it except by consent.

The objection raised by Mr. Goodrich has been met to some extent in the report. There are, I believe, estates in the Northern Provinces where rents have been forced up excessively. If this is the case, there should be some means provided for lowering them, for such enhancement is directly contrary to the principle of the Bill and is an infringement of the tenant's right which the Bill now seeks to establish by legislation. Whether, however, the necessity for any such provision exists is a question of fact, and can only be settled after all parties interested have had a full opportunity of making themselves heard. The Committee acted with very little evidence before them; and it was for this reason that I was anxious to circulate and collect opinions on the Bill before reporting to Government. At present the Bill can be regarded only as suggestion, and not by any means as a matured project of legislation.

April 1887. (Signed) H. J. STOKES.

MEMORANDUM BY MR. P. RAJARATNA MOODELLIAR, RAI BAHADUR.

The Bill, as it stands, is a great improvement on the existing enactment, and aims at defining very clearly the rights of the landlord and tenant so as to protect the latter from undue oppression and exaction and the former from being kept out of his just rights. But the very attempt to hold the scale even between the two parties has necessitated the introduction of numerous provisions and conditions, the practical working of which would, I am afraid, lead to an enormous increase in litigation, in which, owing to the inevitable delay and expense involved, the tenant is certain to

suffer in the long run. It appears to me that the simplest and most effectual way of attaining the object aimed at by the Bill would be to prepare, once for all, registers showing a record of rights and of rates of rent as at present existing, and to keep them corrected to date under competent sanction. The preparation of these registers need not be a matter of difficulty and may be confined only to permanently-settled estates as it is in these that disputes are most frequent. The Collector or other officer to be appointed for the purpose should have power to call for (and enforce the submission within a given period of) returns showing all lands treated as home farms, *i.e.*, pannai, khas or kammatam, and the rates of rent usually levied, whether in money or grain. In the case of lands under occupation at the time of the preparation of the registers, the rates entered should be those paid during five years preceding, and in regard to lands not under occupation, the rates to be shown shall be those charged during the last three years when the lands were under cultivation. The accuracy of the returns furnished by the proprietors should be tested by local inquiry, and the registers printed and published in each village and in the District Gazette for three consecutive months, within which any objections that may be presented by parties interested may be heard and disposed of. Appeals against the decision of the Collector or other officer appointed for the purpose shall lie to the civil courts within three months from the date of the decision. After the registers are thus finally prepared, copies thereof shall be printed and issued, under the signature and seal of the Collector or other officer aforesaid, to all the revenue and civil courts and to the proprietors concerned, and they shall thenceforward be accepted as conclusive evidence in all disputes between the landlord and tenant. It should be enacted that all lands other than those shown in the register as pannai, khas or kammatam shall be liable to be taken up with occupancy * rights. Where these rights are acquired by the landlord either by purchase, escheat or otherwise, or where the rates of rent are modified under the conditions laid down in the Bill, the fact shall be notified by the party interested to the Collectors of the district within three months from the date of the transaction. The Collector shall then notify the change in the villages where the lands are situated and in the District Gazette for a further period of three months, and, after hearing objections, shall carry out the necessary alterations in the registers. Under proper arrangements, the preparation of these registers need not take up more than a year or so; but even if it takes double or treble the time, the value of having correct records to refer to in all cases of dispute can hardly be over-estimated. In the Bengal Act, from which we have adopted several of our provisions, power is reserved to the Local Government to order the preparation of registers showing the landlord's private lands and the prevailing rates of rent in any specified local area. Instead of leaving the matter entirely to the discretion of the Local Government, I propose that the Bill should make it obligatory on Government to cause these registers to be prepared at least in the case of every permanently-settled estate. The provisions of the Bengal Act relating to the survey and record of the private lands of the landlord have been adopted in our Bill, but not those relating to the important question of rates of rent.

* I see no injustice in enacting such a rule. The holders of permanently-settled estates are merely the assignees of the Government revenue, and, as such, are simply entitled to collect the rent.

2. Another point which seems to me to be deserving of consideration is whether proprietors of estates should not be empowered by law to carry out a regular survey and assessment of their estates. Difficulty has arisen in carrying out this desirable measure in some of the estates under the management of the Court of Wards. In the first place, there is no law under which tenants in proprietary estates, with even permanent occupancy rights, can be compelled to pay the cost of demarcation stones, which is a heavy item of expenditure in carrying out a survey. In the next, any general revision of the rates of rent cannot be enforced unless the tenants agree. In consequence of these difficulties, the Court of Wards has been obliged to abandon the settlement of the large Parlákimedi Zemindari, which has been under management for about 50 years and has a surplus of about 22 lakhs of rupees.

3. Turning to the provisions of the Bill, I beg to offer the following remarks :—

Section 21.—The term arrear of rent occurring in the second line appears to be superfluous, if not misleading. It may refer to the arrear of the preceding year, and

the section, as worded, may mean that the arrear of a previous year cannot be collected in the following year if, in consequence of the landlord's neglect to keep the irrigation work in repair, the crop in that year has substantially failed. This can hardly have been intended by the Committee. Again, the expressions "due and proper care" and "substantially lost" are very indefinite, and open a wide door for unnecessary litigation. There are thousands of Government tanks in the presidency which have to fill twice before a crop can be matured, and the same state of things exists in all private estates. It will always be difficult, therefore, to determine how far the loss of a crop was due to deficient rainfall and how far to neglect to keep the irrigation works in repair. The object aimed at in the section is now secured to a great extent under the system of sharing the produce, which very generally prevails in the case of wet lands. If the section is retained, I would alter the words "substantially lost" into "totally lost," and also substitute "solely" for "chiefly," in the last line but one of the section. It seems hard on the landlord that where his tank water is used (say) for two months and the water from the tenant's well for three, that he should lose all claim to the assessment on the land. In Government villages, even where the crop is raised *solely* with the aid of well water, the ryot has to pay the dry assessment on the land. I see no reason for denying this right to a private landlord as contemplated by the section.

Section 51.—I think that landlords should be permitted to apply to the civil courts for the attachment and sale of lands in all cases where the arrears are not satisfied by the sale of the produce under Chapter VIII. If they are to bring suits and obtain execution decrees in every case before the land could be attached and sold, the costs would, doubtless, in many cases, fall on the tenants whose interests we are seeking to protect. It is true that this is due to the tenants' default, but nothing is lost by allowing landlords to apply to the courts to attach and sell the land.

Section 55.—Under this section, the landlord cannot distrain produce after it is removed to the tenant's dwelling-house or any place other than the holding, the threshing-floor or the like. The effect of this will be that landlords will be compelled to fix the instalments of rent long before harvest and to distrain the produce before removal. This is opposed to the general policy followed in Government villages, where the instalments are so fixed as to allow a sufficiently long interval from the date of harvest, to enable the cultivators to sell their produce to the best advantage. I would, therefore, recommend that landlords be permitted to attach grain and other produce even after removal to their own houses.

24th March 1887. (Signed) P. RAJARATNA MOODELLIAR.

P.S.—With these remarks I approve of the draft Bill. The Bill will of course be considerably simplified if my suggestions as regards the record of rights and rates of rent are accepted.

(Intld.) P. R.

MINUTE BY Mr. J. LAKSHMIKANTA RAO, DEWAN BAHADUR.

Section 5, *Clause* 2.—This is taken from the Bengal Tenancy Act, and is intended to meet cases in which the Zemindars shifted their tenants from one holding to another to prevent the accrual of a tenancy right. I would, therefore, make the provision applicable to such cases only by adding the following :—

"Provided that it is proved beyond doubt that the frequent changes in the holding were the result of the landlord's design to prevent the accrual of occupancy right."

Section 32, *Clause* 1 (*c*).—The period of 20 years is too long and affords room for endless litigation. If the provision is to be retained the time may be reduced to three or four years.

Section 32, *Clause* 2.—In regard to suits under section 32, clause 1 (*b*), the procedure in determining the amount of reduction of rent should be the same as that provided in section 26 (*a*) instead of leaving it entirely to the discretion of the court.

Summary suits brought before the Collector under Act VIII of 1865 were exempted from stamp duty. When the transfer of these suits to civil courts was discussed at the meeting of the 6th March 1886, the question of exempting them was reserved for future consideration. I think all suits under this Act may, as under the present law, be exempted from stamp duty.

CUDDALORE,
15th March 1887.

(Signed) J. LAKSHMIKANTA RAO.

MINUTE OF DISSENT BY MR. KANCHI SUBBA ROW.

While I feel unable to say that the Bill, as now framed, has dealt with all the questions likely to arise between landlords and tenants in this presidency, I am glad to state that it has not only much improved the status of tenants, but has also declared, in distinct terms, the relations existing between a landlord on the one side and an occupancy tenant or non-occupancy tenant on the other. I am not, however, in favor of the following:—

Section 5, clause 2;
Section 8, clauses 1 and 2; and
Section 21.

2. In my humble opinion clause 2 of section 5, which creates occupancy right in favor of a tenant in respect of a land held by him for the time being, notwithstanding that he may not have had it under his tillage continuously for twelve years, contradicts clause (*a*), section 131, in principle, which lays down that a landlord cannot make any land his private property unless he has cultivated it himself with his own stock or by his own servants or by hired labor for twelve consecutive years. If clause 2, section 5, becomes law, there will be very few persons who will be classed under non-occupancy tenants, because there will rarely be found a person who has not held or cultivated different lands at different times under different landlords in the same village for a period of twelve years continuously. While the Bill treats even a non-occupancy tenant with due consideration, as one not to be ejected except in execution of a decree (section 127), the necessity to create a right of occupancy in favor of one who has not held a particular land under his cultivation continuously for twelve years, or one who has entered upon the land for one or two years during which period one may not have been able to lay out sufficient capital and labor in improving the land is not apparent. Moreover, I fear that this provision will most probably prove a dangerous instrument in the hands of cliques who would not hesitate to bring forward false claims of occupancy and in whose support false swearing would not be rare. Even a *bonâ fide* tenant who has held a land continuously for twelve years may be disturbed under the provisions of this clause by a litigious person on the pretext that he has cultivated the said land. Thus this clause would cause discontent not only among the landlords, but also among the *bonâ fide* occupancy tenants, as both of them might very likely be assailed by unreasonable rivals armed with this provision. By all this, the liberal aim of the legislature would be frustrated, and the general peace that has been enjoyed for centuries together under the benign rule of the Government would be disturbed. There must be a limit for all, and so, for declaring the rights of tenants also. It cannot be expected that this clause would bring on prosperity and happy settlement to all needy cultivators in this presidency. Of course a large margin must very naturally be left. Under such circumstances, I fail to see why a non-occupancy tenant should not be permitted to acquire a right of occupancy by holding a land continuously for twelve years. I am not aware how far the similar provision satisfied the Bengal landlords and proprietary tenants; but I am fully confident that both the landlord and the *bonâ fide* tenant in this presidency will feel discontented if this change in the law

is explained to them. To clear off the difference of opinion on this point, I submit that evidence at least of *bonâ fide* tenants who have held lands in zemindaries for years together be obtained before this clause is passed into law.

3. Section 8, clauses (1 and 2).—If it is the opinion of the committee that the lands in respect of which occupancy rights cease, would fall under those referred to in clause (*a*), section 131, I have no contention; but the opinion should be made specific in the Bill to remove doubts on the subject.

4. Section 21 is no doubt a reasonable provision in the Bill. But I am afraid that if this rule is to be carried out legally, even the Government would have to lose considerable revenue in ryotwar villages. It cannot be considered that wet lands in South Arcot, if not in other districts also, are cultivated mostly by means of wells excavated in wet lands by the ryots at their own cost. Under rainfed tanks these wells give material help to crops raised in wet lands.

5. The words "to keep the irrigation works in order" admit of a very wide signification. The words "in order" require unambiguous definition. I have seen numerous tanks, both Government and private, which are provided with sluices, escapers and bunds, though the latter require strengthening. Under such circumstances, no remission is claimed by, or granted to, ryots even in Government villages. Generally under such rainfed tanks rents are fixed low, considering the difficulty and scarcity of irrigation. I therefore submit that this section requires further consideration before it becomes law.

6. Now, as regards the dissent recorded by J. H. Garstin, Esq., C.S.I., I am of opinion that the holders of land under ryotwar tenure should be retained in clause (*b*), section 3, because the retention will help such large puttadars, as pay hundreds of rupees of land revenue to Government, and whose lands are cultivated to a large extent by other persons on leases given year after year, for collecting rents in a summary manner without going to Civil courts for recovery of such rents. When the puttadar is expected to pay his kists regularly to Government, he cannot do so unless he can legally detain the crops on the ground till the rent is paid to him by the cultivator. Section 13, Act VIII of 1865, which empowers puttadars under ryotwar tenure to proceed against their tenants for the recovery of rents has not been violated anywhere; and so I see no cause why it cannot be maintained as adopted in the Bill. I concur with the said gentleman on the second objection raised in his minute. As regards the objection raised by the Honorable H. St. Aubyn Goodrich on section 32 (1), (*c*), I am of opinion that it may be met by fixing the period at twelve years instead of twenty.

With these remarks I would sign the Bill.

(Signed) KANCHI SUBBA ROW.

24th February 1887.

16 AUG 47

ABSTRACT.

(188).

REVENUE DEPARTMENT.

No. 686.

From The Madras Tenancy Bill Committee.

Dated 13th

Received 18th August

Enclosures 2

No.

SUBJECT.

Submitting the Tenancy Bill and reporting on the same.

REVENUE DEPARTMENT.

Current No. 686

From The Madras Tenancy Bill Committee

Dated 13th August 188 .

FOR ORDERS.

It is submitted that the Bill as finally agreed to by the Committee as given in para 50 of the Report

Ex. Go. 681 of 13-8-87.

The Bill together with the Committee's Report will be referred to the Board of Revenue who will obtain and submit with their own views the remarks and criticisms of the Revenue officers and the Collectors of Districts and other interested persons.

FOR ORDERS.

Bill

whereby they are required to issue

Warrant to summon and

examine on its Behalf.

2. The Judicial Officer

will also be required to

obtain the opinion of

from the Judges of the High

Court and of such Judicial

Officers as the Legislature

of the Province may by

Bill to which the Royal

Assent is to be obtained.

Private Bills.

1st The Comrs of Land Rev
with Certificate of Report
thereon
Gen v. Judicial Bench
with Deeds
Alex D. Thurgood and Ram Sewan Roy

The Hon. the Chief Secretary
for Copies of Correspondence