

(1) Number of pages 166(2) Date of repair 8.6.39(3) Initials of the Referencer J

MADRAS RECORD OFFICE.

Government of Madras.

Revenue

DEPARTMENT.

G.O. No.	890	Press Mis.
Dated	10.10	18 93

*Copy*Not to be folded or roughly handled*Madras Tenancy Bill*

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

Read—again the following Proceedings of the Board of Revenue, dated 26th August 1892, No. 470:—

Read—again Board's Proceedings, dated 6th October 1887, No. 607.

ABSTRACT.—Communicating to all Collectors and to Mr. Grose Government Order directing that the remarks and criticisms of Revenue officers, zemindars and other interested persons be obtained on the Madras Draft Tenancy Bill.

Read—Government Order, dated 4th December 1888, Mis. No. 7213.

ABSTRACT.—Referring certain extract from the address presented to His Excellency the Governor by the inhabitants of South Canara.

Read—again Board's Proceedings, dated 24th April 1889, No. 289.

ABSTRACT.—Requesting Collectors of Nellore and South Canara to report on certain points referred to in the note on His Excellency the Governor's seventh tour, and informing Government that the other subjects mentioned as concerning the Land Revenue Department have been disposed of or are under disposal and need not be specially referred to now.

Read—again Board's Proceedings, dated 12th December 1890, Mis. No. 7923.

ABSTRACT.—Communicating to the Collector of Kistna Government Order stating that the report of Mr. Wynch on the condition of the tenants of the Nuzvid zemindari should be considered along with the Tenancy Bill.

Read—the Government endorsement, dated 28th April 1892, No. 2189.

ABSTRACT.—Forwarding to the Board of Revenue, for early attention, in continuation of Government Order, dated 11th November 1890, No. 892, petition from the ryots of the Nuzvid zemindari, Kistna district, praying for a permanent assessment on the zemindari seri lands.

Read—Government Order, dated 4th February 1892, No. 695.

ABSTRACT.—Forwarding petition from A. Pappanna of Ganjam district praying that an Act be passed prohibiting the ejectment of tenants in proprietary estates.

Read—the Government endorsement, dated 14th February 1891, No. 1056.

ABSTRACT.—Forwarding to the Board the petition from the ryots of the zemindari of Uthumalai, Tenkasi taluk, Tinnevely district, praying for issue of orders to their zemindar to carry out the directions repeated by the Revenue authorities to ameliorate their deplorable state.

Read—Government Order, dated 11th February 1892, No. 341 R.

ABSTRACT.—Forwarding petition from the ryots of the zemindari of Uthumalai praying for the amendment of the law relating to landlord and tenant.

Read—Government endorsement, dated 25th May 1892, No. 2542.

ABSTRACT.—Transferring to the Board of Revenue for disposal petition from Nattamai Arunachalla Nadar and other ryots of Uthumalai, Tenkasi taluk, Tinnevely district, praying to issue an order to the Collector of Tinnevely asking him to cancel all the attachments made by

the Manager of the Uthumalai estate, and requesting the Board to state when its report on the Tenancy Bill is likely to be submitted.

Read—also file of replies to Board's Proceedings, dated 6th October 1887, No. 607.

Resolution—dated 26th August 1892, No. 470.

The Board has the honour to report on the Draft Tenancy Bill forwarded for its consideration by Government.

2. The Bill itself and the opinions thereon of Collectors and of certain Judges and zemindars, which are submitted to Government along with these Proceedings, have been carefully considered, and the Board now proceeds to offer its own remarks on the subject.

3. The earliest Regulations dealing on the one hand with the relations of zemindars, mittadars and other landholders to Government, and on the other with the relations of their occupiers under them, are the following:—

(a) *Regulation XXV of 1802*—which declares the proprietary rights of lands to be vested in the zemindars and other proprietors and their heirs and successors for ever.

(b) *Regulation XXVIII of 1802*—(repealed by Act VIII of 1865), which empowers zemindars and other farmers of land to distrain and sell, with certain specified exceptions, the crops, cattle and personal property of under-farmers and ryots "without sending any previous notice to any Court of Judicature or to any public officer" (section 2). For excessive distraint, or distraint contrary to the provisions of the Regulation, the ryot could recover damages from the Zillah Court (sections 9 and 14).

(c) *Regulation XXX of 1802*—(repealed by Act VIII of 1865), which defined the mutual engagements to be entered into by the zemindars and farmers and the inhabitants and cultivators of the land, and which gave origin to the system under which pattas and muchilkas are now exchanged between holders under the permanent settlement and their ryots. Under section 10 of this Regulation, the ryot was liable to summary ejection in favour of others by the zemindar for refusal after one month to accept a patta, while under section 8, zemindars were allowed six months after demand for tender of pattas, and on failure, the ryots had to have recourse to the Civil Court, on application to which he could also get damages for failure to grant him receipts for his payments (section 14). The Regulation, however, "nowhere authorises the zemindar to enter on the possession of the ryot's land, as his own, and to cultivate it by his own means." The Regulation further provided for the consolidation of the various demands of the landlord into one specific sum of money or quantity of grain (section 6).

* Paragraph 10 of letter from the Registrar of the Court of Sadar Adawlat, dated 1st September 1818, printed on pages 17-29 of the Book of Papers relating to the Rent Law of the Madras Presidency from 1812 to 1885, herewith forwarded.

(d) *Regulation IV of 1822*—which declared that the above Regulations "were not meant to define, limit, infringe or destroy the actual rights of landholders or tenants," but that the decisions regarding such rights were left to be adjudicated upon by the established courts.

(e) *Regulation V of 1822*—(repealed by Act VIII of 1865), which was passed for the declared purpose of protecting the ryot from abuse of power by the landlord without putting him to the expense of a regular civil suit (*vide* preamble), provided that no property attached under Regulation XXVIII of 1802 should be sold until a patta had been granted to, or had been tendered to and refused by, the ryot, and until previous notice had been given to the Collector and his previous consent obtained to the sale (section 3); that notice of distraint should at once be given to the Collector, and a period allowed for the ryot to appeal to him (section 4); that a ryot should not be ejected for non-acceptance of patta without the Collector's permission and approval of the terms of the patta (section 8); and that, with certain exceptions, in all cases in which a summary suit had been allowed to the Zillah Court under Regulations XXVIII and XXX of 1802, such suit might now be brought before the Collector, whose decision would, however, be subject to appeal to the Zillah Court (sections 2 and 16) and would be held in abeyance pending such appeal.

4. The Regulations of 1822 were passed because the laws of 1802, which were intended to protect the ryot as much as to assist the zemindar, had confessedly failed in their object. Pattas had not been issued, and as the ryot's right of occupancy "was not a right distinctly understood nor previously established in zemindars' districts," Regulation XXX of 1802 had become a dead letter. To amend this state of things summary and interlocutory jurisdiction was given to Collectors, subject to appeal to the civil courts, to guard the ryot against abuse, and to maintain him in possession where there appeared no just cause for his ejection. But even at this time it appears from the papers that the difficulty in some districts of the Presidency was rather on the side of the zemindars than on the side of the ryots.† The Collector was supposed to have at his command extensive means of information for the immediate adjustment of disputes or revenue cases. But the intention was that his jurisdiction was not, in any way, to be a barrier to recourse to the higher civil courts for real redress by any who considered themselves aggrieved by any acts either on the part of the zemindars or tenants. The intention of the Government in their legislation both in 1802 and 1822 was to leave the ryots and the zemindars either to abide by the custom and usage of the country or to enter such agreement as it might suit their mutual interests to contract.

* Paragraph 8 of Mr. Fullerton's minute of 12th February 1817, printed on pages 3-7 of the Papers relating to the Rent Law of the Madras Presidency from 1812-85, forwarded to Government with these Proceedings.

† *Vide* letter from the Secretary of the Board of Revenue, to the Registrar of the Court of Sadar Adawlat, dated 21st July 1825, printed on pages 38-40 of the volume above referred to.

[Correspondence between the Commission for the revision of the judicial system; Government, and the Sadar Adawlat, pages 12-36 of "Papers relating to the Rent Law of the Madras Presidency."]

5. In 1855, an attempt was made to frame a Revenue Code for the Presidency, and in that connection the land Regulations of 1802 and 1822 again came under discussion, which eventually resulted in the passing of Act VIII of 1865. The High Court has pointed out that, under those Regulations, the ryots under Government could not proceed against their tenants for the recovery of arrears of rent, and the Inam Commissioner had also pointed out that inamdars could not use the summary process allowed to holders under the Permanent Settlement for the recovery of their dues from their under-ryots—*vide* statement of objects and reasons appended to Mr. Maltby's draft Bill of 1863 printed on pages 64-65 of "Papers relating to the Rent Law of the Madras Presidency."

6. Mr. Maltby introduced the Bill in April 1863, and when doing so, stated that its object was to remedy the above two defects in the existing Regulations and to simplify and improve the law as it then existed. The Bill was intended to give new powers for the recovery of rent. The Bill was first reported upon in May 1864; and it is worth noticing that the form it took was due to the desire of the Committee to assimilate it as far as possible to Act II of 1864, which had just then passed the Council—*vide* pages 66-69 of Papers relating to the Rent Law of the Madras Presidency.

7. Before the Bill, however, had passed the Council, many petitions against it were received, almost all it may be noted from the Vizagapatam district, and it was therefore recommitted in November 1864. Among the petitions special attention may be drawn to one from the proprietrix of Mooragapaka ‡ in Vizagapatam, which deals very exhaustively with the wants of the zemindars in that part of the Presidency, which wants are probably precisely the same now as they were then. These wants may be summarised thus, viz., regulations which should secure the following rights:—

‡ Pages 105-116 of "Papers relating to the Rent Law of the Madras Presidency."

(1) The right of demanding from hereditary ryots the share of the produce to which the zemindar is entitled, either by his own agreement with them, or with reference to the receipts upon which the permanent peshkash was estimated.

(2) The right to demand an increase of rent when such is justified by causes similar to those which justify the Government in raising the assessment at the periodical ryotwari settlements.

(3) The right to lease out without restriction lands deserted by the hereditary ryots and lands which were waste at the time of the Permanent Settlement.

8. The Committee also had before them at their second sittings the Proceedings of the Board of Revenue, dated 2nd December 1864, No. 7742, a very valuable paper on the rights and liabilities of landlords and tenants, as far as they could be gathered from an examination into the principles of South Indian land tenures as they stood at the introduction of the Permanent Settlement, which the Board has thought it desirable to reprint as an appendix (III) to the present Proceedings. The then Board's conclusions which are summarised in paragraph 61 of their Proceedings were as follows:—

"That in the earliest times of which we have record, the right of the State to a share in the produce of the land was limited, and that this limit was such as to leave a sufficient margin for the growth of a valuable property in the land appertaining to the occupant, whose right to retain possession on payment of the limited share was inviolable and hereditary.

"That a fixed limit was equally maintained by the Muhammadan conquerors.

"That the origin of the zemindar's office was comparatively a modern one, and that, whatever its origin, the zemindars derived their rights from the State, which could not confer more than it had possessed and exercised.

"That the State asserted, and often in later times exercised, the power of resuming the exercise of its rights from the zemindars without thereby altering the terms and conditions of the ryot's tenure.

"That any increase in the rate of the zemindar's demand on the ryots was only justified by the zemindar on the plea that the State had raised its demands on him, although this ground was by no means a sufficient foundation for any increase in the rate; inasmuch as the State share collected by the zemindar could be legally increased by extension of cultivation, and its value enhanced by improvements in the cultivation, and when the superior kind of crops were grown; and as the State demand on the zemindar was not fixed, though his percentage of the State share of the produce might have been so.

"That the notorious prevalence of excessive receipts by the zemindars from the ryots induced the Nazims of the Empire to raise the State demands on the zemindars, which measure again excited the zemindars still further to exact from the ryots, till the latter were ground down to penury, or exasperated to resistance. Hence the zemindars were themselves impoverished, so long as, and where the officers of the Empire were able to maintain their authority over them, or they fattened on extortion where the influence and authority of the Empire or its lieutenants had grown weak. In neither case was the State benefited.

"That the object steadily kept in view by the framers of the Permanent Settlement was to remedy these crying evils by re-adjusting matters; in order to which they proposed to relinquish to the zemindars an ample allowance for their personal benefit, out of the average State demand in past years on the zemindari, and to fix the zemindar's payment unalterably for ever, leaving to him all the benefits derivable from extension of cultivation and improvements in the culture of the lands, but to restrict his demands on the ryot to the rate or share established for Government by prescription, which rate was to be registered in the village by officers appointed for the purpose; while the actual demand on the individual ryot was to be recorded in a patta or written engagement in accordance with this established rate or share, which patta when granted not "without limit of time," but "for one year," should be renewable at its close, or in force till renewed.

"That a limited time (6 months) was allowed to each zemindar after the Permanent Settlement of the State demand on his zemindari, for the necessary arrangements with the ryots, after which time he became liable to fine if he failed to grant patta to ryots on demand.

"That when disputes arose regarding the rates to be specified in those patta, whether of assessment in specific quantities of grain or sums of money for a specified extent of land, or of shares in the produce, they were to be determined with reference to the rates in force in the particular case in the year preceding the Permanent Settlement of the State demand, or where that was not ascertainable then according to the rates in force in the case of neighbouring land of similar quality.

"That no ryot can be ejected from his holding so long as he pays or is willing to pay this established rate."

9. The following passages from the Committee's report to which section 11 of the present Act (VIII of 1865) owes its origin are also worthy of note:—

"The Committee deem it unnecessary to enter into the discussions to which that important measure (the Permanent Settlement) has led. They will shortly observe that, without going so far as to hold that zemindars are only farmers or assignees of the public revenue, and not

proprietors of their estates, they unanimously concur with the Board that the Regulations of 1802 were intended to protect the rights of occupants of land under zemindars by fixing the maximum rent demandable from them and forbidding their ejection as long as that rent was paid. The Committee further hold that Regulations IV and V of 1822 were passed for the increased protection of such occupants of land in consequence of passages in the Regulations of 1802 which spoke of a proprietary right being conferred on zemindars having led to doubt and misapprehension.

"No alteration is, therefore, necessary in the principle of this Bill, which was framed on the above view of the rights of occupants of land under zemindars; but as experience has shown that Regulations IV and V of 1822 have not remedied all doubt regarding the Regulations of 1802, and as time has effected changes since those Regulations were passed, the Committee deem it essential that section 11 should be amplified and show, in more detail, the course which is to be pursued when disputes regarding rates of rent have to be settled.

"The Committee consider that the three main principles to be kept in view are these—

"1st.—That ryots who hold land in their own right hereditarily or by the custom of the country at a fixed or long-established rent, are to be protected in their occupancy.

"2nd.—That a division of the crop between landholder and tenant formed the ancient basis of rent, and that the local rate of this division is to be referred to in cases of dispute when other means of settling the rate of rent to the satisfaction of both parties prove unsuccessful.

"3rd.—That landholders may arrange their own terms of rent in the case of unoccupied lands.

"The Committee would furthermore not interfere with any voluntary engagements regarding rent which have been made between landholder and tenant, and it is, therefore, proposed to declare that engagements are to be respected. The Committee feel that any other course would lead to great confusion and wrong. As respects the third principle, the Committee would remark that while it is essential to protect the rights of old tenants, it would injure the due rights of the landholder, and oppose the advancement of the country, to declare that he cannot let out unoccupied land to the best advantage. By the introduction of valuable new products, such as the indigo, silk, coffee, oil-seeds, &c., and by improved means of communication in some parts of the country, lands have attained an enhanced value, and as a land holder can refuse applications made to him for waste lands, it would be anomalous and injurious to declare that he can only arrange for their cultivation by cultivating them himself, or leasing them out on an inadequate rent founded upon an ordinary and obsolete grain crop"—paragraphs 4, 5 and 6 of Committee's report printed in pages 179-180 of "Papers relating to the Rent Law of the Madras Presidency."

The Bill was presented by the Committee on the 21st December 1864.

10. It was, however, recommitted on the 18th February 1865 owing to Mr. Ellis having announced his intention of proposing several amendments. It was represented to Council again on 25th February 1865, and considered on the 18th March 1865, when Mr. Ellis proposed several amendments, all apparently to strengthen the landlord's hands, and one of which was to the effect that landlords should be empowered to summarily eject a tenant on his refusal to accept a patta, giving him that power as an alternative to the power given in section 9 of the Bill (also section 9 of the Act as it now stands), viz., to enforce by a summary suit before the Collector the acceptance of the patta offered. The final consideration of the Bill was postponed after Mr. Ellis' amendments had been accepted until April, and in the meantime a strong protest against the proposed amendments was received from the Collector, Vizagapatam. At the next sitting of the Council on 1st April 1865, the amendment above referred to and others which had been carried by Mr. Ellis were rescinded, and the Bill finally passed—pages 195 and 208—13 of "Papers relating to the Rent Law of the Madras Presidency."

11. It is worth notice that the Government of India objected to the Act as finally passed on two grounds: first, that it gave no facilities to ryot proprietors to recover their rents by the summary process; and, secondly, that it infringed on the just rights of zemindars by preventing them from ejecting their tenant-at-will except by a regular suit in the civil court—pages 214-218 of "Papers relating to the Rent Law of the Madras Presidency." It is curious that an Act passed after such long and full discussion, discussions at which men cognisant of the usages and customs of the country assisted, should have had results which so disappointed their expectations, and that so far from the evils which the Government of India expected, having resulted from the Act, precisely the reverse should have happened. One thing may certainly be said that the Act—it did not infringe on any of the just rights of the

zemindars. The result of this legislation has been such as to make it plain that the greatest caution is necessary in framing a new Act, and that the best intentions of the ablest men are liable to be frustrated by the great complexity of the subject.

12. The following are the principal provisions of Act VIII of 1865, which still forms the law as between landlord and tenant:—

(1) Landholders are divided into two classes, as specified in section 1 of the Act and which may be roughly described as—

(a) Zemindars, inamdars, &c.

(b) Ryots.

(2) All landholders can proceed under the Act for the recovery of arrears of rent from their tenants, provided that they have entered into written agreements with them, or in the case of landlords coming under class (a), tendered pattas, and that they take action within a year of the date when the arrears became due—sections 2 and 13.

(3) Except when both parties have agreed to dispense with pattas and muchilkas, no suit either in the Revenue or Civil Courts can be brought to enforce the terms of a tenancy under landholders of the zemindar and inamdar class unless pattas and muchilkas have been exchanged between landlord and tenant, or a proper patta or muchilka has been tendered by the party suing—sections 3 and 7.

(4) When a tenant declines to accept patta from a landlord of this class or a landlord to grant patta to a tenant, the acceptance or grant of the patta may be enforced by summary suit before the Collector, who is to determine what a proper patta should be, deciding rates of rent when under dispute according to the terms of section 11 of the Act—sections 8—11.

(5) A landlord of the zemindar and inamdar class can only eject a tenant by a decree of a civil court, or by a summary suit before the Collector for failure to accept a patta which the latter has approved, or in the case of tenants not having a saleable interest in the land, for non-payment of arrears which distraint of moveables is unable to cover—sections 12 and 41—44.

(6) Landholders may distrain the crops and moveable property of their tenants for arrears of rent on their own responsibility, provided they send a written notice to the Collector within ten days of the distraint. The ryot may, however, bring a summary suit before the Collector within thirty days to set aside such distraint. If no such suit is brought, or if it is decided against the ryot, the Collector will, on application by the landholder within a specified time, cause the distrained property to be sold, unless the ryot pays up his dues, with interest, costs of distraint, &c., previous to sale—sections 14—37.

(7) Distress levied for arrears shall not be excessive; and the ryot may bring a summary suit before the Collector to recover damages for improper distraint, loss of property while under attachment, and irregularities in sale. Moreover, an unlawful distraint precludes the landholder from further proceedings under the Act for the recovery of the arrears concerned—sections 17, 20, 24 and 36.

(8) A landholder of the zemindar and inamdar class may also sell such saleable interest as a tenant may possess in his holding in satisfaction of arrears of rent, provided he gives due notice to the Collector and to the defaulter, and the latter does not appeal by summary suit to the Collector or such suit is decided against him—sections 38—40.

(9) When arrears cannot be liquidated by distress, or sale of the tenant's interest in his holding, and the Collector has reason to believe that the defaulter is wilfully or fraudulently withholding payment, he may, on application by the landlord, have the defaulter arrested and imprisoned for certain specified periods or till the arrear is paid—sections 45—48.

(10) Except where the Act debars him from doing so (as under section 7), a landholder may also recover any arrear of rent by suit in a civil court. But in deciding rates of rent, a civil court must be guided by the provisions of section 11 of the Act—section 87.

(11) Tenants are entitled to receipts for all payments made by them to landholders, and if these are not granted, may obtain damages by summary suit before the Collector—section 81.

(12) Landholders may proceed under the Act against a tenant's surety as well as against the tenant himself—section 84.

(13) Any judgment passed by the Collector on a summary suit under this Act may be appealed against to the District Court within thirty days—section 69.

13. The present proposals for legislation have arisen in the following way. In Special Appeal No. 9 of 1870 (Chokkalingam's case), before the High Court of Madras, the High Court ruled that a landlord possessed the absolute right to put an end to a tenancy at the end of the fasli year, unless the condition that he was to continue to hold at the same rent as that paid previously was proved to exist either by the force of general custom or by positive law, and was a part of the contract of tenancy. It was held that there was no provision in the Act to qualify the right of eviction on termination of a tenancy. This ruling was said by the Board of Revenue in its Proceedings, dated 8th September 1871, No. 3876, to be of very great importance, and to deprive the tenant of the right of occupancy intended, as is evident from the remarks of the second Select Committee quoted in paragraph 9 above, to be confirmed to him by Act VIII of 1865. It must be admitted that the then Board exaggerated the effects of the High Court's ruling. It did not, as pointed out by Sir Philip Hutchins,*

* *Vide* his note of 29th August 1882, printed on pages 272—275 of "Papers relating to the Rent Law of the Madras Presidency." give the landlord power to eject (in the absence of any positive stipulation as to the term of the tenancy), provided that custom could be proved to exist which

gave the tenant an occupancy right. The decision, however, "has had the effect in every case of throwing on the ryot the burden of proving the custom, whereas in former judgments the custom could be recognised without proof. It has also been misunderstood or misrepresented in certain districts, where ryots have been induced to sign muchilkas acknowledging that they are

mere tenants-at-will."† The Board's Proceedings of 8th September 1871, No. 3876, were not noticed by Govern-

ment until March 1876 when the Government called upon the Board to find out whether the results they anticipated had happened—Government Order, dated 13th March 1876, No. 366. The Board reported in their Proceedings, dated 7th March 1879, No. 618, that the ruling had had no effect except in Ganjam, Vizagapatam and Nellore; but that the relations of zemindars as landlords to their tenants stood on a very unsatisfactory footing, and that the sooner this difficulty was faced the better.

14. In 1881, the Government of India forwarded to the Madras Government certain extracts from the report of the Famine Commission suggesting that an inquiry should be made whether it would not be advisable to legislate in the direction of discouraging, if not forbidding, the subletting of land by occupancy tenants, and of improving the position of tenants-at-will by providing that all tenancies should *prima facie* carry a right of occupancy. The Madras Government referred these suggestions to the Board and to certain selected officers for report—Government Order, dated 18th March 1881, No. 475.

15. Of the district and other officers who reported on this point, all were against the first proposal. Mr. Chentsal Rao ‡

† *Vide* papers read in Government Order, pointed out that in the Presidency dated 29th April 1882, No. 437. the number of cases in which lands are

sublet is probably small, and that probably tenants-at-will are not as much as one per cent of the tenants with occupancy rights. He wished to see legislation undertaken to secure the tenants the value of their improvements; and to clearly lay down that zemindars cannot claim any actual rights in the soil, but merely a share in the produce. He urged, if all zemindari tenants could not be broadly declared to have rights of occupancy in the same way as Government ryots, the appointment of a

Commission to inquire into the tenures of the zemindari tenants to decide who had occupancy rights and who had not. Mr. * *Vide* papers read in Government Order, dated 29th April 1882, No. 437. (now Sir) H. E. Stokes * wished to see the position and rights of occupancy tenants, and to correct the confusion which made the Act difficult to work.

The Board, in forwarding these papers, expressed its disapproval of the proposal to prohibit subletting and its concurrence with Mr. H. E. Stokes in the impracticability of a suggestion the Famine Commissioners had made for compensating the landlords for the conversion of tenants-at-will into tenants with occupancy rights. As regards the relations of landlord and tenant, it reiterated its former suggestion that the Rent Law should be revised, and remarked that the object to be kept in view should be "to define existing rights as established by customary usage, and make provision for their enforcement, and not to create by statute new relationships between landlord and tenant." (Board's Proceedings, dated 26th September 1881, No. 2122).

16. The Government concurred in considering any State interference in the matter of subletting inadvisable. On "the far more momentous question" of further rent legislation it said:—

"Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for doubt that it has been judicially interpreted, though yet within a limited area, as declaring the tenure of a zemindari ryot terminable at the will of the zemindar at the end of the year, and has had the effect, over a more extended area, of enabling the zemindars to impose arbitrary terms and levy enhanced rents from the ryots. It is clear, therefore, that Madras Act VIII of 1865 has failed to assure to ryots holding under assignees of the public revenue that permanency of tenure, as well as security against exaction and oppression, which that enactment, as likewise the Regulations of 1802 and 1822 which it consolidated, contemplated and intended to assure to them.

"The position, having regard to the magnitude of the interests involved, is fraught with anxiety, and the Right Honorable the Governor in Council is satisfied that remedial measures cannot be safely deferred any longer. He accordingly resolves to appoint a committee, composed of the gentlemen named in the margin, to draft a Bill calculated to remove all doubt as to the conditions of a ryot's tenure of land. The Government would be disposed to distinctly lay down that the ryot and his heirs

Section 12.
Honorable Mr. Carmichael.
Honorable Mr. Sullivan.
Mr. Forster Webster.
Mr. H. E. Stokes.
The Government Pleader.

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 patta and muchilka, 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.

"The Government consider that, as suggested by the Famine Commission, the Bill should provide that all tenancies in zemindari or inam lands *primæ facie* carry a right of proprietary occupancy, and should throw on the zemindar or inamdar the onus of proving the fact from which a non-occupancy tenure has to be inferred. In like manner, where a special contract at the time of first occupancy, reserving to the superior holder the right of eviction or a higher rent, is alleged, the onus of proving such contract should rest on the party pleading it." Paragraphs 3, 4 and 5 of Government Order, dated 29th April 1882, No. 437, Revenue.

The committee, however, never sat.

17. The Famine Code Committee, in the meantime, drew attention to the fact that under section 2 of Act VIII of 1865, a zemindar could not in times of famine postpone claims on his tenants for more than a year without altogether losing the right of enforcing them under the Act, and recommended that when the Act was revised, steps should be taken to remove this disability. (Government Order, dated 5th October 1882, No. 1080-A, Revenue).

18. The next step was a short Bill drafted by Sir Philip Hutchins in which it proposed to declare that occupancy right existed by the ancient custom of the country, and that this custom should be presumed by the courts in every case coming

before them until the contrary was proved, except in the case of sub-tenants, cultivators of the zemindar's *pannai* or demesne land, tenants holding land in lieu of wages, and tenants farming lands under a landholder. No written admission by the tenant of the landlord's right of ejection was to be allowed unless it had been executed for good and sufficient consideration, or unless the tenant and any one from whom he claimed had held the land for less than twelve years, "with reference to the said custom" (occupancy right). After the passing of the Bill, a stipulation excluding occupancy right should only be valid if executed in the presence of the Collector or the Divisional-officer.

In a subsequent note Sir P. Hutchins proposed to add to the Bill a clause making arrears of rent the first charge on the land as the Government land revenue is in the case of ryotwari tenures under section 17 of Act II of 1864, and another permitting the landlord to eject the tenant by suit "for any such misfeasance as would entitle a lessor to cancel a lease" (pages 278-79 of "Papers relating to the Rent Law of the Madras Presidency").

19. The reports on that Bill were various. Mr. Brandt * desired a complete revised Rent Act. Mr. J. G. Horsfall *

* *Vide* pages 281-2 and 286-290 of "Papers relating to the Rent Law of the Madras Presidency." reported that in Kistna the tenants had become mere tenants-at-will for the periods covered by their leases. The landlords

seldom ejected, but they systematically raised their rents whenever leases terminated. He submitted that the only remedy was the compulsory survey of, and introduction of Revenue Settlement rates in, all zemindari estates, fixity of rent being needed by the ryot even more than fixity of tenure. Mr. Winterbotham, * writing from Vizagapatam, said that in that district the Civil Courts had been steadily passing decrees ignoring or denying the occupancy rights of the zemindari tenants for the last fifteen years. He regarded it as certain that the Civil Courts would affirm the universal non-existence of the custom. Mr. (now Sir) H. E. Stokes * reported from Tanjore that it was the landholders there who needed protection and not the ryots. The Bill was apparently dropped.

20. The next step was the circulation of Mr. Carmichael's Bill which was generally disapproved—*vide* Board's Proceedings, dated 1st September 1884, No. 3050. The Government thereupon referred the Bill, with the criticisms thereon, to a strong committee which included, among others, the Hon. Mr. Garstin, Mr. H. J. Stokes, Dewan Bhadr Subramania Aiyar, C.I.E., Mr. P. Rajaratna Mudaliar, Mr. Chentsal Rao, and Mr. T. Venkasawmi Rao. The committee was to deal with the contemplated revision of the Rent Law as enunciated in Government Order, dated 29th April 1882, No. 437, above referred to, and it was added as the opinion of the Governor in Council that "the new Bill should deal only with acknowledged evils, avoiding unnecessary changes, and holding the scales even between the landlord and tenant." (Government Order, dated 15th July 1885, No. 827, Revenue.)

21. This committee submitted its report on the 13th August 1887. It discarded Mr. Carmichael's Bill by reason of the general condemnation it had elicited, and substituted a new one drawn upon the model of Bengal Act VIII of 1865. It is this Bill which the Board now has to report on.

22. A detailed abstract of the Bill will be found in the first appendix to these proceedings. Its principal provisions are described below in the drafting committee's own words:—

(a) *Occupancy rights, &c.*—"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

† All Zemindars, Shrotriendars, Muttadars, Jaghirdars, Palayagars and Inamdars; 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.
Bill, sections 4, 5 and 103.

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 zemindars 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

Section 7.

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 (paragraph 7 of Committee's report).

"From the provisions described in paragraph 7, however, are excepted cases of tenants cultivating the private lands of landlords, known as *kambattam khds*, *seri*, *pannai*, or lands of which the occupancy right has become

Section 103 proviso.

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 (paragraph 9).

"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 enquiry 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*, *seri*, *pannai* or *khds*, and (2) land proved to have been cultivated by the landlord himself by hired labour for 12 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." (Paragraph 13.)

"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 *khamar* 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 paragraph, be subject to the provisions of the Act in regard to the accrual of occupancy right.

"The object of thus circumscribing the limits of landlords' demesne lands is that the area of communal land available for the wants of the increasing agrarian population may not be materially curtailed." (Paragraph 14.)

"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." (Paragraph 15.)

"To meet the particular requirements of this Presidency, we have placed in the same category as landlord's private lands inam 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 favour of the proprietary tenant." (Paragraph 16.)

(b) *Non-occupancy tenants*.—"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

Sections 35—40.

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

Sections 36, 37.

enhancements to be binding on him must be by registered agreement or by agreement obtained through the court. In the latter case, the

Section 39.

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

Section 38.

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." (Paragraph 35.)

(c) *Surrender and abandonment of holdings*.—"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

Section 122.

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.

"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

Section 123.

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 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." (Paragraph 44, clauses 4 and 5.)

(d) *Transfer, sub-division, and subletting of holdings*.—"In case of a transfer of a tenant's interest in the land, notice in writing should

Section 125.

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.

Section 126.

"A sub-division of a holding, except in accordance with the law of inheritance or under a

Section 124.

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."

"A tenant may sublet only by a registered instrument or with the landlord's consent, and the term of sub-lease may not exceed nine years." (Paragraph 44, clauses 7, 6 and 3.)

Section 121.

(e) *Acquisition of tenant's holding by landlord for useful purposes*.—"Provision is made for the acquisition by the landlord, through the

Section 120.

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." (Paragraph 44, clause 2.)

(f) *Improvements by tenants and compensation therefor.*—"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. 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 (section 27) from enhancing the rent on the ground of an improvement made by him, unless he shall have registered it." (Paragraph 12.)

* Sections 112-119.

(g) *Pattas and muchilkas.*—"The most important provisions in the existing Madras Act which we have retained are those relating to the exchange of patta and muchilka and to rates of rent. Of course these (i.e., provisions as to rates of rent) 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 zemindars, taking advantage of the High Court's ruling of 1871, have contrived to exact undue terms in the shape of muchilkas; 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)." (Paragraph 23.)

"The only points in the detail of the chapter on pattas and muchilkas which call for notice are the following: We have omitted the provision in the existing Act (section 7), which allows of patta and muchilka 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." (Paragraph 24.)

Section 13.
Section 17.
Section 10.

"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 patta was tendered, we have provided for its being, if necessary, tendered by filing in court." (Paragraph 25.)

"We have further, with reference to the Proceedings of the Board of Revenue, dated 16th January 1884, No. 134 (collection of papers relating to the Rent Law of the Madras Presidency, page 323), expressly limited the scope of the provision for the exchange of patta and muchilka 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." (Paragraph 26.)

(h) *Rates of rent.*—"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 Act VIII of 1863) 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." (Paragraph 27.)

Section 19 (1).

"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

Note of explanation appended to section 19 (1).

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 1863, 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)." (Paragraph 28.)

Section 21.

(i) *Enhancement and reduction of rents.*—"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. An enhancement by contract is subject to the following conditions, viz.:-

Sections 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." (Paragraph 29.)

Section 25.

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

- "(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." (Paragraph 30.)

Sections 26-29.

Section 30.

"The grounds on which a tenant may obtain a reduction of rent are -

Section 32.

- "(1) Deterioration of the soil;
- "(2) Fall in the prices of the staple food crops; and
- "(3) Undue enhancement within 20 years before suit."

Note by Board.—The Bill says 20 years before the passing of the Act.

Section 33.

"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 zemindars to exact arbitrary terms by threats of eviction."

+ *Vide* Government Order, dated 29th April 1892, 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." (Paragraph 32.)

Section 32 (2).

(j) *Commutation of rents in kind.*—"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." (Paragraph 33.)

Section 34.

(k) *Recovery of rent by ryot landholders.*—"In chapter VI is inserted the existing provision to enable holders of land specified in clause (b), section 3, viz., Government ryots and others not included in clause (a), to proceed to recover rent under the Act, provided they shall have secured written agreements." (Paragraph 36.)

(l) *Consequences of default in payment of rent.*—"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 Government Order, dated the 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." (Paragraph 37.)

Sections 42-46.

Section 53.

(m) *Distrain for arrears.*—"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." (Paragraph 11.)

Sections 47-50.

Section 51.

Section 54.

(n) *Sale of land for arrears.*—"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 realization of his dues, we have not considered it necessary to adopt the suggestion of the Board of Revenue in their Proceedings printed in Government Order, dated 18th July 1885, that the sale should carry an absolutely unencumbered title in all cases." (Paragraph 40.)

Section 97.

"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." (Paragraph 41.)

(o) *Abolition of summary procedure and transfer of rent suits 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." (Paragraph 17.)

"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. 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." (Paragraph 18.)

"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." (Paragraph 20.)

Section 82.

"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.§" (Paragraph 21.)

† Section 34.

‡ Sections 112-119.

§ Sections 128-136.

"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 were 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." (Paragraph 22.)

|| Section 88 (e).

¶ Section 88 (e).

** Section 88 (g).

23. The Committee, as might have been expected, was not unanimous in regard to all the provisions of the Bill. The principal points on which minutes of dissent were recorded by some of the members are noticed below:—

Section 32 (1) (c).—*Mr. Goodrich* held that it would be inexpedient to permit tenants to sue for reduction of rent on the ground that it has been "unduly raised" twenty years before the passing of the Act. Such a provision would lead to vexatious litigation. *Mr. K. Subba Row* wished to reduced the period within which such suits might be brought to twelve years before the passing of the Act; and *Mr. Lakshmi-kanta Row*, to three or four years.

The Hon. Mr. Garstin held that the power of summary distraint should not be given to Government ryots in respect to their tenants. They themselves are tenants of Government.

Mr. Garstin further objected to the fact that, under section 23 safe-guards against enhancements of rent were restricted to money-paying occupancy tenants, giving no protection for those who pay in kind.

Mr. H. J. Stokes pointed out that, as section 128 prevents the tenants of certain inamdars from acquiring occupancy right, the term "inamdar" should be strictly defined in section 3. As at present defined it could be made to include all zemindars, &c.

The latter part of the definition of rent which made it include money recoverable by landlords "under any other enactment" was, he pointed out, unsatisfactory, since it would enable a loan to be recovered as rent.

(j) *Commutation of rents in kind.*—"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." (Paragraph 33.)

Section 34.

(k) *Recovery of rent by ryot landholders.*—"In chapter VI is inserted the existing provision to enable holders of land specified in clause (b), section 3, viz., Government ryots and others not included in clause (a), to proceed to recover rent under the Act, provided they shall have secured written agreements." (Paragraph 36.)

(l) *Consequences of default in payment of rent.*—"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 Government Order, dated the 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." (Paragraph 37.)

Sections 42-46.

Section 53.

(m) *Distrain for arrears.*—"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." (Paragraph 11.)

Section 51.

Section 54.

(n) *Sale of land for arrears.*—"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 realization of his dues, we have not considered it necessary to adopt the suggestion of the Board of Revenue in their Proceedings printed in Government Order, dated 18th July 1885, that the sale should carry an absolutely unencumbered title in all cases." (Paragraph 40.)

Section 97.

"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." (Paragraph 41.)

(o) *Abolition of summary procedure and transfer of rent suits 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." (Paragraph 17.)

"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. 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." (Paragraph 18.)

"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." (Paragraph 20.)

"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.§" (Paragraph 21.)

* Section 82.

† Section 34.

‡ Sections 112-119.

§ Sections 128-136.

"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 were 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." (Paragraph 22.)

|| Section 88 (e).

¶ Section 88 (e).

** Section 88 (g).

23. The Committee, as might have been expected, was not unanimous in regard to all the provisions of the Bill. The principal points on which minutes of dissent were recorded by some of the members are noticed below:—

Section 32 (1) (c).—*Mr. Goodrich* held that it would be inexpedient to permit tenants to sue for reduction of rent on the ground that it has been "unduly raised" twenty years before the passing of the Act. Such a provision would lead to vexatious litigation. *Mr. K. Subba Row* wished to reduced the period within which such suits might be brought to twelve years before the passing of the Act; and *Mr. Lakshmi-kanta Row*, to three or four years.

The Hon. Mr. Garstin held that the power of summary distraint should not be given to Government ryots in respect to their tenants. They themselves are tenants of Government.

Mr. Garstin further objected to the fact that, under section 23 safe-guards against enhancements of rent were restricted to money-paying occupancy tenants, giving no protection for those who pay in kind.

Mr. H. J. Stokes pointed out that, as section 128 prevents the tenants of certain inamdars from acquiring occupancy right, the term "inamdar" should be strictly defined in section 3. As at present defined it could be made to include all zemindars, &c.

The latter part of the definition of rent which made it include money recoverable by landlords "under any other enactment" was, he pointed out, unsatisfactory, since it would enable a loan to be recovered as rent.

With reference to section 21, which bars claims to rent on irrigable land when the landlord has neglected to keep the irrigation works in proper order and the crop has in consequence substantially failed or has been irrigated by the tenant chiefly at his own expense, he observed that this would involve an inquiry into what irrigation works landlord and tenant were required respectively to keep up, and asked who was to decide when the crop has "substantially failed." (The Board presumes that the Court would do this.)

Mr. Rajaratna Mudaliar, with reference to the same section, proposed to alter the words "substantially failed" into "totally failed," and asked why the landlord should not get the dry assessment in these cases, as Government does when the ryot raises crop from his own well. Mr. K. Subba Row also pointed out that Government gave less to the landlord under this section than it takes from its own ryots. Mr. T. Venkasawmi Row, in criticising the Bill subsequently as Dewan to the zemindar of Kālahasti, * agreed with Mr. Rajaratna Mudaliar, as to allowing dry assessment to the zemindar.

* Page 9 of Book of Reports from Collectors, &c. With reference to sections 55, &c., Mr. Stokes held that distraint should be by the Court as in Bengal, and sale at the place where the property is.

Mr. Rajaratna Mudaliar pointed out that the Bill as it stands will lead to much litigation unless registers showing rights to land and rates of rent throughout permanently-settled estates are directed to be prepared. Appeals against the decisions of officers drawing up such registers might lie to the Civil Courts and after final correction thereby, the registers should be conclusive evidence in all suits as to rent.

Proprietors of estates should also be empowered by law to carry out a regular survey and assessment of their estates.

With reference to section 55 of the Bill, he remarked that grain should be liable to attachment even after removal to the tenant's house. Otherwise, the landlord would have to fix the instalments of rent long before the harvest so as to be able to distrain in time.

Mr. Lakshmikanta Row held that occupancy right should only accrue under section 5 (2) when the same land is not held for twelve years, if it is proved beyond doubt that frequent changes in the holding were the result of the landlord's design to prevent the accrual of occupancy right.

With reference to section 32, he thought that reduction of rent owing to fall in prices should be subject to the same conditions as enhancement for rise in prices under section 26 (b) instead of being left to the discretion of the Courts.

Now that suits which were formerly decided summarily by the Collector are to be brought before the ordinary Civil Courts, they should be exempted from stamp-duty as those under Act VIII of 1865 are now.

Mr. Kanchi Subba Row objected to the provision of section 5 which permits the possession of occupancy right by holding any lands in the same village for twelve years on the ground of the false claims that it will give rise to and as not being fair to the landlord.

24. The opinions of Judges, Collectors, Divisional-officers, Zemindars and others on the draft Bill have been printed and bound together, with an index, in a book which is herewith submitted to Government, and an abstract of their criticisms on the various sections of the Bill will be found in Appendix II attached to these Proceedings. It will be seen that the Bill, as a whole, and each of its more important individual provisions, have been subjected to a very considerable amount of hostile criticism, and it is clear that, even if it should be decided to introduce the Bill into the Legislative Council, it will have to be very carefully gone through and amended. Some of the minor points, apart from the main questions of principle, on which amendment is needed, will be indicated in the succeeding paragraphs; others will suggest themselves on a perusal of Appendix II. But the first thing to be considered is, of course, whether the Bill, as a whole, furnishes the most expedient and satisfactory solution of the vexed question of the relations of landlord and tenant in this Presidency.

25. On this point the Board begs to draw the attention of Government to some of the more noteworthy opinions expressed by District-officers and others in regard to the Bill.

26. Mr. Moberly (Nellore) says (this officer has had considerable experience of the working of the Tenancy Law): "I would rather see Act VIII of 1865 amended." The draft Act in following the Bengal Act followed an Act framed to meet a totally different condition of things from that which exists in Madras, where the Permanent Settlement has been only partially introduced, and where the ryots have not lost sight of their rights. Mr. Winterbotham, writing as Collector of Malabar, presumes that the new Act will not be extended to that district where Act VIII of 1865 has, as a matter of fact, never been applied, and says he feels certain the removal of rent suits from revenue to civil courts will be most unpopular all through the Northern Circars where he has had much experience.

27. Mr. Gibson, writing as Collector of Tanjore, says that if one thing was certain from the opinions framed on Mr. Carmichael's draft Bill, it was that any new measure of such a nature as this one would be a leap in the dark; that the "acknowledged evils" and the "unnecessary

* Vide G.O., dated 15th July 1885, No. 827. changes" to be avoided are not known, and that a preliminary inquiry on this

subject is necessary. In his opinion the subject is far too important to be dealt with without further investigation, and he asks what actual inquiry into existing facts the Committee made. One of the main objects of Act VIII of 1865 (Note by the Board: following in this the provisions of Regulation V of 1822) was to provide the illiterate ryot with a summary means of redress for injuries, and after many years' working, this is suddenly to be taken away from him. Whatever may be urged in favour of fixity of tenure, it must be allowed that legislation is not always needed to enforce it; and legislation which is not called for is an evil. Why again are all classes of tenants to be divided up into two classes, having occupancy or non-occupancy rights? Further inquiry is certainly necessary on these points.

28. Mr. Manavedan Raja (Tanjore) says:—

"Do the Committee really mean to say that the Bill holds the scales evenly between landlord and tenant? Mr. Stokes is plain on the point. He says: 'It does no such thing; it seriously restricts the powers which the landlords now possess' †

"The only acknowledged evil is the difficulty of working the present Act."

As regards occupancy right, Mr. Manavedan Raja says:—

"It is rare to meet with any large number of ejectment suits.

"What the evils (i.e., the 'acknowledged evils' of the existing law) are, by whom they are acknowledged, are questions which I find no means of answering from a perusal of the Committee's report.

"I would specially insist on the provisions (of the Bill) regarding transfer of jurisdiction and those relating to improvements. These I would add to the existing Act.

"The necessity for legislative interference is not made out to the extent contemplated in the Bill.

"It is a Bill which promises employment only to the ingenious vakils."

29. Mr. MacCartie, then Acting Collector of Tinnevely, says:—

"A comprehensive survey of the Bill leads me to the general conclusion that, admitting the individual excellence of many of the reforms advocated, their immediate and simultaneous introduction is inexpedient, because the Presidency as a whole is unripe for such far-reaching reforms, and moreover has never evinced a uniform desire for their introduction; hence it is better to jog on with the old Act, improved where necessary, than to open the flood-gates of litigation and to set landlords and tenants by the ears."

In his opinion the only reforms now urgently required are—

(a) A provision declaring the rights of continuous occupancy to be inherent in the proprietary tenant, avoiding the elaborate provisions of the Bill for the growth and accrual of such rights.

(b) That pattas should be tendered and distraints effected through the Courts alone.

(c) A survey of, and record of rates in, permanently-settled estates.

(d) The abolition of the existing summary jurisdiction of revenue officers and the transfer to ordinary courts of all suits having reference to relation of landlords to tenants.

30. The General Charge Deputy Collector, Tinnevely, points out (*vide* paragraph 18 of Mr. MacCartie's report) that the distinction between occupancy and non-occupancy tenants is well understood in Tinnevely. The occupancy ryots hold patta, the non-occupancy ryots who cultivate home or pannai lands hold leases. The sale of the tenant's interest in his holding is constantly carried out. Cases in which the landlords contest the existence of occupancy right or urge their claims to raise rents are conspicuous by their absence. The only result of trying arbitrarily to define and classify the rights of tenants will be discord and litigation. He advocates a compulsory registration of private lands.

31. Mr. Willock asks why the main provision of the proposed new Act should not be separately promulgated and the complicated procedure laid down in the Bill be left for future consideration. He says the new Bill, if it becomes law, will be one of the most complicated on the statute book, and litigation, with all the losses and troubles resulting from it, will be a sure result. Act VIII of 1865 has now acquired from judicial decisions under it during 23 (now 26) years some degree of uniformity in its administration and it is locally understood.

32. The Manager of the Udayarpalaiyam zemindari remarks that the zemindar there has always been on excellent terms with the tenants, and he much fears the result of the Bill. He would like to see the legislature better acquainted with the existing expectation on the subject in order that they may act in accordance with it.

33. Mr. H. G. Turner had not the slightest faith in the proposed legislation as likely to benefit either the tenant or the landlord. "The landlord is more merciful and long-suffering than the money-lender," to whom the occupancy ryot would probably fall a prey.

34. Mr. Crole, writing as Judge of North Arcot, is unaware of the existence of any generally diffused desire for a change in the present law on the part of those interested. The Act is now well understood owing to large sums which have been spent in litigation. It has palpable defects, like every thing human, but on the whole it has worked well. Mr. Crole, speaking as one who has had experience of the Act as Collector, Agent of the Court of Wards and Judge, remains of the opinion that any legislation, which aims at anything more than amending acknowledged defects of detail, would be inexpedient, unnecessary, and calculated to foment litigation and to endanger the possibility of good relations between landlord and tenant. The Bill would revolutionize instead of stereotyping the existing unwritten law and custom while its provisions in regard to non-occupancy tenants "offer almost illimitable opportunities for rack-renting and the usurpation by landlords of the right in the soil."

The main existing defects of the law are three—

(a) A want of a clear declaration of the mutual rights in the soil possessed by landlord and tenant, which he would meet by a section declaring the *status* of the ryot and assimilating it to that of the present proprietary in the Government tracts.

(b) The absence of provision for the survey and demarcation of fields in estates.

(c) The uncertainty and confusion caused by the want of any systematic record of rights and rates.

It is quite unnecessary to introduce into Madras the provisions of the Bengal Act. The circumstances of this Presidency, where the original rights of the ryots have been kept alive, are entirely different from those of Bengal. A simple declaration assimilating the *status* of the ryot in the Northern Circars and in certain tracts in North Arcot and Nellore, where the landlord's powers appear to have been most

abused, with that of the ryot holding under Government, would not be half so revolutionary, half so radical as the present Bill, while it would put an end to doubts, disputes and encroachments, and be in the true interest of the tenants at large. On the other hand, any legislation, which, as the present Bill does, makes the recovery of dues by the landlord more difficult than it is now by restricting his powers of distraint, would be uncalled for and mischievous. "To place in the hands of the landlords a speedy and sharp remedy for the realization of arrears is the surest way of compelling the tenant to be prompt in the payment of his rent," to his own ultimate good. Mr. Crole is strongly against the abolition of the Revenue officers' jurisdiction in rent suits, the regulation of the relations of the zemindari ryots with their landlords being "one of the prime duties of an administrator;" but he would appoint a Judicial Commissioner to hear appeals in such suits and allow Revenue Courts to state cases for his decision. He would also prohibit the direct acquisition of landholders of lands in their estates over and above such extent as might reasonably be cultivated by themselves and their servants and would give power to the Collector to take prompt steps to keep irrigation works in estates in an efficient condition.

35. Besides the above opinions, attention is drawn to those recorded in Board's Proceedings, dated 1st September 1884, No. 3050, on Mr. Carmichael's Bill. The general opinion then was that any legislation which had more for its object than the amendment of Act VIII of 1865, where necessary, would be probably mischievous; and, among those papers, the opinion of Mr. H. J. Stokes is particularly worth recalling at the present time. He said then: * "The objects of a Tenancy Bill ought to be to ensure the payment of a fair

* *Vide* page 367 of "Papers relating to the Rent Law of the Madras Presidency."

rent on the one hand and security of tenure on the other. If these objects are not attained, there certainly results disorder. In this Presidency, in all the settled estates with which I am acquainted, we have a customary rent, and all that is wanted is to ascertain and record it. † Hitherto no

† The italics throughout this quotation are the Board's.

to have gone on *very smoothly* in Madras when we compare the record of our estates with the constantly recurring troubles which have been experienced in Bengal. There the landlord was armed with power to evict and enhance and the cultivator was forgotten. It is to correct the results of this long neglect that a vigorous effort is now being made. But seeing that our circumstances have been so different, it is most improbable that an enactment framed specially to meet those of Bengal should be copied in our Presidency without great danger." It may also be noted that Mr. S. Subramania Aiyar, who was on the Committee who have framed the present Bill, also recorded his opinion in 1884 thus: ‡ "It would

‡ *Vide* page 399 of "Papers relating to the Rent Law of the Madras Presidency."

have been far more satisfactory if the Rent Recovery Act, with which the people have become so familiar, had been merely revised."

36. In dealing with the Bill, as a whole, the first point that the Board has to consider is whether its framers have carried out the instructions which they received from Government in Government Order, dated 15th July 1885, No. 827. These instructions were twofold. In the first place, the attention of the members of the Committee was directed to Government Order, dated 29th April 1882, No. 437, in which it was remarked that all tenancies in zemindari or inam lands should *prima facie* carry a right of proprietary occupancy; secondly, they were directed to "deal only with acknowledged evils avoiding unnecessary changes and holding the scales even between the landlord and tenant."

37. Neither of the instructions has, the Board considers, been carried out. The Bill, while providing in section 4 a general presumption of occupancy right in respect of tenants of landholders of the first class (inamdars, zemindars, &c.,) proceeds to nullify that general presumption by the distinction it makes between occupancy and non-occupancy ryots and by making tenures of land for twelve years continuously a criterion of occupancy right. It follows that the large class of tenants who, at the

passing of the new Act, had held land for less than twelve years could not obtain this right without the landlord's consent, since he could easily arrange to evict them before they could qualify for occupancy. The intention of Government that the zemindari ryots as a class should possess "a right of continuous occupancy" (paragraph 4 of Government Order, dated 29th April 1882, No. 437) is therefore disregarded in respect to a very large number of them.

38. The Bill again clearly fails to hold the scales evenly between landlords and tenants. The only important concessions it gives to landlords are that it makes arrears of rent a first charge on occupancy holdings sold for arrears (section 51) and empowers landlords to enhance rent. Apart from the provisions in respect of occupancy right, it takes away from landlords and gives to tenants by establishing a presumption that a rate of rent which has been paid for three years is a fair rent, by giving tenants total remission on wet land when the tank that supplies it has got out of repair in certain circumstances, by prescribing a procedure under which tenants may claim a reduction of rent, by allowing tenants to sue against enhancements of rent made from the date of the Chokkalingam case now upwards of twenty years ago, by limiting distraint to such an extent that it might as well be swept away altogether, and by giving the tenants the right to make and be compensated for improvements. The reason of the Committee for disregarding this part of their instructions seems to have been that they thought each new provision (taken by itself) to be right and found most of them included in the Bengal Act, which "was the product of much lengthened and mature deliberation." This reason does not satisfy the Board.

39. Thirdly, the Board holds that the Bill deals with unacknowledged evils (1) by almost abolishing Act VIII of 1865 (of which the Committee have retained only a few sections); (2) by transferring the jurisdiction in rent cases from Revenue Courts to Civil Courts; and (3), as indicated above, by greatly restricting the landlord's power of distraint, by allowing the enhancement, reduction and commutation of rents on the terms adopted by the Bill, by making new provisions as to improvements and the grant of compensation for them, by placing zemindari tenants in a much better position than Government ryots in cases where the irrigation works are not kept in order (section 21), and by many other provisions of less importance. On the other hand, it does not deal with an evil, which, the Board thinks, is universally felt, viz., our want of knowledge of the estates (which are scattered over 141,000 square miles) and their tenures, as it might be dealt with, by prescribing a survey and an authoritative record of rates of rent and so uniting the interests of the landlords and the tenants; nor does it alleviate the difficulty brought to notice by the Famine Commission and the Famine Code Committee by postponing summary process for collecting rent when the payment of peshkush is deferred in times of famine. The arguments on this point in paragraph 43 of the Bill Committee's report are anything but conclusive. It is true that rent may be recovered within three years by an ordinary civil suit, but it cannot be expected that a landlord will forego the early and summary recovery which the Rent Act allows him by distraint, &c., on this consideration. He will naturally prefer to proceed under the Special Act, and unless he is empowered to postpone realization of his rent without shutting himself off from the use of its provisions, his tenants will still obtain no relief in times of scarcity or famine. Perhaps the simplest way out of the difficulty, and one which the Board thinks would not, in the long run, be to the disadvantage of the ryot, would be to extend the period allowed by section 2 of the Act for the institution of proceedings thereunder to two years.

40. Act VIII of 1865 is certainly not a model of lucidity, but the Board cannot * Page 289 of "Papers relating to the Rent Law of the Madras Presidency." accept the opinion of Sir Henry Stokes (as Collector of Tanjore) that it is "a disgrace to the legislature and a grievous burthen to those whom it affects." * It will be seen from the papers that a large number of the gentlemen who have been consulted with regard to this Bill and Mr. Carmichael's proposed measure, advocate the retention of the existing Act (with the necessary amendments and additions) pointing out that it has been in force and has worked tolerably well for now more than twenty-six years; that the doubtful

points in it having been settled by the Law Courts at a great expense of time and money, it is now well understood, whereas a Bill of the sort proposed would be even less readily comprehended and much more productive of litigation; and that the Bengal Act, in imitation of which it has been prepared, was drawn to meet different conditions and has not been long enough in operation to be fully tested. In these opinions the Board entirely concurs.

41. The Board has therefore come to the conclusion that the present Bill, although a good one in many respects, is not one which it can recommend Government to introduce into the Legislative Council. It has been drafted on the supposition that conditions in Madras are similar to those in Bengal, which is not the case. It has introduced many changes which are not called for and the effect of which will probably be harmful. It will be a very unpopular Bill with the landlords in the Southern Districts and will not afford them the help they require. It will, in the Northern Districts, produce an enormous quantity of needless and continued litigation. It has made provisions in many cases to meet evils which it is not certain exist at all. And while it has removed from the tenants a method of gaining redress which they now understand and appreciate, it proposes to give them in its place a cumbrous method of procedure which will be very costly and give them no corresponding advantage. While the Bill professes to leave things as they are as far as possible, its immediate effect will probably be to set class against class, to foster litigation, and to compel the landlord to be continually on the watch to prevent his tenants gaining rights, which it would be better Government should at once declare to reside in them. In fine, it will stir up animosities which happily are now absent.

42. The Board will now proceed to justify the general criticisms made on the Bill above, and to set forth its own views of what is required in the way of remedial legislation.

43. The main subjects which have to be considered in dealing with a law as to the relations between landlord and tenant in this Presidency are—

- (1) Occupancy right.
- (2) Rates of rent.
- (3) Exchange of pattas and muchilkas.
- (4) Distraint.
- (5) Judicial Procedure.

44. Before dealing with these, however, it is desirable to discuss the definitions with which the existing law (Act VIII of 1865) opens. Their chief defect is, the Board thinks, that they contain no definition of what *rent* is. This omission the Bill under discussion supplies, but its definition is defective inasmuch as it deals only with land and not with water and trees which may also be the subject of a tenancy, and far too sweeping inasmuch as it includes moneys payable by the tenant to the landlord in respect of *any* enactment for the time being in force. The landlord would, for instance, be able thereby to use his powers of distraint under the Act to enforce a decree obtained against a tenant in respect to an ordinary civil suit. The Board would define rent as follows:—

"Rent means whatever is lawfully payable or deliverable in money or in kind, including any fees or charges payable with it according to established usage or to law, by a tenant to his landlord on account of the use or occupation of or other easement appertaining to any land, water or trees held by the tenant from the landlord, and includes also money recoverable by the landlord from the tenant in respect to the said land, water or trees under any other enactment for the time being in force."

45. To the definition of "tenant" contained in Act VIII of 1865 the Board would add that of a *ryot* as being a tenant possessing occupancy rights of any of the landholders specified in section 3.

46. "Land-holders" should be divided into two distinct classes and be defined by enumeration as in section 1, Act VIII of 1865, but to the landholders of the first class specified in the first clause of that section the Board would add muttadars and poligars as is done in the draft Bill, and also Mokhassadars, as it has been doubted whether the latter are included under inamdars. It would also add to this clause the words

"provided that such persons hold at least a whole revenue village." Petty inamdars, &c., holding merely fields in a village should fall under the second-class of landholders along with Government ryots, as their tenants, when they have any, will not possess occupancy right or need special protection. The amendments above proposed should of course also be carried out in section 3 of the Act.

47. The Board does not think the word "inamdar" need be defined any more than "zemindar." The effect of the definition in the Bill is, as Mr. H. J. Stokes suggests, to "wipe out" the whole of it when section 128 is taken into account.

48. There is a difference of opinion as to whether ryotwari landholders should come under the Act. The Board thinks they should. One of the express objects for which Act VIII of 1865 was projected, was to give them powers to recover arrears of rent summarily, and one of the reasons for which the Government of India hesitated to sanction the Act was their fear that it did not effectually protect ryotwari landholders (*vide* paragraphs 5 and 11 *supra*). Their removal would be another instance of dealing with an unacknowledged evil.

49. The Board does not think it necessary to define the term "holding" as is done in the Bill. It would, on the other hand, as the Bill does not do, provide that *patta* should be the term used to designate the engagement between a landholder and a ryot possessing occupancy right and *lease* the term used to designate the engagement between a landholder and any other person holding under him.

50. There is some doubt as to the tracts and classes of proprietors, &c., to whom a Tenancy Act should extend. Act VIII of 1865 is supposed to be in force in all the un-scheduled districts outside the town of Madras (section 88), and in Bhadrachalam, Rékapalle and Rampa, but the Collectors of Nilgiris and Malabar say it is not used in their districts; the Collector of South Canara says that in his district it only applies to landlords of the second class, and not to *Mulgenidars*; and the "Note" by his General Duty Deputy Collector sent by the Collector of Vizagapatam shows that Act VIII of 1865 was in force in parts of the Agency tracts before they became such and is in force there now. In Malabar, the janmis have now been authoritatively declared to be

"holders of land in proprietary right," and the Board, concurring with Mr. Winterbotham, thinks that their exercise of the right of distraint without the inter-

vention of a Civil Court might seriously affect the peace of the district. Government, however, has recently expressed a contrary opinion—*vide* paragraph 6 of Government Order, dated 3rd December 1891, No. 1152. How far Act VIII of 1865 as the Board would amend it or any new law which may be substituted therefor should extend in South Canara and the Agency tracts might be made the subject of a special report. The Agency tracts in Vizagapatam should, the Board thinks, all be treated in the same way in this respect.

51. The Board now proceeds to deal *seriatim* with the main subjects specified in paragraph 43 above.

OCCUPANCY RIGHT.

52. It seems to the Board that the basis of all attempts to regulate by law the relations between landlord and tenant must be a consideration of the fact that whatever their origin, the landlords have no traditional or historic right to more than a fixed payment from their tenants. In Board's Proceedings, dated 2nd December 1864, No. 7743, quoted in paragraph 8 above, it is demonstrated that such zemindars as owe their existence to the Mahomedan Government or our own Permanent Settlement were only delegates of the State, while such zemindars as the Raja of Ramnad or the Maharaja of Vizianagaram themselves represent old Hindu Sovereignities or quasi Sovereignities. In either case, the right of the State which the zemindar now holds is restricted by the law of Menu and subsequent custom to a certain share in the produce, the ownership being vested in the actual cultivating class. It is true that Regulation XXV of 1802 distinctly sets up a contrary pretension, and declares the proprietary right of the soil to be vested in the zemindars and other proprietors of

land; but this provision of that Regulation was long ago rendered nugatory by Regulation IV of 1822, which declared that it was not meant to "define, limit, infringe or destroy the actual rights of any description of *** tenants" (section 2).

53. From the proposition that the property in the soil vested in the village community, it follows that every cultivator had the right to continue to hold his lands until legally ejected therefrom, that is to say, until he had failed to pay the rent, and it had been found that the arrear could not be realized by the distraint of his personal property.

54. It has to be remembered, however, that the doctrine that the property in the soil vested in the village community had become obscured at the commencement of this century, owing to the ignorance of indigenous customs and land tenures under which the British Government of the day unfortunately laboured. In this connection the Board would call attention to paragraphs 12—16 of Mr. Crole's letter printed on page 64 of Board's Proceedings, dated 1st September 1884, No. 3050. All that seems to have been admitted, at all events, in 1802, at the time of the Permanent Settlement, was that some cultivators had proprietary rights in the soil, while others had not. This is clear from section 34 (7) of Regulation XXVIII of 1802, which divides the tenants into two classes: first, those who were the holders of tenures which, by the title-deeds, or by the established usage, of the country, were transferable by sale or otherwise; and, secondly, those who were lease-holders (*i.e.*, whose tenure was determinable, in regard to its duration as well as to its other conditions, by the terms of their leases) or who had the right of occupancy only during payment of certain rents without right of property or possession.

55. Behind the Regulations of 1802, as interpreted and modified by Regulations IV and V of 1822, we cannot now go. It is impossible, therefore, to argue that all tenants in zemindaris have occupancy rights. It is equally impossible to say with any certainty which tenants in zemindaris have those rights.

56. In 1802, and no doubt for many years later, it must have been well known, or at any rate could easily have been ascertained, whether any particular cultivator had, or had not, occupancy rights. But in this country the risks to which both private papers and public records are exposed are so great, and negligence with respect to the proper maintenance of zemindari village accounts has been so uniform and continuous, that very few indeed among the zemindari tenants can possibly now be in a position to prove both the nature of the tenure by which the particular lands at present held by them were held in 1802 and an unbroken descent of those lands to themselves from 1802 to the present time.

57. Unless, therefore, the Legislature steps in to assist them, the whole body of zemindari ryots must, under the present attitude of the Civil Courts, with the rarest possible exceptions, lose their occupancy rights and become mere tenants-at-will, dependent, in too many cases, on the caprice of landlords who have no hereditary interest in their welfare and whose sole object is to make as much money out of them as possible. Already this appears to be the position in the northern districts, where, for a long time past, the mass of the tenantry have been liable to eviction at the will of the landlords. In the south of the Presidency, on the other hand, the landlords have hitherto practically admitted the occupancy right of all their ryots, of the man who took up waste lands and brought them into cultivation a year, or two ago, as well as of the man who cultivates the lands, his father and ancestors for several generations cultivated before him.

58. The facts thus being that everywhere some tenants have occupancy rights; that in much the greater part of the Presidency it is as yet practically not disputed that all tenants have those rights; and that, where there is any doubt whether a tenant has occupancy rights, the lapse of time has in most cases made the question one of impossible of proof, it is proposed in the Bill that this difficulty be solved by the provision that an uninterrupted holding for twelve years by a tenant himself, or by persons through whom he claims, shall be deemed proof that he has occupancy rights.

This course has at first sight a good deal in its favour, but it is liable to two very serious objections. The first is that it is not in accordance with usage anywhere in this Presidency to make the possession of occupancy right contingent on twelve years' occupancy. The second is that to make the occupancy right the prize of possession for a term of years, whatever that term may be, would lead to endless litigation and to perpetual struggles between zemindars and their ryots to over-reach one another. Once make occupancy ryots a privileged class, as is done in the Bill before the Board, and the landlord will naturally do all he can to prevent other tenants from holding on long enough to get into that class. These objections seem to the Board to be fatal to the position taken up in the Bill.

59. Many officers urge that no distinction should be made between occupancy and non-occupancy tenants, but the two classes do exist, and, as shown above, the distinction between them has been authoritatively recognized since the beginning of the century. Any law that does not take cognizance of this fact will therefore be a faulty law. It seems to the Board that the distinction between the two classes should be made to rest not on any arbitrary condition of tenure for a fixed period, but on the salient fact that part of each estate is the landlord's private land, land of which he and not the cultivator for the time being possesses the occupancy right. In the case of such lands the landlords should be able to give leases and take back the land at the end of the lease just as a landlord does in England. In the case of other land he should have no power, except to give it on patta, to collect rents and to attach and sell the holding (subject of course to transfer of the occupancy right to the purchaser) when rent is due and the distraint of moveables has failed to satisfy the arrears.

60. The land which the zemindar or other landlord of the first class should be entitled to deal with as his own would be his pannai or demesne land, or as it may be termed the "home-farm," forests and uncultivable lands not being poramboke assigned to communal purposes; also lands formerly waste and now held under specially favourable written leases granted in view to their reclamation and improvement, or which have been reclaimed at the landlord's expense.

* Note.—The First Member has recorded a minute of dissent in regard to this paragraph and paragraph 65.

61. This classification of the land into two distinct categories should be formally laid down by law.

62. To carry out this reform it would be necessary to make an authoritative register of private lands, and for this purpose zemindars, under which term the Board includes, for convenience, all owners of whole villages, whether single persons or joint holders, should be required, within a prescribed date, to prepare and submit to the Collector, through the divisional officer, for sanction, a register showing all the "home-farm" lands and other lands claimed as "private" under the foregoing paragraph in each village. The Collector's orders thereon should be subject to the usual appeal to the Board of Revenue. When duly sanctioned, this register should be proof, and the only proof allowed, that the lands entered in it might be rented out on terminable leases, subject only to the general law of contract. All other lands should be held only on patta; and so long as the rent therefor was duly paid the pattadar should enjoy all the privileges of a Government ryot regarding fixity of tenure and full freedom of transfer and devolution. The question of rates of rent is discussed later on.

63. This scheme would be at once simple, more effective, more certain in its operation, and more in accordance with the traditional custom of the country than the provisions of the Bengal Tenancy Act in regard to the acquisition of occupancy rights. Its main features are familiar in the south, and by no means unknown in the northern districts, where ryots, unless they become personally obnoxious to the zemindar or his agents, are very largely left in possession of their holdings even after they have failed to pay the full rent demanded for a series of years. But the power to eject exists, and the knowledge that it exists and may be exercised induces the ryots to agree to ruinous rates of rent and other conditions which they would

never assent to if free agents, keeps them in slavish dependence and prevents them from exerting themselves to better their condition with as much energy and industry as they would exhibit under happier circumstances.

64. The objects set forth above could be obtained by the insertion in Act VIII of 1865 of sections of the following import:—

(1) The non-existence of occupancy right on the part of a ryot cultivating lands under a zemindar or other landholder of the first class can only be proved by showing that such land is "private land."

(2) "Private land" means such land as the landlord shall, within a date to be fixed by the Governor in Council for each district, get registered under this title by the Collector as being either—

(a) Forest or uncultivable waste which is not by established usage allotted to village sites, village grazing grounds, village threshing floors or other communal purposes.

(b) Land which the proprietor himself holds and cultivates.

(c) Land formerly waste which has been (1) reclaimed at the landlord's expense or (2) is, at the time of registry, held under a specially favorable written lease granted with a view to its reclamation and improvement by the tenant.

The Collector to decide which lands in each village come under the above heads, and an appeal to lie within thirty days against his decision to the Board of Revenue whose order shall be final.

(3) A ryot (as proposed to be defined in paragraph 45. above) shall, so long as he pays his rent, be entitled, so far as the landholder is concerned, to alienate, sublet, mortgage, sell, give, bequeath or otherwise dispose of the whole or any portion of his holding in the same manner as a Government ryot is entitled to do in respect of Government.

65. The Board does not think it desirable to permit the landlord to acquire occupancy right in any of the holdings possessing that privilege. If they became vacant by relinquishment or abandonment, he might, of course, occupy them himself, but as soon as they are again let out to a tenant they should be subject to full occupancy right on the part of the latter.*

* Note.—The First Member dissents.

66. Occupancy tenants should be subject to eviction after sale of their holdings for arrears. An addition should therefore be made to section 40, Act VIII of 1865, empowering the officer conducting the sale of the holding to place the purchaser in possession. Otherwise the defaulter may refuse to give place to the purchaser.

RATES OF RENT.

67. The main cause of the rack-rents which are now undoubtedly levied in certain estates is the provision in section 11 of Act VIII of 1865 that all contracts as to rates of rent shall be enforced, coupled with the ruling in the Chockalingam case which puts the burden of proving occupancy right on the ryot. This provision tends to put the latter at the landlord's mercy and to make him agree to an extortionate rent rather than run the risk of losing his holding.

68. In the Board's opinion, it was never intended that zemindars should have the legal power of enhancing their ryots' rents. The Board argues this from the wording of the Regulations of 1802. The preamble of Regulation XXV of 1802, which dwells on the evils arising from the assessments on lands not having been fixed previously, and which declares that they shall be fixed for the future, is addressed to the ryots and cultivators as well as to the zemindars and mirásidars; and it would be a cruel mockery, of which of the Legislature of those times is not to be considered capable, if the fair promises then made are to be considered as made to the small but wealthy minority only and not to the whole body of the agricultural classes to whom they were solemnly addressed. But fortunately the matter need not be left to inference. Section 9 of Regulation XXX of 1802 is explicit. It runs as follows:—

* "Where disputes may arise respecting rates of assessment in money or of division in kind, the rates shall be determined according to the rates prevailing in the cultivated lands in the year

preceding the assessment of the permanent jumma on such lands; or, where those rates may not be ascertainable, according to the rates established for lands of the same description and quality as those respecting which the dispute may arise."

It is true that an officer whose opinion is entitled to much respect, Mr. C. Collett, then Judge of Vizagapatam, held in 1864 that this section only applied to first pattas.* But the Board at once contested the validity of this ruling (*vide* paragraphs 63—7 of its Proceedings printed as Appendix III), and so far as it is aware, the question never went up to the High Court, as it was deprived of practical importance by the passing of Act VIII of 1865. The Board therefore holds that, however much some zemindars may have usurped the power of raising the rents of their ryots, the law never intended to give it to them.

69. Speaking generally, in the south of the Presidency the landlords cannot be said to have abused their powers under the complete freedom of contract unfortunately allowed by Act VIII of 1865, and rents have not been unduly enhanced. But in those tracts, principally in the northern districts, where the lands have not already been surveyed and assessed by the British Government, matters are in a far less satisfactory state. Throughout those districts, the zemindars seem from the first to have assumed the rights of ejecting their ryots, and of raising the rents upon them, as a condition of permitting them to continue to hold their lands. The ryots have been reduced, in fact, to the position of tenants-at-will; and have been rack-rented accordingly. The Board holds that it cannot be for the public benefit that this state of affairs should be permitted to continue, and the zemindars allowed to reap the whole advantages of the increased prices of agricultural produce which time has brought about, and which there can be no doubt the Legislature of 1802 intended should be retained by the cultivators, or at least by such of them as had occupancy rights in their lands. But *quod fieri non debet factum valet*. Since 1802 many families of cultivators must have become extinct, or have ceased to hold the lands in which their forefathers had occupancy rights; some zemindaris have changed hands and have passed to new owners who have acquired them on the understanding that the ryots had no right either to fixed tenure or to fixed rent; and among both classes, landlords and ryots, the memory has died away of the days when the latter had such a right and of the law which secured it to them. It is essential, the Board thinks, that the law should re-assert itself and secure the ryots in the enjoyment of their occupancy rights; but it would certainly not, under present circumstances, be equitable that it should go further and restrict the landlords to the rates of rent on which the settlement of 1802 was effected.

70. On the other hand the perpetuation of the existing rates would be as unfair to a large proportion of the ryots as a reversion to the rates of 1801 would be to the landlords. In a vast number of cases, no doubt, the existing rates of rent are based on contracts between the parties, and it may therefore be argued that they should be enforced. The argument would be a sound one if there were reason to believe that the arrangements between the landlords and their tenantry as to the rates of rent and other conditions of their leases were, on both sides, voluntary and free from undue pressure; but the Board fears that this is seldom or never the case in the northern districts. A tenant who is anxious to retain possession of his ancestral holding can in no country deal on an equal footing with a landlord who will not scruple to eject him if he does not agree to his terms. In India, the corruptibility of the lower officials, the natural timidity of the people, and their excessive dread of being compelled to leave the villages in which they were born and bred, all tend to increase the power of the wealthy and unscrupulous and to render the contest between landlord and ryot most unequal. There can be no doubt, the Board fears, that, in probably a majority of cases, the existing contracts for rent in the unsurveyed and unassessed zemindaris are not free contracts such as it would be equitable to enforce; † though at the same time it is more than probable that the ryots would greatly prefer a

† See for instance Mr. Wynch's report on Nuzvid referred to in G.O., dated 11th November 1890, No. 892.

legalized continuance of the crushing burden of the existing rates of rent to the prolongation of their present uncertainty of tenure and of rental. But if it be not equitable to bind the landlords to the strict letter of the law, and to insist on a reversion to the rentals of 1801, neither it is equitable to hold the ryots to the exact terms of the contracts into which they have entered under a compulsion which is none the less real because it has been looked on as inevitable and endured in silence.

71. A further practical reason against the continued subjection of the tenantry to the existing contract rates of rent is that rates of rent are not infrequently imposed by the landlord, and assented to by the ryot, which the former neither expects to receive with regularity nor the latter to pay. In really good seasons, the ryot pays what appears an exorbitant rent; in ordinary seasons, he pays something; in bad seasons, he pays little or nothing; on the average, he pays much more than a Government ryot would pay for lands of the same kind and quality. When he falls into arrears he often succeeds in evading payment. The landlord's administration of his property is generally more or less lax and inefficient. Sometimes his agents are forgetful and the arrears are barred; sometimes they fall into one of the pitfalls as to the exchange of patta and muchilka, &c., which disfigure the law, as it at present stands. When at last compelled to pay, the ryot is sometimes sold up and has to make a fresh start; sometimes, with an apparent show of consideration, he is excused the sale of his goods and chattels, but is required to sign a bond for the amount of his debt, which is held over his head *in terrorem* for years to come. Altogether the position of the tenantry in the northern zemindaris is very bad. But for the case with which the karnams are corrupted and the landlords defrauded, it is difficult to see how the ryots could at all hold their own. It may be taken for granted however that, if the law is clearly declared and occupancy rights established, the landlords will bestir themselves and see that they get the last farthing which has been left them by what they will no doubt regard as a process of spoliation. If, then, the high rates of rent now existing, the full payment of which the ryots now look to evading, be declared permanent, their last state will be worse than the first; and their ruin will in many cases be brought about by a measure intended to benefit them.

72. A solution proposed in the Bill [explanation to section 19 (1)] is to presume the existence of a continuing contract in respect to rates actually paid for not less than three years previously. It is obvious, however, that this method would be very unfair to the landlords in those cases, probably somewhat numerous, in which ryots have succeeded in evading their just obligations during the whole, or a part, of this period, and that it cannot therefore be recommended for adoption.

73. It appears to the Board that the most equitable course which can be adopted is to do away with the contract clause in section 11, Act VIII of 1865, in the case of occupancy ryots, who will, if its proposals above made be adopted, constitute by far the larger proportion of zemindari tenants, and to work on the lines of the clause following. The Board considers, that is to say, that a survey and record of existing rights should be carried out forthwith for all estates in the Presidency. Many of the gentlemen consulted have stated that they consider such a survey absolutely necessary or very desirable. It seems to the Board that there would be no injustice in enacting that the tenants of zemindaris should pay for demarcation stones any more than there has been in making Government ryots pay for them. Similarly the Board does not think it would be unjust to make zemindars, the representatives of Government, bear the expense of survey, which Government has found to be necessary in the interests of its subjects and has carried out and paid for in the lands under its direct management.

74. Attached to the "record of rights," which would show the existing holder of or claimants to each field, as is done in the survey of Government lands, should be a register of rates of rent (as existing on the date on which the new legislation comes into force) such as was proposed by Mr. Rajaratna Mudaliar in his minute of dissent. Where the rate of rent is under dispute at the date with reference to which registry is to be made, the latest admitted rate should be entered. The Survey officer should also enter in the register, though not ordinarily for publication, the rates of 1801 as far as ascertainable.

75. The question then arises whether the survey should be followed by a settlement. Many officers are in favour of such a course. The Board does not, however, think that it would be necessary, except in cases in which the ryots in an estate appear to be subject to wholesale rack-renting which could not be otherwise dealt with. It would, in order to deal with such cases, provide for power to settle every estate after survey, but it does not think that this power would as a rule need to be exercised except in the northern districts. The course, the Board would ordinarily follow, would be this. It would make the survey and publish the survey registers with the record of rights and the register of existing rates of rent. If it were decided that these rates were generally excessive, a contingency, which as above remarked, is only likely to occur in the northern districts, a recourse should be had to settlement. By "settlement," however, the Board does not intend the process by which the assessments in Government lands are fixed, but the fixing of rent on each field according to the rates of 1801 whether those were settled in money or kind. When the 1801 rates cannot be ascertained, the rates of the earliest subsequent period which may be on record should be adopted. These rates would then be published; but, for the reasons stated in paragraph 69 above, the Board would not enforce them as final when they were objected to by either party within a period of, say, six months. In some instances such objections might come from the ryots, for there may be cases in which the rates of 1801, when prices were, the Board believes, much higher than in subsequent years, would be found higher than those which have more recently prevailed. Objection to the 1801 rates should be taken by the filing of a summary suit for the fixing of a fair rent. In some estates, the Board has no doubt, but few such suits would be filed; in others, probably, the rent of almost every field would be contested. Where this was so, it would be necessary to appoint special officers (say of the Deputy Collector class) to hear the suits and a Commissioner, or additional Collector, to whom appeals might be preferred from original decisions. Where cases were few in number they might, with little difficulty, be disposed of by the ordinary district staff.

76. In the conduct of a settlement by Government, the matters taken into consideration are the quality of the land, its proximity to a market, the permanency or otherwise of the sources of irrigation, and so on; but, as the Board has before pointed out, the transactions in zemindaris of the last ninety years are facts which cannot be obliterated or ignored. In disposing of suits as to the fair rents of zemindari lands, therefore, it should be an instruction to the officers trying them also to take into account the rents hitherto paid for the lands. Suits brought after settlement for the fixing of rates of rent would rarely involve points of law. Almost without exception, they would deal with matters with which the Civil Courts are by no means so familiar or so capable of inquiring into and deciding as Revenue officers. For the sake of all the parties concerned—the Government which would have to provide the officers to try the suits, as well as the landlords and ryots—it would be of the greatest importance that expense should be minimised. On no account, therefore, would the Board allow any second appeal from the decision of a Collector or Special Commissioner to the District or High Court; but, in order to uniformity, it would permit Collectors and Special Commissioners to refer points of law to the High Court in the same way as the Board of Revenue now refers Stamp cases.

77. The rates as finally fixed will then be either—

- (a) the existing rates of rent as authoritatively recorded at survey—or, if the necessity for "settlement" arises,
 - (b) the 1801 rates when not disputed within six months, or
 - (c) the 1801 rates as modified by appeal to the Revenue Courts;
- and, when determined in one or other of these ways, should remain invariable in the case of all occupancy tenancies, the landlord being debarred from raising them except as allowed in the second proviso following clause IV of section 11 of the present Act in the case of improvements executed by or at his own cost. It may be observed here that the words "pay an additional value to Government" in that proviso should be altered into "pay additional revenue to Government."

78. The Board's scheme would, it must be admitted, involve in some districts a large amount of litigation, to cope with which special officers would have to be appointed; but once these suits, which must all be brought within a short period, had been dealt with, the rates would become definitely fixed and there would be no further room for dispute.

79. The above proposals will do away with the necessity for the elaborate provisions of chapter IV of the Bill in regard to enhancement, reduction and commutation of rents which seem to the Board to be likely to produce much more extensive and prolonged litigation than its own scheme, besides being altogether in opposition to the idea of a Permanent Settlement which should involve fixity of payment on the part of the ryot as well as on the part of the zemindar. The Board's scheme gives finality; under the provisions of the Bill, enhancement or reduction of rent might be sued for every 15 years (sections 31 and 33).

80. In addition to the elaborate character of the "enhancement" and "reduction" provisions of the Bill, they are further liable to objection, in that they do not extend to ryots paying in kind, and that section 32 (1) (c) would, in the northern districts, unsettle for an indefinite period the relations between landlord and tenant.

81. Non-occupancy tenants of landholders of the first class will, if the Board's proposals be accepted, be limited to the occupiers of "private lands," and, as above stated, no special legislation is needed in respect to them. They will be on exactly the same footing as that on which the tenants of landlords of the second class are placed by section 13 of the present Act, i.e., their rents will be regulated by written agreement and on such written agreement the landlord will be entitled to distrain their property for arrears of rent under the Act and to evict them if after such distress rent is still due (section 41). Failing a written agreement the landlord must go to the ordinary civil courts, and any dispute regarding the terms of the tenancy must be settled by the same authority. The provisions of chapter V of the Bill in regard to the eviction of, and enhancement of rent on, non-occupancy tenants are, therefore, unnecessary.

82. To section 13 of Act VIII of 1865 the following words should therefore be added:—

* As proposed to be amended.

"And the same conditions shall apply to the landholders specified in section 3* in respect of the tenants of their registered private lands."

83. There is one serious question with which the Bill does not attempt to grapple, and that is the load of arrears which tends to render the zemindari ryots of the Northern Circars so helpless. In order to prevent rent being barred, it is a common practice to take bonds for the amount due and get them renewed every three years. The Pithapuram estate, for instance, holds bonds for rents which would, in the ordinary course, have been barred twenty years ago. Ryots readily give such bonds from mere want of foresight or in the belief that they will be able to evade payment. Wherever such bonds have been given, the zemindar is restrained by nothing but public opinion, or his own reluctance, from reducing his tenants to the condition of serfs. It is within the personal knowledge of one of the Members of the Board that in 1877, after the produce of the fields of the Venkatagiri estate which paid rent in a kind was divided, the zemindar's agents took not only the landlord's share, but, in a number of cases, that of the ryots also to meet "previous arrears due," thus leaving the unfortunate ryots in a famine year, without any grain at all. The only efficient remedy for such a state of things is, in the Board's opinion, to provide that rent of land, whether secured by bonds or otherwise, shall not be recoverable after the lapse of three years from the date on which the rent so secured became payable. It is useless, as has been found in Ireland, to put the tenant in a better position for the future unless he is given a fair start by being freed from the crushing load of debt which is often the result of extortionate oppression in the past.

84. Rent should be made a first charge on all tenancy holdings and not merely on those of occupancy ryots as provided in section 51 of the Bill. The omission of such a provision is one of the main defects of the existing Act.

EXCHANGE OF PATTAS AND MUCHILKAS.

85. The points in which the existing law on this subject, sections 3, 4 and 6—10, Act VIII of 1865, requires to be amended are, the Board thinks, the following.

86. Exchange of pattas and muchilkas between landlords of the first class and their ryots should be made obligatory, the clause in section 7 allowing them to be dispensed with by agreement being omitted.

87. The muchilka should always be a counterpart of the patta, so as to furnish evidence of the contents of the latter if it should not be forthcoming. The Bill, following section 4 of the present Act, makes this optional only.

88. Fees and charges payable along with the rent should be "separately specified" in the patta as provided in section 12 of the Bill and not merely "included" as in section 4, Act VIII of 1865. It may be observed here that section 12 of the Bill errs by allowing "the local description or extent of the land" to be entered in the patta instead of requiring particulars of both.

89. It should be made clear that the provisions of sections 3, 7, 8 and 9 of Act VIII of 1865 relate only to landlords of the first class and their ryots. Tenants of "private lands" will, if the Board's proposals are accepted, be on the same footing as tenants of landlords of the second class, and the provisions of section 13 of the Act should apply to both.

90. Section 7 of the Act, as it at present stands, has been held (by the High Court) to bar any suit unless patta (or muchilka) has been given or tendered, and (by the District Court of Madura) to bar, under the same circumstances, any proceedings under the Act, including distraint. The second limitation the Board entirely approves of, but the meaning of the section requires to be made more plain. The first is necessary only in respect to suits under the Act; it should not be a bar to a landlord recovering his dues by ordinary civil suit.

Vide pages 4 and 7 of the Digest of Rulings under the Act.

Third Member dissenting.

91. If, as proposed, occupancy right, carrying with it fixity of rent and tenure, is made the rule, pattas will generally vary but little from year to year, and a provision that a patta once accepted should hold good between the same parties until there is a change in the terms of the contract, or either party desires a fresh patta, would save much trouble and annoyance.

92. It has been ruled with reference to Section 7, Act VIII of 1865, that tender of patta must be made within the fasli year for which rent is sought to be recovered (*vide* page 4 of Digest of Rulings under the Act). This ruling, coupled with the other ruling abovementioned that tender or acceptance of patta is a necessary preliminary to all suits, has operated very hardly on landlords. A tenant can easily deny tender of the patta, and unless his denial can be disproved, the landlord is estopped from recovering his back arrears. Moreover, suits about the same questions are repeated year after year. Mr. J. H. Nelson, speaking of his experience in Chingleput, says—

"If I am not mistaken I have been engaged (as District Judge) in hearing an appeal about a patta for the year 1893 whilst the parties were before the High Court on account of their patta for 1882, and had just begun a dispute about a recently tendered patta for 1884 in the Sub-Collector's Court, and all the disputes practically were about identically the same matters."

It has already been proposed to give the landlord power to sue civilly independent of the patta; and as the yearly renewal of pattas is unnecessary (paragraph 91 above), it would be sufficient for the purpose of proceedings under the Act to require acceptance or tender of patta (or muchilka) to have been made within or before any revenue year to which the patta applies.

93. Mere tender of patta (or muchilka) is regarded as validating further proceedings, such as distraint, only if the patta (or muchilka) is "such as the other party was bound to accept." It follows that if there is any mistake in the patta, the landlord's distraint is liable to be set aside with costs, though the error may be perfectly trivial and the patta in the main a just one (*vide* remarks of the Madura District Court

printed on page 7 of the Digest of Rulings). The Board does not think that this is equitable. On the other hand, section 10 of the draft Bill omits the saving clause altogether, and would therefore allow a landlord to distrain after mere tender of a patta however monstrous its terms might be. The Board would maintain the saving clause with the modification that the patta (or muchilka) should be "substantially such as the other party was bound to accept, and that distraint should only be valid to the extent that the patta was correct."

94. The provisions in section 10 of the Bill allowing tender of a patta to be made through a court might be accepted, substituting the Collector for the Civil Court, and allowing a tenant's demand for patta by tender of a muchilka to be made in the same way. The Bill is one-sided, inasmuch as it allows special facilities for tender to the landlord which it does not give to the tenant.

95. With reference to the remarks made in paragraphs 89, 90, 92, 93 and 94 above, the Board would substitute the following for section 7, Act VIII of 1865, as it now stands:—

"No suit brought and no proceedings taken under this Act by any of the landholders specified in section 3* or by a ryot † holding or claiming to hold under such landlord shall be sustainable unless pattas and muchilkas have been exchanged as aforesaid, or unless it be

* As proposed to be amended.

† As proposed to be defined in paragraph, 45 of this Proceedings.

proved that the party claiming to sue or take proceedings has, within or before the revenue year to which such suit or proceedings relate, tendered a patta or muchilka which is substantially such as the other party was bound to accept. Such tender shall be sufficiently evidenced by such proof of service as is provided for by section 39 in the case of notices. But it shall not be necessary to send duplicates of a notice of tender to the Collector.

"Explanation.—Tender of patta or muchilka may be made through the Collector who shall in that case cause due notice of such tender to be served on the other party at the cost of the party tendering."

"Proviso.—Where proceedings are taken under the Act by a landholder on a patta which is not entirely, but is partially correct, distraint shall only be valid to the extent that the patta is correct."

The amendments in the other sections proposed above present no difficulty.

96. For reasons which will be indicated later on the Board would maintain the Revenue Courts as the medium by which questions relating to the exchange of pattas and muchilkas should ordinarily be settled.

DISTRRAINT (CHAPTER VIII OF THE DRAFT BILL).

97. The restriction of the landlord's powers of distraint proposed in the Bill has met with an immense amount of disapproval in which the Board entirely concurs. To restrict distraint to crops standing or stored on the ground is to impair most materially the landlord's power of recovering his rent. The change would, moreover, work as much harm to the tenant as to the landlord, since, in the first place, it would encourage the accumulation of arrears to the tenant's ultimate disadvantage, and, secondly, the landlord would be compelled, in his own interests, to have recourse to distraint at a time when the tenant, having not yet raised money by the sale of his crop, can least afford to pay. If the landlord had power to distrain other moveables, as he now has, he could wait until the tenant had disposed of his crop and was in funds.

98. The absence of the police assistance, which section 19 of the present Act allows, will add to the landlord's difficulties and encourage breaches of the peace.

99. Again as gathered crops can only, according to the Bill, be distrained on the holding or threshing floor, &c., every temptation is given to the tenant to remove them to some place where the landlord cannot proceed against them.

100. Further, as rents in kind, which vary with the amount of the harvest, are often not determined until the crops are actually reaped, the landlord will in such cases not be able to proceed while the crop is standing.

101. Lastly, the Bill would altogether cripple farmers and contractors under Government who are authorised to proceed for arrears against their sub-renters under

the Rent Recovery Act—see for instance section 23, Act I of 1886. To tell an abkari renter that he can only distrain the crops of his shopkeeper, who may hold no land at all, would be pure mockery.

102. Sections 15—36 of the existing Act, which deal with distraint, form, the Board thinks, its most satisfactory portion. The powers of distraint provided have worked perfectly well, and the remedies provided against oppression are satisfactory. The majority of the Board as now constituted (Mr. Clogstoun dissenting) entirely disapproves of the exemption from distraint of the ryot's agricultural implements, and of a pair of ploughing cattle for each holding, which would follow from the recent orders of Government (Government Order, dated 1st February 1892, No. 110, and Board's Proceedings, dated 25th March 1892, No. 146) as tending to encourage improvidence on the part of the ryots. If any exceptions are required, the Board would revert to the provisions of sections 3 and 4 of Regulation XXVIII of 1802, and protect from distraint the tools and materials of manufacture of ryots who may also be artisans or weavers, and the seed-grain of all ryots, so long as other property equal to the discharge of the arrear is forthcoming.

103. Whatever decision may be come to as to the transfer of suits under the Act to civil courts, the sale of distrained property should rest with revenue officers who constantly have like duties to perform under Act II of 1864.

104. The omission in the Bill of the provisions of section 45 of the existing Act which permit of the arrest of a fraudulent or wilfully defaulting debtor is, in the Board's opinion, inadvisable, more especially so if the landlord's powers of recovering his rent should be curtailed as the Bill proposes. So also is the omission of sections 82 and 84, Act VIII of 1865, which allow a tenant to gain time for payment of his rent by furnishing security, and make his surety liable in the event of his default. Section 55 of the Bill, it is true, permits incidentally of the acceptance of security, but if the landlord is given no summary remedy against the surety, this provision is likely to remain a dead letter.

105. Section 83, Act VIII of 1865, should also have been re-enacted for the protection of landlords who receive their rents in kind. It has been pointed out above that section 55 of the Bill would, in certain cases, be very unfair to this class of landlords, while, if the previous year had been a bad one, the first proviso to that section would prevent them from recovering their just share of a succeeding good harvest even by means of the small powers left to them. The provisions of sections 80 and 85 of Act VIII of 1865 have also been quite needlessly omitted.

106. Two more defects require to be pointed out before the Board takes leave of this chapter of the Bill, which furnishes an excellent example of the way in which the Committee have needlessly proposed to alter the existing law, to the detriment of the landlord, to meet unacknowledged and non-existing "evils." The first is that the "double control" provided by sections 62 and 63 of the Bill is certain to lead to trouble. Section 21 of the existing Act is far preferable. The second is that section 71 of the Bill omits the clause of section 26, Act VIII of 1865, which renders a defaulting tenant, making a fraudulent conveyance of property to avoid distress, liable to prosecution under section 424 of the Penal Code, and that this provision is not re-enacted in section 108 (of the Bill) though the Committee, in paragraph 37 of their report, profess to have dealt with the matter.

107. As minor amendments required in the distraint sections of the existing Act may be specified—

(1) The insertion in the first line of section 15 of the words "crops and" before "moveable property." The omission of these words was evidently accidental.

(2) The insertion, in section 17, of a provision making a Collector's direction for the restoration of distrained property to its owner, on proof of certain material irregularities in distraint, enforceable in the same way as a decree in a suit under section 70. As the law at present stands the direction cannot be enforced—*vide* pages 43 and 44 of the "Digest of Rulings."

JUDICIAL PROCEDURE.

108. As to whether it is desirable that jurisdiction should be transferred from Revenue to Civil Courts, there is much diversity of opinion. On the threshold of the discussion the consideration arises that the effect of the transfer on ryots will be disastrous, unless their suits are exempted from stamp duty in ordinary Courts just as they have been in Revenue Courts. The Board is not sure that the Supreme Government would grant this exemption, and it is a matter of such importance that it considers that an assurance on this point should be a necessary preliminary to legislation before the transfer, if decided on, is proceeded with.

109. The Bill Committee say that the reports on Mr. Carmichael's Bill, by Messrs. R. Sewell, * Pinto, Rajaram Row and Narainasawmi Naidu, are in favour of the transfer, but in this they are not quite correct. Messrs. Pinto, Rajaram Row and Narainasawmi Naidu advocated it with special reference to the amount of new work which would be thrown on the Revenue establishment if Mr. Carmichael's Bill became law. Thus Mr. Pinto said that in his division the average of four years showed that there were only 78 disputed distraints (such as would have come before the Courts under Act VIII of 1865) whereas there were 659 distraints altogether, and all would have come before Divisional officers under Mr. Carmichael's Bill.

110. The Committee give statistics showing that in 1884 and 1885 the "relative rate of speed" in Divisional Courts and District Munsifs' Courts (including Small Cause Court cases), the comparative number of contested and uncontested cases, the percentage of cases in which appeals were made, and the percentage of appeals in which the original decision was confirmed, were in favour of District Munsifs' Courts. Their comparison is, however, misleading. The length of pendency of uncontested suits and Small Cause Court cases, and the proportion of contested suits to uncontested suits must be left out of consideration as irrelevant. According to the annual reports on the Administration of Civil Justice, the duration of contested suits has been:—

	1884.	1885.	1886.	1887.	1888.	1889.	1890.
	DAYS.	DAYS.	DAYS.	DAYS.	DAYS.	DAYS.	DAYS.
Revenue Courts	120	161	148	105	125	177	164
District Munsifs' Courts	163	171	162	170	160	183	169

These results, it will be seen, are uniformly in favour of the Revenue Courts, and the Board believes that the disposal of business by these Courts could be made much more expeditious if transfers of Divisional officers were less frequent and if returns relating to their disposal of rent suits were submitted to the Board instead of being dealt with, as now, solely by the High Court. At present the Board only receives general quarterly "business statements" in which rent suits are not separately shown.

111. The percentage of decisions confirmed on appeal, on the other hand, is decidedly in favour of District Munsifs' Courts,† and this is a consideration in favour of the transfer, but it is not a strong one considering the special circumstances. In para. 57 of the Report on the Administration of Civil Justice in 1887, it is stated that the districts, where the largest number of rent

	Revenue Courts.	District Munsifs' Courts.
1888	49.87	61.86
1889	20.34	63.81
1890	25.47	64.84

appeals were decided, showed the highest rate of confirmation. Again in Madura, which is one of the chief districts for rent suits, the percentage of confirmation, on appeal in 1889, was 85.25. It must be remembered that the same facts are often at issue in a large number of rent suits, so that a reversal in respect to a single point

of law would often materially affect the percentage. The argument for the abolition of summary procedure on the ground that there is "no royal road to the discovery of facts and most short cuts are mere delusions" (paragraph 20 of the Committee's report) is scarcely applicable, since Revenue Courts do not settle titles. One great consideration is that these rent suits could not be imposed on District Munsifs' Courts without adding to their numbers and to their establishment, and therefore to the expenditure of the State. The suits instituted before Revenue Courts during the last five years for which figures are available were—

1886	...	...	...	...	...	...	...	...	...	5,829
1887	...	...	...	...	...	...	...	...	...	7,622
1888	...	...	...	...	...	...	...	...	...	9,147
1889	...	...	...	...	...	...	...	...	...	11,805
1890	...	...	...	...	...	...	...	...	...	14,658

The present Bill, as has been shown in the Board's remarks on its principal provisions, would add vastly to their number.

112. From the opinions of the gentlemen who object to the transfer and who have had special experience of rent litigation, the Board quotes the following:—Mr. Winterbotham thinks an average District Munsif is not as likely as an average Divisional officer to hold the scales evenly between litigants so unevenly matched as landlords and tenants, and says that, if they had the chance, the zemindari tenantry would "plump" against the change of tribunal. Mr. Moberly says that, as far as Nellore is concerned, it would be a fatal mistake to transfer all suits under the Rent Act to ordinary Courts, where, in India as elsewhere, the longest purse generally wins, and where expenses must be greater. He says it is true that, "in order that justice may be done, truth must be elucidated, and the elucidation of truth, especially in this country, requires time and expense," but believes ordinary Courts are even now overworked. He adds: "zemindari ryots have hitherto been able to look to Collectors and Divisional officers for protection against exacting landlords, and Revenue officers by the use of their summary powers have been able to promptly remedy grievances, which want of money would prevent ryots from making the subject of a suit in the ordinary Courts." Mr. LeFanu thinks rent cases should be tried not by the ordinary Courts but by specially selected officers, and agrees with Mr. Crole, who thinks nothing is more unsatisfactory than the treatment which cases between landlord and tenant receive from District Munsifs. Mr. Willock says: "I think all questions regarding the rent to be paid . . . should be decided by the Revenue officials. In the first place, the Collector, with his staff of officials, accustomed to local investigation, in constant daily contact with the villagers . . . must possess far better qualifications for deciding what is a fair rent than a sedentary District Munsif . . . There can be little doubt as to what the desire of ryots with a good case would be in the matter . . . The suits which will arise in some of the larger zemindaris, though nominally affecting comparatively small interests in each case, will really constitute one gigantic suit, in which the powerful and wealthy zemindar is on one side and three-quarters of the agricultural population of a taluk or two on the other. This certainly will be the case in some of the zemindaris of the north of the Presidency, and I think it most objectionable that District Munsifs should have to deal with such large interests." The manager of the zemindari of Udayarpálaiyam speaking of application to District Munsifs' Courts in connection with distraint, writes to this effect: the power of attorney costs 8 annas, the travelling to and fro to Ariyalūr costs 10 annas, the agents wages are 4 annas a day, the plaint stamp (not taking into account the fees for writing) is 8 annas, the charges of the Court for serving the notice are over one rupee. With all this charge of Rs. 2-14-0 the tenant is saddled. It would be saved if the Revenue officer were applied to as at present.

113. Some ten gentlemen, among whom may be mentioned Mr. MacCartio, are in favour of the transfer, but we should not, the Board thinks, be justified in making such a complete change in administration without more powerful reasons than have

been urged in support of it. Revenue officers, as a rule, know far more of the local conditions and the ryots' difficulties than does the average District Munsif, who has himself no practical knowledge of the subject and is assisted by a bar equally ignorant. Moreover the investigation of disputes between zemindars and their ryots furnishes most valuable training for young Revenue officers. No doubt in some cases, as for instance the Tanjore Sub-Collectorate, the adjudication of rent suits at present tends to overburden the Divisional officer with work, but it must be remembered that if the Board's proposals are adopted, the adjudication of rates of rent, which is now the great *crux*, will in future become a comparatively easy matter. Again, in the important matter of execution of decrees, &c., it will hardly be denied that Tahsildars and Revenue Inspectors form a more trustworthy agency than batta-amins and process-servers.

114. Another important point to be considered is that the end of the revenue year (*i.e.*, the months of April to June) is the time when disputes as to receipt of patta and grant of muchilka, distraints, &c., are most likely to occur. But that is the very time when all the Civil Courts in the Presidency are closed for at least six weeks. In a distraint case, at all events, the power of immediate action is essential.

115. Lastly, the Board has to point out that if rent suits were transferred to Civil Courts, the Collectors in zemindari districts would be as completely dissociated from the people, and from all knowledge of their wants, wishes and economic condition as is now the case in Bengal and Behar. The Board cannot imagine a greater misfortune for the country. Even as it is, Collectors in zemindari districts know too little of their people.

116. The transfer of jurisdiction proposed in the Bill would, for all these reasons, be a most disastrous one, and in no circumstances would the Board allow Revenue Courts to lose jurisdiction over such matters as pattas and muchilkas, rates of rent, and distraint.

MINOR CRITICISMS ON THE DRAFT BILL.

117. The main features of the Bill have now been discussed in connection with the alternative proposals set forth by the Board and detailed criticisms by District officers and others will be found in Appendix II. There are, however, a certain number of sections on which the Board desires to offer brief remarks of its own and with these it will now proceed to deal.

118. *Section 1 (2) of the Bill.*—If the law is completely changed, some reservation will have to be made as to suits in progress, distraints already effected, &c., when the new Act comes into force.

119. *Section 3 (b).*—A particular meaning is given to the word "registered" in the Madras General Clauses Act, 1891, which makes it necessary to add, "in the Revenue Accounts," in section 3 (b).

120. *Section 3* that "signed" includes "marked," and that masculine words shall be taken to include feminine words, &c., is already enacted in the Madras General Clauses Act, 1891.

121. *Section 5.*—Even if the twelve years' occupancy principle laid down in the Bill were accepted, the Board would strongly object to section 5 (2) which permits the accrual of occupancy right by an aggregate tenure of different holdings in the same village, as being unfair to the landlord, since by this means a tenant who had previously held inferior land but had entered into a more valuable holding shortly before the Bill became law would acquire occupancy right in respect to the latter. The Board does not think that the reasons which led the Bill Committee to make the proposal which it is now criticising (*vide* paragraph 7 of their report) apply to this Presidency. The Board would require continuous tenure of the *same* land, except in cases in which whole villages are usually rented out either to the villagers as a body or to

The provisions of sections 114, 116 and 117 of the Bill would, moreover, throw a great deal of extra work on Revenue officers and questions under section 114 would often be more properly determinable by Civil Courts.

In section 112 the word "permanent" ought to have been inserted before "value;" and if section 118 were enacted, it should be provided that, in case of ejection for non-payment of rent, the amount of arrears due should be deducted from any amount decreed as compensation for improvements.

115. *Acquisition of land for building and other purposes, section 120.*—This ought to be left to private negotiation or to the operations of the Land Acquisition Act which is at present under amendment.

146. *Section 121.*—There is no reason why a sub-lease should be valid against the landlord without his consent merely because it is registered. Zemindari ryots should not have greater privileges than Government ryots, i.e., they should be liable to the landlord, whatever private arrangements they may make, till their holding or part of it has been transferred with his consent. Other tenants should be bound by the terms of their leases.

147. *Section 122.*—The landlord's consent should not be necessary for the relinquishment of part of a holding constituting a separate field unless such relinquishment will impair the letting value of the holding.

Section 122 (3) (b) of the Bill is unfair to the holders of large estates. How are they to know when an individual ryot leaves his village?

148. *Sections 123 and 124.*—The provisions of these sections might be incorporated in Act VIII of 1865, substituting of course "the Collector" for "the Court," but in the case of abandoned occupancy tenancies, it should be enacted that as soon as they are re-let to a fresh tenant, he obtains the full privileges of occupancy right.

149. *Section 125.*—The occupancy tenant, being put in the same position as the Government ryot, should remain liable for his holding as against the landlord till the latter has accepted the transfer by issue of a fresh patta or otherwise.

150. *Section 126.*—If this section is enacted, provision should be made for the service of a general notice on all tenants in the same village.

151. *Section 127* is unnecessary with reference to the Board's remarks above.

152. *Chapter XIV of the Bill—Landlord's private lands.*—The amendment of the existing law proposed in paragraph 64 above sufficiently provides for the definition and registry of "private lands."

The pernicious effect which section 128 of the Bill, as it stands, would have when read with the definition of inamdars in section 3 has been already pointed out (paragraph 47).

153. The Board considers that provision should be made for the levy of prohibitory assessment on unauthorized and improper cultivation of tank-beds, channels, &c. This is a defect in the existing law which the Bill fails to remedy.

154. The following further amendments of Act VIII of 1865 seem to the Board desirable:—

As remarked in paragraph 39 above section 2 should be amended so as to allow the landlord to grant postponements of payment to his tenants in times of distress without thereby forfeiting his right to proceed subsequently under the Act.

Section 5.—The Board is inclined to think that the term "unauthorised tax" in this section requires definition. The only authorized taxes should be cesses imposed by the legislature and fees paid for village service actually rendered. All other dues, such as nazaranas, &c., taken by the zemindar in addition to the rent without giving any equivalent, should be declared illegal. Further in this section to the word "sum" in speaking of exactions in excess of rent, the words "or thing" should be added to meet the case of rents paid in kind.

Section 41.—For the words "distress upon the premises" in the first clause substitute "distress upon his crops and moveable property." As remarked by Mr. H. J. Stokes in his commentary on the Act, the distrainer may follow a defaulter's property beyond his premises.

155. If the proposals made by the Board in this Resolution are accepted, the amendment of Act VIII of 1865 should present little difficulty. If, however, it be thought that the amendments are so numerous and important that a new Act is required, the Board hopes that Act VIII of 1865 will be taken as its basis, and all its provisions which have not been shown to be defective, allowed to stand in the old words and as much as possible in the old order, so that the new matter with which landlords, tenants and courts will have to make themselves familiar may be reduced to the smallest practicable compass.

156. In conclusion, the Board would strongly insist on the undoubted fact that no enactment of new laws, nor amendment of old ones, will establish the relations of landlord and tenant on a really satisfactory and secure basis so long as both parties are, as at present, at the mercy of the karnam. The mischievous independence of the zemindari karnams, who cannot be dismissed save by suit in the District Court, is a positive curse to the country. They extort money from the ryots, swindle the zemindars, and frustrate the best efforts of the Government officers to obtain trustworthy economic and vital statistics. One of the most pressing of all reforms is to place these persons under the control of the Collectors with the other village servants. The Board would strongly urge upon Government the absolute necessity of early legislation with this object.

57. With this Proceedings the Board returns to Government the Report and Minutes of Proceedings of the Bill Committee, and the Digest of Rulings under the present Act and collection of Papers regarding the Rent Law of the Presidency made by their Secretary. It also submits in a separate volume the reports of Collectors, Judges and others on the Bill.

158. The Acting Third Member, while agreeing generally with the contents of this Resolution, considers that the proposals contained therein do not go far enough in recognizing, and following to its proper consequences, the right of the ryot in the soil, and has recorded a separate minute.

(A true Extract:)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with a file of reports of Collectors, Judges
and others on the Bill, the Report and Minutes
of Proceedings of the Bill Committee, the
Digest of Rulings under the present Act and
collection of papers relating to the Rent Law
of the Madras Presidency, together with enclosures
received with Government Endorsement No. 1056,
dated 14th February 1891, Government Order,
No. 695, dated 4th February 1892, No. 341 R.,
dated 11th February 1892, and Endorsement
No. 2189, dated 28th April 1892.

.. all Collectors.

a single renter and in which the villagers are in the habit of settling among themselves the annual division of the land for the purpose of cultivation. Such cases appear to be still common in some of the Ganjam zemindaris.

122. *Section 6.*—The absence of any indication as to what constitutes a "material" injury to the value of the land or the rendering of it "unfit for the purposes" of the tenancy is calculated to lead to much litigation. The same remark applies to section 7 (a).

123. *Section 9.*—Occupancy right should be subject to the same conditions of devolution as other property.

124. *Section 21* has been universally condemned as giving to the tenant far more than the Government ryot would claim under similar circumstances.

125. *Section 25.*—The term "average local prices" used in sections 25 (a) and 32 (b) of the Bill is far too vague. A local unit of area for such prices, e.g., the taluk or zemindari division should have been specified. And section 25 (b) fails to provide for the case of improvements executed at the joint cost of landlord and tenant.

126. *Section 43.*—The Board, having proposed to limit the recovery of arrears to amounts due within three years, does not consider further legislative interference necessary.

127. *Sections 44—46.*—The Board does not see any necessity for departing from the simpler provisions of section 81, Act VIII of 1865. It would be sufficient to say that tenants shall be entitled to "adequate receipts" in the first line of clause 1 of that section, and to insert the words "or inadequate receipts given" after "refused" in clause 2. To allow an informal receipt for perhaps a trifling sum to wipe out all the landlord's existing claims for rent, as proposed in section 44 (4) of the Bill, would be unjust and oppressive.

128. *Sections 47—50.*—The Board thinks there is no necessity for these sections. Moreover, they make no provision for rent in kind, the custody of which Courts or Revenue officers could not possibly undertake.

129. *Section 51.*—By requiring a formal suit and decree for the sale of the holding of an occupancy tenant, the landlord is deprived of the summary remedy which Government reserves as against its own ryots. The provisions of sections 38—40 of the existing Act are satisfactory and should stand subject to the addition to section 40 proposed in paragraph 66 above.

130. *Section 52.*—A defaulting non-occupancy tenant can be satisfactorily dealt with under section 41 of the existing Act. There is no necessity to require a separate suit for ejectment.

131. The proper place of section 51 of the Bill is, moreover, after section 7, and that of section 52 after section 38.

132. *Section 87.*—To bar a second suit for fresh arrears for three months is most unfair to the landlord.

133. *Section 88.*—The Board considers that the provisions of the present Act are satisfactory in regard to procedure and that no change is called for.

134. *Sections 90 and 91.*—The Board begs to draw the attention of Government to the following remarks of Mr. Happell, as Collector of Górávari, in which it fully concurs:—

"Section 90 seems harsh and even unjust. Tenants will very often be sued when they are unable to raise money sufficient to pay their rents. If they cannot pay the landlord, it is manifest they cannot pay the full amount into court. In such cases the section would give the landlord as much as he chose to name, however unjust the claim might be.

"A tenant may have ample means from which to meet his obligations for rent, and yet not be able to raise ready money to pay into court at the time he is required to do so. His means may be locked up in unripe crops, in loans to others not yet due or in immoveable property. The

section, in fact, offers a strong inducement to the tenant to deny that anything is due even when willing to admit part of the claims, and to the landlord to make a false and exorbitant claim whenever he has reason to believe that the tenant cannot at once raise the amount justly due. "Section 91 leaves too much to the discretion of the court; a great evil even when Judges are the best possible."

135. *Chapter X of the Bill.*—As above remarked (paragraph 129), there is no necessity to require a suit for the sale of land of an occupancy tenant. The provisions of sections 38—40 of the existing Act will, with the proposed amendment, be satisfactory and sufficient.

136. *Section 97.*—Given the fixity of tenure and fair rent which it is above proposed to provide for occupancy tenants, their holdings should, the Board thinks, be sold free of incumbrances as provided in the case of Government ryotwari lands by section 42, Act II of 1864. It is not understood why the provision was omitted in the subsequent Rent Act. The Board would now insert it in regard to ryots, but would not legislate in the case of other tenants.

137. *Section 100.*—Where two or more persons possess an interest entitling them to take action under this section and more than one wishes to take such action, the party whose claim dates back longest should have been allowed preference. Otherwise a third mortgagee, if first in making payment into court, would obtain preference for the future over the other two.

138. *Section 102.*—The decree-holder should have been made subject to the disability imposed by section 294 of the Civil Procedure Code, since other tenants might be debarred, from fear of consequences, from bidding against the landlord.

139. *Chapter XI of the Bill—Contract and Custom.*—If the Board's suggestions as to occupancy right and "private lands" be adopted, occupancy tenants will be withdrawn altogether from the régime of contract, and other tenants placed entirely under it, and the elaborate provisions of this chapter will therefore be altogether unnecessary.

140. *Chapter XII—Limitation.*—The provisions on this subject of the existing Act are, the Board thinks, satisfactory.

To make special provisions for limitation in regard to certain suits, &c., as is done in schedule II of the Bill, and leave the rest under the ordinary Limitation Law [section 107 (2)] is confusing.

141. *Section 108.*—The provision of section 27 of the existing Act, which rendered the offender generally liable under the Penal Code, is preferable. Clandestine removal of distrained property, for instance, is more akin to theft than to criminal trespass. The Board has already brought to notice (paragraph 106) that fraudulent conveyance of property to avoid distraint is not specifically made a penal offence as it should be, and is under section 26, Act VIII of 1865.

142. The important provision of section 86, Act VIII of 1865, which permits farmers of public revenue other than land revenue to proceed against their sub-renters under the Rent Law has been omitted.

143. Coming where section 111 of the Bill does, it is not at all obvious what is an "unauthorised tax," and its provision may be rendered nugatory by those of section 105 which the Board considers to be a highly dangerous one. The corresponding section of Act VIII of 1865, section 5, comes directly after its description of the patta, so that it is obvious that "unauthorised" tax meant, there, a tax not entered in the patta.

144. *Sections 112—119—Improvements.*—These sections might be desirable if there were a crying want for them, but there is not.

Occupancy tenants will, according to the Board's proposals, be entitled to do as they please with their holdings, subject to the payment of rent. If their holdings are sold for arrears they will get compensation for any improvements they may have effected in the shape of the increased price the holding will fetch, and no further special legislation is required. The powers of other tenants will depend on their contracts which would be adjudicated upon in case of dispute by the Civil Courts.

APPENDIX I.

Abstract of the Draft Madras Tenancy Bill upon which the Board is now called upon to submit its opinion.

CHAPTER I.—DEFINITIONS.

The Bill gives the necessary definitions of "landlord" (dividing landlords into two classes as in the existing Act) "tenant," "rent," &c.

CHAPTER II, SECTIONS 4—9.—OCCUPANCY RIGHT:

It next proceeds to provide that every tenant of the first class of landlords (zemindars, &c.) shall be presumed to have occupancy right, and that every tenant holding under such landlords shall acquire the right by a continued tenancy of land under the same landlord in the same village for a period of 12 consecutive years.

The incidents of such right are to be the following:—(1) the right to use the land provided its value is not materially impaired; (2) protection from eviction, as long as the tenant uses the land properly and has not broken any condition of a contract with his landlord consistent with the provisions of the Act, on breach of which he is liable to eviction; (3) devolution on death to descendants as immoveable property.

CHAPTER III, SECTIONS 10—17.—PATTAS AND MUCHILKAS.

No landlord of the first class shall proceed against any tenant unless pattas and muchilkas have been exchanged or a patta tendered. Provision is made for the tender of a patta through the Civil Court and provision is made that a patta and muchilka may be exchanged for a period of more than one year. The procedure laid down with regard to suits to compel the exchange of pattas and muchilkas is the same as in the present Act.

CHAPTER IV, SECTIONS 18—31.—RATES OF RENT FOR OCCUPANCY-TENANTS.

The Bill then proceeds to make rules regarding rates of rent. Every contract not inconsistent with the Act shall be enforced. In the absence of contract, (1) survey rates, (2) rates of similar neighbouring lands and (3) Court rates shall be enforced, but the landlord may make his own conditions as to waste and abandoned lands when lands have been granted on special terms for building, quarrying, &c.; these terms will remain binding so long as the conditions of the lease are enforced. No claim of rent is to be made where, through the landlord's failure to keep any irrigation work in repair, a crop has suffered materially or has been *wholly* raised by water from tenant's own wells.

I. *Enhancement of rent in the case of occupancy tenants paying rent in money can only be made—*

- (1) by contract (under certain conditions);
- (2) by a decree of the Court on an action brought by a landlord asking for enhancement on the following grounds:—

- (a) rise in prices when rents in kind have been commuted;
- (b) improvement executed by landlord;
- (c) improvements executed by Government for which the landlord has had to pay;
- (d) permanent improvement by fluvial action.

The Court is to be guided in case (a) by the following principles:—

- (1) It is to compare decennial average prices or the average prices of shorter periods if taken and at what places is not laid down. (How the prices are to be obtained, what grains are to be)
- (2) The enhanced rate is to bear the same proportion to the existing rate as the one set of average prices does to the other, provided that the excess of the latter set of prices over the earlier shall be reduced by one-third.

In case (b), the Court shall not grant enhancement unless the improvement has been registered under the Act, and in determining the enhancement the Court shall consider—

- (1) cost of improvement;
- (2) cost of cultivation necessary for utilising improvement;
- (3) existing rent;
- (4) increase in productive power of land by the improvement.

In case (c), the Court shall consider points (2) and (4) above and the additional payment required from the landlord.

In case (d) the landlord is not to get more than half the net increase by such improvement. The Court may order the enhancement to be gradual.

No suit can be brought at any time for enhancement on the ground of prices if the question of prices has been considered by the Courts either in view to commutation or enhancement within 15 years previous, or if within that time the rent has been enhanced by contract.

Enhancements shall take effect usually in the year following that in which suit is instituted, but if a suit is instituted in last four months of a year such enhancement shall not take place until the year next but one following.

II. Suit may be instituted for *reduction of rent* on the following grounds:—

- (1) deterioration of soil;
- (2) fall of prices;
- (3) undue increase in rent within twenty years from date of institution of suit. In deciding such suits the Courts may direct such reduction of rents as they think fair and equitable.

No suit can be brought for reduction of rent on the ground of prices, if within 15 years previous such reduction has already been made either by contract or by Court's decree.

III. A tenant or landlord may apply to the Collector for *commutation* of grain rent into money. If the application is objected to, the Collector may refuse, but must record his reasons. If not opposed or if the objection is disallowed, the Collector shall order commutation having regard to—

- (a) the money rent of lands of similar description;
- (b) the average value of the rent in kind received in the past ten years or any shorter period for which alone estimate may be available;
- (c) charges incurred by the landlord in respect of irrigation.

CHAPTER V.—NON-OCCUPANCY TENANTS OF LANDLORDS OF THE FIRST CLASS (ZEMINDARS, INAMDARS, &c.).

The Bill describes the *status* of non-occupancy ryots, i.e., ryots who admit or are proved by the landlord to have no occupancy rights.

Their rent is subject to contract, but may not be enhanced save by (1) a registered agreement, (2) an agreement tendered by a landlord, refused by the tenant, and imposed upon the latter by the Court.

They are liable to ejectment (by suit, see section 127) on the following grounds:—

- (1) non-payment of rent;
- (2) rendering the land unfit for the purpose of the tenancy;
- (3) expiry of lease or breach of a condition thereof, consistent with the terms of the Act to which the penalty of ejectment has been attached;
- (4) refusal to pay rent enhanced under order of Court.

CHAPTER VI, SECTION 41.—LANDLORDS OF THE SECOND CLASS (RYOTS, &c.).

The status of the second class of landlords is described. They can proceed under the Bill for recovery of rent if they have taken written agreements, but not otherwise.

CHAPTER VII, SECTIONS 42—54.—ARREARS OF RENT.

- (a) A tenant's payment is to be credited as he wishes.
- (b) Landlords are to grant receipts on forms prescribed by the local Government.
- (c) Tenants may sue for a receipt and penalty will be adjudged for not having granted one in the prescribed form.

(d) Tenants may, where there is reason to doubt who is entitled to receive rent or where it has been refused or is likely to be refused, pay their rent *plus* a fee into Court. The Court will give a valid acquittance and take steps to pay the sum to the person entitled to receive it.

- (e) The holding of occupancy tenants may be sold for arrears.
- (f) A suit for eviction for non-payment of rent may be instituted against non-occupancy tenants.

- (g) In occupancy-holdings rent is to be a first charge on the land.
- (h) Arrears of rent shall bear simple interest at the rate of 12 per cent. *per annum*.
- (i) The Court may award damages to plaintiff or defendant in a suit for arrears of rent.

CHAPTER VIII, SECTIONS 55—81.—DISTRRAINT.

Landlords may distrain within a year from the date on which arrears fall due—

- (1) standing crops;
- (2) gathered crops on the tenants' holding or threshing floor.

Distrain is effected (1) by service of notice on the tenant and (2) by the landlord taking charge of the produce.

Notice is also to be sent to the Civil Court which will at once serve a notice on the tenant that, unless arrears are paid into Court within 15 days, or cause shown why the distraint should be withdrawn, the distrained property will be sold. Rules are laid down for the custody of the produce, when under distraint, and protection given to the tenant against irregular distraint and loss of or damage to distrained property owing to the carelessness of the distrainer. Provision is also made, as in the present Act, against fraudulent conveyance or improper removal of distrained property. Rent is declared to take precedence as a charge on a distrained crop, but the Court may take into account the claims of third parties.

Failing compliance with the terms of its notice to the defaulting tenant the Court will *proprio motu* order the sale of the attached property.

Arrangement is made for the release of crops if the tenant pays the arrears either to the distrainer or into Court before the sale takes place.

Any payment made by a sub-tenant to free the produce of his land from attachment for default of a superior tenant may be deducted from his rent.

The Governor in Council is given the power to make rules to regulate the procedure in distraint.

CHAPTER IX, SECTIONS 82-93.—JUDICIAL PROCEDURE.

The Courts appointed for hearing suits under the Act are declared to be the regular Civil Courts, and such Revenue officers as the Government may empower for the purpose.

Instructions are laid down as to payments into Court in suits for arrears of rent in cases where the tenant admits a portion of the arrear or pleads that the amount is due not to the plaintiff, but to a third party. Where a tenant has been sued for arrears, he cannot be sued again for fresh arrears for three months.

Summonses in suits under the Act are to be as a rule for the final disposal of suits.

In case of ejectment, the tenant is declared entitled to value of crops on the land and of the labour employed in preparing the land for sowing.

Decrees for enhancement of rent shall not take effect immediately (section 93).

CHAPTER X, SECTIONS 97-102.—SALE OF LAND FOR ARREARS UNDER DECREE.

Portions of holdings may be sold for arrears.

In cases of sales of land for arrears, the purchasers are declared liable for encumbrances made with the landlord's permission or before passing of the Act.

Rules are laid down for the disposal of sale-proceeds.

A person having an interest in a holding is entitled to pay into Court the arrears for which such holding would otherwise be sold, and the amount so paid by him becomes a charge on the holding having priority next to the rent, bearing interest at 12 per cent., and secured by a mortgage with possession until the debt is paid.

An under-tenant is allowed to pay arrears, to stop sale and to deduct the amount from his rent.

The defaulting tenant against whom the decree is issued may not bid at the sale, but the decree-holder may.

CHAPTER XI, SECTIONS 103-105.—CONTRACT AND CUSTOM.

The Bill lays down that no contract whatever—(1) purporting to bar in perpetuity the acquisition of occupancy right, (2) purporting to take away an occupancy right in existence at the time, (3) entitling a landlord contrary to the terms of the Bill to eject, (4) limiting a tenant's right to make improvements—shall have effect; that no contract made since the Chokkalingam case in 1871, purporting to prevent the acquisition of occupancy right by any tenant, shall have effect; and that no contract after the framing of the Act, purporting to produce a disability in any tenant to take advantage of the main advantages conferred by the Act, shall be valid.

None of the customs as regards the rights of a tenant in his homestead, &c., are to be affected by the Act.

CHAPTER XII, SECTIONS 106-107.—LIMITATION.

The Bill lays down certain periods of limitation for suits.

CHAPTER XIII, SECTIONS 108-127.—MISCELLANEOUS.

This chapter deals with several miscellaneous points. It renders liable for criminal trespass persons (1) illegally distraining, (2) illegally resisting a distraint or clandestinely removing distrained property, (3) illegally preventing the reaping, removing or storing of crops.

It provides that landlords may act by agents.

It protects tenants of zemindars, inamdars, &c., from illegal exactions by their landlords.

It lays down rules as regards improvements, and defines what are improvements, and who are entitled to make them.

It gives the Collector power to decide on questions arising as to the right to make improvements and as to what are to be considered improvements.

It provides that non-occupancy tenants shall, under certain conditions, be entitled to make improvements and gives full power to make such to occupancy tenants.

Collectors are to register, when required, improvements that have been made and to record evidence concerning them.

The Bill prescribes when and how compensation is to be given for improvements made by ejected tenants and the principle upon which compensation is to be granted. Such matters are to be adjudicated upon by the Courts.

The Bill provides that the Court on the request of a landlord may acquire land from tenants required by the landlord for building or other useful purposes.

The Bill places restrictions on the rights of tenants of landlords of the first class (zemindars, &c.), as regards sub-letting. Such sub-letting unless made by a registered lease, which shall not be for more than nine years, shall not be valid against a landlord if made without his consent.

The surrender of a portion of a holding requires the landlord's consent. A tenant is bound to give his landlord three months' notice of his intention to surrender his holding or he will be liable to the latter for the loss of rent. But that such notice was given is to be presumed when a tenant quits his village three months before the end of the Revenue year; or when the tenant takes a new holding from the same landlord in the next year.

A landlord may, after due notice, which is to be published by the Collector, enter on a holding which has been abandoned by a tenant without due notice of surrender.

The tenant may, however, recover possession by a suit instituted within two years (if an occupancy tenant) or six months (if a non-occupancy tenant), from the date of publication of Collector's notice, if he can prove that he did not voluntarily abandon his holding.

If an abandoning tenant has sub-let the land by a registered deed, the landlord must offer the holding to the sub-lessee at the same rent for the remainder of the tenant's term.

Tenants may not sub-divide holdings without consent of the landlord; but in case of sub-division under a decree or by inheritance, any party interested may sue for apportionment of rent.

Tenants who have a saleable interest in holding must give notice of transfer of such interest to the landlord.

Landlords of first class must give notice to their tenants when they transfer their estates or portions thereof.

No tenant of a landlord of the first class shall be ejected except in execution of a decree.

CHAPTER XIV.—LANDLORD'S PRIVATE LANDS.

This, the last chapter of the Act, provides that nothing in chapter II shall confer an occupancy right in the private or *pannai* lands of a landlord of the first class, or in lands held by tenants of inamdars who possess more than a mere right to the assessment.

The Government is given the power of making a survey and record of such private lands, and of ascertaining, at the wish of tenant or landlord, whether any particular land is of this class or not. In this case Revenue officers must register as landlord's private lands—

- (1) land proved to have been treated as such for twelve years; and
- (2) other cultivated land recognised as such by village custom.

The presumption will be that land not falling under the above classes is *not* private land, but this may be rebutted by evidence of local custom, &c.

Revenue officers are to decide on the above points after a notice of six months for hearing objections; and then the record is to be published.

They will be guided in their procedure by the Civil Procedure Code, and an appeal will lie from their judgments to such special judges as the Governor in Council may appoint.

APPENDIX II.

Notes by District Officers and others on the Draft Tenancy Bill.

CHAPTER I, SECTION 3.

Mr. Lee Warner (p. 25*) would substitute in the definition of "rent" for "includes also money recoverable by the landlord from the tenant," "money declared to be recoverable as rent under any other enactment."

Mr. S. Russell (p. 5) suggests illustrations under the definitions of "tenant" and "landlord" to make them more clear.

Mr. E. Turner (p. 57) wants to know what is a farmer of land revenue. Does it include a sub-tenant or lessee? Would it include a receiver of an estate appointed by a Civil Court?

* The number in brackets after the name of each officer, &c., refers to the page of the Book of Collectors' Reports, &c., on which his remarks will be found.

Rajaram Rao, Madura (p. 59): Does the term "tenant" include an inamdar holding a village at favorable rent from a zemindar? If so, some special arrangement should be made to enable landlords to proceed against each inamdar in cases where a number of shareholders enjoy one village and pay rent (*poruppu*) jointly, and to enable joint inamdars to be free from penalties under the Act when they have paid their share of the *poruppu*.

The definition of "holding" should be clearer. In Ramnad, assessments have not been fixed, and rent is only paid on so much of a holding as is cultivated.

Mr. A. Thompson (p. 66) agrees with the Honorable Mr. Garstin that ryots should not be considered "landlords," and would omit inamdars on the same ground so as to exclude the minor inams. The major inamdars would come under the term "shrotriendars".

He would substitute for "who holds land under another person" in the definition of tenant, the words "who holds land under a landlord as above defined" in order to make the terms tenant and landlord correlative.

Presumes the Act will not be made applicable to Malabar.

Karunakara Menon (p. 67) takes this case. A is a zemindar, B a mortgagee with possession, C is cultivator under B. Is B, A's tenant, and C, B's tenant? On the answer to this depends the effect of section 4.

C. Kunhi Kannan (p. 68): Is a Malabar janmi a landlord? Janmi lands have been always held to be private lands, and so tenants will get no benefit from this Act.

Mr. H. Moberly (p. 69): The definition of *rent* should include "payment of grain by share and fees or charges and cesses payable with it according to any law or contract". Payments by "farmers" of rents should be *rent* and the "farmers" tenants.

Would place all lands in zemindaris on the same footing as Government lands, and give all cultivators occupancy rights.

What is meant by "all persons farming rents from the above persons" in section 3 (a)? A, a zemindar, leases the whole of a taluk to B, who rents out a whole village to izardars C, D, E. Is B a tenant or landlord? Are C, D, E tenants or landlords? If B and C, D, E are "farmers of rents", they are not tenants and so not prohibited from sub-leasing by sections 121-125 as Mr. Garstin thought.

Are lessees of forest produce and kancha lands tenants?

Messrs. L. R. Burrows and A. C. Tate (p. 76): Malabar janmis should not be given powers of landlords under the Act.

General Deputy Collector, North Arcot (p. 7): *Rent* should include money or kind payable for using water belonging to the landlord for the benefit of such lands.

Mr. McWatters (p. 76) agrees with the Honorable Mr. Garstin that ryotwari holders should not be landlords.

Mr. Wynne (p. 15) notices that in Canara holders under *mulgeni* tenure are excluded from the Act as landlords.

Mr. J. M. Brito (p. 16): The distinctions between the two sorts of landlords are confusing. It is very doubtful how far the Bill affects the three sorts of tenants in Canara, viz., those holding under (1) *Mulgeni*, (2) *Kayamgeni* and (3) *Chalgeni*.

N. Gundu Row, Landholder (p. 20): The Bill is not clear as to the rights enjoyed by each sort of landlord.

Registered holders [Section 3 (b)]: It takes long sometimes to register ryots' names and the ryot should not suffer because his name has not been registered.

Mr. J. N. Atkinson (p. 81): The whole of section 3 requires redrafting. Are the superior and inferior tenants in Bhadrachalam taluk tenants or landlords, or both?

Does "the subject of a separate tenancy" in the definition of *holding* mean "entered in a separate patta and muchilka", or what?

Deputy Collector N. Gopalakrishnama Chetti (p. 84): "*Holding*": Would specially exclude house-sites on *gramanattam* from the operation of the Bill. Does not think that the mirassidars have shown a tendency to seize these holdings. Section 104 is likely to prove sufficiently restrictive.

The Etaiyapuram Zemindar (p. 94): *Tenant*.—The words "or but for a special contract would be" should be omitted from the definition. In cases where lands are held on service tenure, the holders should not be able to acquire occupancy right under section 5. Resumption should always be permitted if service is dropped.

Deputy Collector K. V. Muthuswami Aiyar (p. 115): "*Rent*" should include money paid for right of fishing in an irrigation work.

General Deputy Collector, Vizagapatam (p. 121): Inamdars whose kattubadi was included in the assets of the zemindar's estates should be mentioned as tenants. Cases where zemindars

undertake to collect quit-rents of inams situated in these estates should be provided for. They cannot collect them under the present Rent Act, but they should be able to do so. The point should be made clear.

Explanation (1) to section 3 should be, if anywhere, under the definition of "rent".

K. Purushottam Pantulu, Vizagapatam (p. 134): Why are "holders under a sanad-i-milkeut-istimrar omitted from list of landholders"?

Muttadars [Section 3 (a)]. The word has different meanings; sometimes it applies to a renter, sometimes a service tenure holder, sometimes a holder direct from Government.

The Kallakota Zemindar (p. 177) objects to the division of zemindari and ryotwari holders, as if they were persons who held on similar but not identical tenures. Ryots are, he considers, very inferior to zemindars.

Mr. Nelson (p. 154) objects to the very unscientific terminology of the 3rd section. He says nobody agrees as to the definition of the terms "zemindar," "assignee" and "mortgagee". He would not leave the expression "landlord" undefined, but would define it as tenant is defined. He thinks the expression "landlord" implies the power to take back land from another who has the right of possession for a time.

Purchasers of the interest [Section 3 (a)]: A zemindar sells for ten years his right to the coffee produce on his estate. Is he a landlord?

"*Farming the land revenue*" [Section 3 (a)]: Why should a landlord under section 3 (b) be turned into a tenant just because the Government farms out the revenue? It is inequitable.

Section 3 (b): Why mention holders of land only? Why not include trees and water right?

"*Ryotwar settlements*": Is a vague and unscientific term and may mean several things.

"*Registered holder*": A man's status as a landlord should not depend on registration of his name in revenue registers; often a man's ancestor remains the registered holder for years.

"*In proprietary right*": Nobody is registered in proprietary right. The status of the ryot is a matter still under discussion, and our views are still hazy.

A "tenant" is defined as one who holds under another. These words will cause endless difficulty. In many cases it will be a matter of great difficulty to know whether an occupier does "hold under another" or not.

Mr. Nelson would call the zemindar "the over-proprietor"; the ryot "the proprietor"; the ryot's lessee "the tenant".

Explanation (2) under definition of tenant: "Payments to be made" should be "payments due" as in explanation (1).

The definition of "rent" will not suit the West Coast tenures.

CHAPTER II, OCCUPANCY RIGHT.

Mr. Underwood (p. 56): Section 5 (2) requires a proviso to the effect that land must have been held under one and the same landlord.

Section 7: Some precaution must be taken to prevent tenants losing their occupancy rights under bonds to pay arrears of rent.

Mr. Lee Warner (p. 25): The words "whether under lease or otherwise" in section 5 require explanation.

Section 6: The words "materially impair its value or" are unnecessary and likely to cause dispute and should be omitted.

Mr. Welsh (p. 29) (Section 5) suggests the importance of registration of occupancy rights by registering relinquishment and acquirement of land in the taluk office.

District Munsif V. Subramanyam (p. 53) would divide and register all lands as either *khas* or communal and give all occupiers of the latter occupancy rights. This would involve a survey.

Mr. E. Turner (p. 57) looks upon section 5 as likely to foster much litigation. He is also strongly in favour of a record of right as under section 131.

Mr. Mounsey (p. 58) thinks occupancy in section 5 should be with consent of landlord. He thinks section 6 will be very difficult to work. What unfits land for a tenancy?

T. Rajaram Row (p. 59): In Ramnad tenants often go away to Ceylon for years and leave land waste. Some special provision is necessary to enable the landlord to step in in such cases. (But section 123 of the bill provides for this.) He thinks also that a landlord should be allowed to acquire the occupancy rights, where at a sale for arrears he buys in land held by an occupancy tenant.

Mr. Winterbottom (p. 64) thinks section 5 wants more consideration. What is the meaning of "for the time being" at the end of clause (1)? Would it do to substitute "then" for it? Probably not. Can the same person be, as regards the same landlord, an occupancy tenant as

regards some land, and a non-occupancy tenant as regards other land? Section 7 does not make this point clear.

A holds under B for twelve years, and quarrels with him; B gives the land to another tenant in A's absence. A finds the new tenant ploughing the land and sues after lapse of one year for his occupancy rights. Would he get them as being out of possession at the time?

The General Deputy Collector, Nellore (p. 71): The distinction between occupancy and non-occupancy tenants is invidious, and section 5 is certain to lead to fabrication of fraudulent evidence. It will necessitate a distinction in pattas. He thinks that all lawful tenants at the time the Act comes into force should have their right to possession confirmed and be entitled to continue it, subject to penalty of ejectment by courts when rent is proved not to have been paid. Their moveables should be liable to seizure first, and then the occupancy right should be sold.

The Karveinagar Zemindar (p. 10) thinks that section 6 should be clearer. Does the building of a house on land suited for cultivation materially impair its value or render it unfit for the purpose of the tenancy?

Revd. T. Foulkes (p. 77) also considers section 6 too vague, and thinks there should be special provision for leases for mining and quarrying.

Mr. Atkinson (p. 82): The grammar and spelling of section 9 is bad. Why is right of occupancy classed as immoveable property?

The Etaiyapuram Zemindar (p. 95) thinks section 5 will prevent landlords from leasing out land temporarily, e.g., beds of ruined tanks, which is constantly and very beneficially done now. Section 5, clause (2) will work hardly on landlords. A tenant has held lands for ten years, the landlord incautiously gives him on lease some other land; it may be his own land bought in at auction and in two years the tenant gains the occupancy right.

Mr. Willock (p. 105) thinks that section 5 (2) is quite unnecessary and may lead to trouble. *Deputy Collector K. V. Muthuswami Aiyar* (p. 116) thinks the attempt to distinguish tenants into occupancy and non-occupancy a mistake. All tenants should be given occupancy rights, provided they pay the fair rent. If they do not pay them then the law should grant power of ejectment.

The General Deputy Collector, Vizianagram (pp. 125-6), while in favour of the spread of occupancy rights among the zemindari tenants, does not approve of section 5, clause (2), or indeed of the whole section. He considers it will tend to produce a large increase in the number of evictions, and bring about a far greater divergence between the interest of the landlord and tenant than is the case at present. In any case he would add "under the same landlord" at the close of section 5, clause (1).

Section 6: He considers that the tenant should be compelled to obtain landlord's consent for any new use he wishes to put his land to.

Section 7, Clause (a): Would add "or which materially impairs its value".

The late Mr. K. Purushottam Pantulu, Huzur Sheristadar, Vizianagram (p. 131) is, as regards the zemindar of the Northern districts, entirely against the conferring of occupancy rights on the tenant as proposed in the Bill. He quotes the Circuit Committee's report of 11th October 1884 to the effect that the cultivator has no right in the soil, and he believes that in the last 100 years no claim to occupancy right has ever been successfully contested in the courts. He considers that the judgment of the Madras High Court of 1871 made no change in the law as far as the Northern Circars are concerned, and he believes that the result of the present Bill will be to estrange the landlord from his tenants, to derive him to be rigorous in the collection of arrears and exacting on all occasions. The law is now, he believes, generally speaking, indulgent and kind. But all this will be altered if the Bill becomes law. He remarks that in the last seven years there have been only three estates out of 55 in the district where the landlords have taken undue advantage of their rights over their tenants. He believes that in the Ceded Districts all tenants have occupancy rights.

Mr. H. G. Turner (p. 143) agrees that it is unnecessary to grant occupancy rights as done in the Bill, and remarks that the tenant would soon be in the hands of the sower if he is not in those of the landlord.

He considers that the richest lands in the world are those in the hands of the largest proprietors.

S. Narayana Gajapati Razi Mukhammadar (p. 141) is entirely against the Bill as regards its attempt to confer occupancy rights on the tenant. He says it is the universal custom in his district (Vizagapatam) for landlords to grant leases for a term, and at the close of the term to revise their rents according to circumstances. He considers section 5 most unjust. "To enact that twelve years' occupancy in all by one or his representative of one or another land shall confer a right of occupancy seem as unfair as it would be to enact that when a debtor executes two different bonds and the combined time exceeds the time prescribed by the law of limitation for suits on bonds, both the bonds should be time-barred."

Mr. Happell (p. 41) considers the occupancy right section just. He would, however, amend section 8, clause (3), to meet the case of a tenant who becomes an izaradar, so as to enable him still to acquire occupancy rights in his tenancy lands.

Mr. Hamnett, Góddávari (p. 47) from his experience thinks that, probably owing to rents in the Northern Circars having been paid in money and not in kind as in the southern zemindaries, the enhancements have been much greater in the north than in the south. He wishes to see fixity of tenure and a method for fixing fair rents introduced, and approves of the Bill as regards the Northern districts.

He does not think that reading section 8 (1) and (2) with section 131, clause (1) (a) that the Bill effects the purpose of the Committee as explained in paragraph 14 of their report.

P. Pundarikakshudu, Deputy Collector, Góddávari (p. 49), approves of the Bill, but considers that inamdars should be excepted from its provision. Such men, as it is, have great difficulty in collecting their rents, and, if occupancy rights are given to their tenants, will not get anything.

The Zemindar of Kallakota, Tanjore (p. 176), asks why, when the Committee were instructed to make as few changes in the existing law as possible, they have retained but eight of the sections of the Act VIII of 1865? He considers that no acknowledged evils have been proved to exist which require legislation.

Mr. Nelson (pp. 155-9) sees no reason for excluding tenants of landlords under clause (b) of section 3 from the benefits of chapter II.

Clause (3), Section (5): In a *Murumakkattayam* family the son of the manager of a property is neither his heir nor his assign, and yet he will generally succeed.

Section 6: "In any manner" should be explained.

Section 9: With reference to the word "descend" in line 5, points out that in many cases in Southern India immoveable property does not "descend," because families and tarawads who hold the property do not die.

Mr. Justice Shenhard (p. 146) [Section 5, Clause (3)] objects to the words "or assign", which are not in the Bengal Act.

CHAPTER III, SECTIONS 10-17.

General Deputy Collector, Ganjam (p. 40) (Section 10): Method of proof of a "tender" should be laid down and what is a "tender"?

Section 14: No limitation is laid down as to the time within which suits under this section should be brought. This should be done. [The Limitation Act applies—*vide* section 107 (2) of the Bill.]

Pennkonda Munsif V. Subramanyam (p. 53) (Section 12) considers that to allow fees payable according to "usage having the force of law" to be entered in the pattas will lead to oppression. In Nizvid such fees are numerous and burdensome. The only fees which should be allowed are karnam and vettayan fees, and they should be only a fixed proportion of rent.

"Special terms" should not be allowed unless both parties agree. The law should, moreover, lay down some rules regarding the property in trees about which there are now continual disputes.

Mr. Mounsey (p. 58): Similar rules should be enacted in respect to the demand for a patta as are prescribed in section 10 for the tender of a patta.

Sections 14 and 15: Why should the landlord have three months' grace and the tenant only one month allowed?

Mr. A. Thomson (p. 66) would not allow the landlord any right after a mere tender of patta except to bring a suit for acceptance. He considers "muchilkas" unnecessary. Pattas are sufficient.

P. Karunakara Menon (p. 68) (Section 17): The tenant should have some prescribed means of terminating his tenancy and obtaining cancelment of patta. (But see section 122.)

General Deputy Collector, Nellore (p. 71): "Local description or extent of the land" in section 12 should be "and" as in the existing Act. He would also add "measured" or "surveyed" before "extent". Considers it very necessary that the Act should provide that all lands in occupation should be measured by the acre standard. When money assessments are introduced in place of division of crop, the Act should provide for inspection by a Government officer at cost of zemindar.

Considers that tender of patta should precede and not follow the cultivation season, as a tenant often does not know under what term he is holding his land. He also thinks that arrangements should be made for a supplementary patta to contain details of fasaljasti, &c., which charges are not known until the end of the cultivation season.

He does not think that a mere tender of a patta should give right to distrain; many of the existing evils arise from this. The landlord should be bound to enforce his patta before proceeding to realize and distrain, and the tenant in such circumstances might be bound to deposit in court his alleged arrears under the patta and abide result of it.

Mr. Moherty (p. 74) asks if chapter III applies to non-occupancy as well as occupancy tenants. (Clearly it does so long as they are tenants of landlords of the first class.)

General Deputy Collector, North Arcot (p. 7): Is retrospective effect to be given to section 10?

The Karretnagar Zemindar (p. 10) does not think any landlord would avail himself of the privilege of tendering a patta through the court; such a procedure would be expensive and tedious.

P. Rajagopalacari, Deputy Collector, Salem (p. 79), does not think the provisions in Act VIII of 1865 enabling landlords and tenants to dispense by agreement with pattas and muchilkas has been a dead letter as the Committee seemed to think. He believes such agreements are many.

Mr. H. Sewell (p. 12) does not see any necessity for insisting on an exchange of patta and muchilka where there has been no change in the tenant's holding.

N. Gundu Row, South Canara (p. 21), does not feel sure how much of chapter III only refers to landlords in section 3, clause (a); section 13 for instance. (The whole chapter refers to these landlords only.)

N. Gopalakistnamah Chetty (p. 85): In section 12, would not admit any charges payable according to "usage having the force of law", and would not allow "special terms" to be introduced in the patta; mentions a case of a patta where the tenant is bound down to work as a slave for the landlord; charges payable according to usage are not rent and should not be collected as rent.

Mr. Rawson, Head Assistant Collector, Tinnevely (p. 89), would allow pattas to be served through Divisional officers.

The Zemindar of Uthumalai (p. 104) thinks that landlords should be permitted to tender pattas by registered letter.

The Manager of the Udayarpalaiyam Zemindar (p. 110) considers the taking of muchilkas quite unnecessary. He gives a case of a deceased pattadar leaving behind him a family of six, some males, some females, some absent; how could the muchilka in such a case be signed by the parties "authorised in that behalf"?

Section 14: How is demand to be made, orally or in writing?

The General Deputy Collector, Vizagapatam (p. 127), thinks it very desirable that facilities should be provided for the exchange of pattas and muchilkas for periods longer than a year.

Section 14: He thinks some directions should be given as to how the discretion of the court is to be exercised. What is a proper patta?

Some time should be given after order is passed before the decree shall have effect, e.g., ten days after appeal time has elapsed.

Mr. T. Weir (p. 151) (Section 12) thinks the muchilka ought to be always a counterpart of the patta. It is very useful where patta is lost.

Mr. Nelson (p. 159) objects to terms "patta" and "muchilka" as not understood by the people. He thinks a form of patta should be prescribed; otherwise there will be all sorts of difficulties from section 12.

If pattas and muchilkas are necessary, would compel their interchange within 30 days from commencement of the year and their registry by village accountant.

Mr. Justice Shephard (p. 146) would omit all reference to muchilkas.

CHAPTER IV, SECTIONS 18-34.

Mr. Goodrich (p. 14) thinks that in section 19 it might be specifically stated that all evidence of rents actually paid on the lands in dispute should be admitted.

Section 21: He considers that injustice will be done to landlords, unless some words are inserted allowing the landlord to prove his non-liability to repair works, by giving evidence of the conditions under which they were constructed.

He objects to section 32 (clause c) as fostering litigation.

Mr. Lee Warner (p. 26) points out that dry rates should be saved for the landlord under section 21; in section 32 (1) (c), thinks 20 years may be reduced to three years.

Mr. G. Stokes (p. 29) would substitute "paid" for "payable" in section 22. A fraudulent landlord will insert a higher rent in the agreement than he collects.

Mr. Broadfoot (p. 31) thinks Government should fix rates on waste land under section 20 and not leave it to the landlord's will.

Mr. J. G. Horsfall (p. 34) considers section 21 quite unnecessary in Ganjam.

Section 23 should also apply to rents paid in kind; no reason exists for excluding them. In section 24 (b), read "two-sixteenths" for "two annas."

Section 28: The landlord should not obtain any benefit from irrigation given to the tenants by Government.

He agrees with Mr. Goodrich as regards section 32 (c).

Section 24: He would make commutation compulsory if asked for either by tenant or landlord. He considers the system of payments in kind a great evil.

The Mandasa Zemindar (p. 36) objects to sections 21 and 34; would only permit commutation if asked for by both parties.

T. Sivaramayya Pantulu, Pensioned Deputy Collector (p. 37) objects to section 21; thinks tenants who pay in kind should be protected from enhancement; thinks commutation should only be on joint application.

Mr. O'Farrell (p. 39) thinks that contract has been allowed to go too far in the Bill; he would prevent any tenant who cannot write his own agreement from making any contract to enhance his rent except in the presence of the Collector. He considers a landlord under section 21, proviso 1, can easily get over the Bill; he can receive high rent and remit parts for three years and then claim the exception under the proviso.

Mr. Wynch, Kistna (p. 52), section 24: "Does the word 'contract' in this section mean a separate contract apart from the patta or muchilka? In many of the cases of enhanced rates of rent which have come before me in this division, pattas have been accepted and muchilkas given for a five years' lease and registered, the rates of rent were enhanced, but no consideration for this enhancement was set forth in the patta or muchilka. The tenants pleaded in some cases that they had agreed on condition of the landlord executing improvements, which he had not done.

"Under proviso 2 of section 24 the landlord would not be entitled to his enhanced rent in such a case, but then the tenant's plea not appearing on the face of the contract could not be proved."

V. Subramanyam, Penukonda Munsif (p. 54) thinks section 19 (explanation) requires amendment; on promise of improvement tenants will enter into three-year engagement at a high rent, and the promise is not recorded on the agreement and difficult to prove; in such case the section would operate hardly. The rule should be that the tenant should have agreed on three separate occasions to pay the rent to make presumptive evidence as to rate.

Section 32: He would substitute for "unduly" in clause (c) "except upon one of the grounds mentioned in section 28." He approves of the section.

Mr. E. Turner (p. 57): Section 21 will be difficult to work.

Rajaram Row, Ramnad (p. 61): Section 21, as it stands, is most unjust to the landlords; it makes no provision for kudimaramut.

Section 24, proviso ii: Provision should be made for an enhancement where Government has improved the water-supply.

Section 26: "Average prices" where? in the village, taluk, district?

Mr. Winterbotham (p. 65) would enact a section clearly laying down that no rent which exceeds on an average half the gross produce (after deducting cultivation expenses) shall be deemed fair. He also would like to see it laid down that tenants are entitled to all trees growing on the land.

General Deputy Collector, Nellore (p. 72): Enhancement under section 25 should be subject to the conditions of section 24 (c). (But see section 31.)

Mr. LeFanu (p. 3) objects to re-settlement by prices, on the ground (1) that the average ryot has nothing to sell, and so high prices don't benefit him; (2) that decennial periods are far too short. We promised the landlords a permanent settlement, and now we offer a settlement with no elements of permanency.

Mr. Andrew (p. 6), section 34: An order from a Collector refusing commutation should be appealable; it apparently is not.

Vakil Raghava Mudali, North Arcot (p. 9): In zemindaries there are almost always two rates of rent; one favorable on the whole, and the other high, and it will be unfair to prevent a Zemindar who has left on favorable terms raising his rent to the higher rates.

The Karretnagar Zemindar (p. 11) objects to a landlord who has given land on favorable rent not being allowed to raise it, if the favorable rent was given for the sake of allowing tenants to improve the land as is often the case though no mention is made of the fact in the written

contract. Under the Bill such a landlord could never raise his rent except under section 25, which would not apply to the case. He does not think any landlords will care to raise rent on the ground of a rise in prices.

Mr. Foulkes (p. 78) draws attention to the clause in many Zemindars' title-deeds that the assessment on the lands "shall never be able to change under any circumstances."

He thinks that when a tenant gets a reduction of rent from a reduction in prices, the landlord should, under the Act, be entitled to claim a corresponding reduction in *prashkush*.

He objects to section 32 (c).

Deputy Collector Rajagopalachari, Salem (p. 79): With reference to section 19, instances the following case. A, a Mittadar, has a tenant B, who pays him favorable rent on cowle. The mitta is sold at a revenue sale and bought by C. Can C raise the rent to the *faisal* rates under clause (2) of the section, or is he bound by A's rates under the explanation to clause (1)? The point is very doubtful as the Bill stands.

Mr. H. Sewell (p. 13) objects to clause (1) of section 19. The great blot in Act VIII of 1865 was the play it gave to contract instead of to custom, which is the real bond between landlord and tenants.

Mr. Atkinson (p. 83), section 25 (c): Why make it a condition that the productive powers of the land must be increased? This will be difficult to prove, and Government has not to prove it as regards the landlord.

Section 32 (b): What is a "temporary cause?" Why not introduce the decennial period here?

Section 25 (b) should provide for cases where the improvement has been effected partly by landlord, partly by tenant.

Mr. MacCartie (p. 93) does not understand why suits relating to enhancement should deal with money rents only.

Section 24: Where there has been commutation by contract, clause (c) of section 24 should apply.

The Ettiyapuram Zemindar (p. 97): The presumption of section 22 should also apply in cases of suit for reduction of rent by tenants.

Section 19 (1), Explanation: No provision is made in the Act for cultivation of special crops at special rates, as betel, vine, plantains, &c. A custom of charging special rates for the years such crops are cultivated is very common in the south and fair to all parties. Palmyras, in the same way, are subject to examination at intervals and rent charged. If a high rent has been paid for three years under section 19, such must continue. If this section remains, some arrangement must be provided for in the Act under which landlords will be empowered to settle and consolidate rents after demarcation and survey at their own cost. Such a provision would be very useful.

Section 20 (b): He prefers the proviso to clause 2, Act VIII of 1865; there it is specifically laid down what agreements shall not be binding on a successor in interest.

Mr. Willock (p. 105) is strongly of opinion that all suits regarding enhancement, reduction should be decided by Revenue and not by Civil Courts. These suits all require local knowledge, and an intimate acquaintance with revenue and settlement statistics. Munsifs have generally neither.

Section 20 (a): Some restriction is necessary to prevent a landlord converting the bulk of his estate into non-occupancy holdings in time of famine.

Section 20 (b): Such leases should be in writing.

Section 25 (c): The landlord should share some of the advantages derived from his estate having been permanently improved by a good water-supply for irrigation, even though he has not had to pay extra on that account.

T. Appaji Row Garu, Treasury Deputy Collector, Trichinopoly (p. 108): The facilities afforded in the Bill for enhancing and reducing rents according to prices are not necessary and will be mischievous. No account is taken of famine years, when prices rise enormously, but the tenants do not benefit, owing to sterility of lands and their poverty.

The General Duty Deputy Collector, Vizagapatam (p. 128) would make the enhancement rules apply to grain rents as well as money rents.

Section 29 (a): Why should not the landlord have the benefit of an accretion which is washed away after one or two crops? What is the meaning of "temporary" and "casual?"

He quotes an instance of a landlord unduly increasing rents without the knowledge of the tenants and crediting kist payments to arrears of enhanced rents really illegal. He thinks that some provision is necessary against this, but that the twenty years allowed in section 32 (c) is too long. The Collector's Sheristadar is much against this provision.

K. Purus'otham Pantulu (p. 141) does not consider that grain rents are always disadvantageous to the tenants and disapproves of commutation except by mutual consent. The sharing system prevents the tenant losing by having to sell his grain when it is cheap owing to a glut in the market.

Mr. Happell (p. 42), in place of section 21, would like to see a provision that tenants might, after due notice to landlord, repair their tanks and deduct the cost from their rent due. In other cases, where the landlord failed to keep up the irrigation works, so that wet crop could not be raised therefrom, the tenant should pay dry rates only.

He would prevent any enhancement, except for improvements carried out by the landlord or an increased water-rate imposed by Government for 15 years from the passing of the Act. He notices the enormous enhancements in Pittapur, and considers rack-renting very common in Godavari.

Thinks section 32 necessary in the North. After the high prices obtained during the famine of 1876-77, rents were raised enormously in Godavari.

He thinks a provision should be made giving Courts power to cancel arrears when satisfied that the tenant has paid a fair rent. In the Medur estate the limitation for unsecured arrears (viz., three years) was avoided by taking periodical bonds for arrears. Makes a suggestion that power should be given to Government to issue a commission to examine and pass orders on the arrears of any estate.

He does not share in the prejudice against the sharing system.

Mr. T. Weir (p. 152), (Section 19, Explanation), considers three years a very insufficient time to warrant presumptive evidence of a contract to pay rent.

Mr. Nelson (p. 160), Section 19, (4), "Fair and equitable:" Mr. Nelson would provide assessors to assist the Court on these points. Does not believe Munsifs or Revenue Courts could decide the intricate questions of enhancement, &c.

Mr. Justice Shephard (p. 146) sees no necessity for section 20 (a).

CHAPTER V, SECTIONS 35-40.

Mr. Lee Warner (p. 26) cannot understand this chapter. Why should not a Zemindar be entitled to terminate a non-occupancy tenancy without the aid of the Courts? The five years given in section 39 (7) may just complete the 12 years required to give occupancy rights; is that intended?

Mr. Russell (p. 51), Section 39 (10): There will often be loss to the landlord under this section, as the cultivation season often begins before the end of the *faisli*. It would be better to say that ejectment order should take effect as soon as the crop, if any, on the ground, has been harvested and if there is no crop on the ground, immediately.

Mr. Moberly (p. 74): "Admitted to occupation" in section 40 is an unintelligible expression and not cleared up by the remainder of the section.

The chapter places non-occupancy ryots in a very unenviable position.

Mr. LeFanu (p. 3): Under the Bill non-occupancy ryots must all become occupancy ryots unless much harassed by the landlord. This will lead the landlord to constantly eject and harass his non-occupancy tenants to avoid their acquiring occupancy rights.

The Ettiyapuram Zemindar (p. 96) thinks that non-occupancy ryots should not be mentioned in the Bill. Its provisions in respect to them will defeat their own object. The landlord will not let out his land as he will not be able to eject without going to Court, and the tenant will not quietly resign his land as he now does at the end of his tenancy. It would be better to leave these cases to the ordinary law of contract.

Mr. Willock (p. 106) would add "by suit" after the word ejectment in section 38. He thinks the section unduly favours "non-occupancy ryots."

T. Appaji Row, Treasury Deputy Collector, Trichinopoly (p. 108), Section 38, Clause (c): To prevent the acquisition of occupancy rights the landlord will be compelled to go to Court every 11 years at least to eject his tenant. Chapter V read with section 127 will produce mischievous results.

K. V. Muttuswami Aiyar, Deputy Collector, Trichinopoly (p. 119), can see nothing but evil results to follow from chapter V.

K. Purushottam Pantulu, Vizagapatam (p. 141), thinks that chapter V will lead to much litigation and bring about all the evils which it was feared would have followed from the High Court judgment of 1871. He would much prefer to have it laid down as the common law of the country that every tenant who takes up land whether under Government or under a landlord acquires rights of occupancy under the usual conditions.

The Kallakota Zemindar (p. 180): "The general tone of this Bill is so studiously pre-judicial to the interests of the landlord that it denies him even the only too common privilege of ordinary mirasidars, viz., ejectment of tenants at the will of the landlord."

In section 39 "agreement" should be "proposal."

Mr. Mackenzie (p. 170): Under section 39 a landlord has only to tender a tenant an agreement with a preposterous high rent; the Court will then fix the rent under clause (6) and at the end of five years under clause (7) the tenant will be ejected and so never gain occupancy rights.

CHAPTER VI, SECTION 41.

Mr. Nelson and Mr. Justice Shephard (pp. 162 and 147): This section seems unnecessary. Why should tenants under this class of landlords be liable to this Act, whatever sort of written agreement may have been entered into? There should be some rule as to the kind of agreement if the section is to stand.

CHAPTER VII, SECTIONS 42-54.

Mr. Lee Warner (p. 26), *Section 44 (4)*: Opportunity might be taken to compel landlords to keep their accounts in intelligible forms.

Sections 48-50: It is necessary to make some better provision to enable the Court to recoup itself for expenses incurred.

Section 54 (Clause 1): Why should the landlord forego interest, which might be more than 25 per cent. of demand. (But if so, the Court could decree interest in lieu of damages.)

The Tahsildar of Cuddapah (p. 33), *Section 43 (2)*: The instalment should not be of such a date as to be irrecoverable owing to limitation having expired.

Mr. J. G. Horsfall (p. 35), *Section 51*: This section is hard on the landlord and unnecessary. How is the landlord to get his land cultivated before the suit is disposed of?

Rajaram Row, Ramnad (p. 62): *Section 45* will instigate tenants to bring false suits. The fine on the landlord should go to Government.

Deputy Collector, Nellore (p. 72), *Section 45*: The kurnam should also be punishable under this section.

Rajagopalachari, Deputy Collector, Salem (p. 79), *Section 43*: Where neither tenant nor landlord express any wish, payment should be appropriated to rents in order of time.

Section 44 (4): "All demands," does this mean on all holdings held by the tenant under the same landlord?

Mr. Brito, South Canara (p. 18): Thinks that section 47 gives tenants a great concession which they will abuse. Third persons will instigate them to dispute the landlord's title. (But section 116 of the Evidence Act will protect the landlord.) There should be only three cases in which a deposit may be made:—

- (1) Where co-sharers are in dispute, and one gives a notice against the other to the tenant.
- (2) Disputed succession to an estate after the death of the last holder.
- (3) Where lunatic or minor landlords are without authorised guardians.

N. Gundu Row, Landlord, South Canara (p. 22), *Section 44*: Receipts in Canara are the exceptions, and there is no reason why they should be made compulsory.

He looks with great alarm on the opening given to tenants to dispute the landlord's title, and would allow an appeal, at all events from proceedings under section 47. Signed by the landlord—section 44 (1) add "or by his authorised agent." [Unnecessary with reference to section 109 (3).]

Gopalakrishna Chetti, Deputy Collector, Tanjore (p. 86), *Section 42*: Thinks some more specific provisions should be made in the Bill for cases where dues are paid in grain.

Mr. Rawson (p. 90) condemns section 51 as the most mischievous in the Bill. Why should a landlord be driven to such a cumbrous method of recovery? Why not give him out-and-out sale through a Revenue Court as Government treats its tenants?

Mr. Willock (p. 106) thinks section 44 (4) most unnecessarily unfair on the landlord.

T. Appaji Row, Treasury Deputy Collector, Trichinopoly (p. 108), *Section 42*: No landlord can proceed under this Act unless agreements have been made (section 10). So it is unnecessary to save local custom in this section. (But sections 10-12 apply only to landlords of the first class.)

Mr. Ramachandra Row, C.S. (p. 114), *Section 43*: In the Northern Circars the back crediting of payments is a constant source of oppression. He would insist, in the absence of any wish expressed by the tenants, on the landlord crediting the payments made to a period within that allowed for the issue of summary process under the Act.

K. V. Muthuswami Aiyar, Deputy Collector, Trichinopoly (p. 119), thinks the deposit sections will throw immense labour on Government officials.

Thinks a counterfoil receipt and sale by Government of receipt books (sections 44 and 46) unnecessary.

Section 48: What enquiry is the Court to make about a tenant's application to deposit his rent? Can the Court summon on the landlord? Is there an appeal? All these points should be made plain.

The General Deputy Collector, Vizagapatam (p. 130) thinks that if ryots are to be benefited by section 43, it must be ordered that all their payment of rent must in the first place be credited to current arrears.

Section 47: A tenant who pays in kind should if the landlord, refuses to receive, be allowed to pay money into Court on the basis of the prices at the taluk head-quarters.

Section 51: He prefers the corresponding section (38) of the existing Act. *The late Sheristadar, Vizagapatam* (p. 142): *Section 51* will be hard on landlord and tenants. It will make the landlord very much more exacting, and the present practice of giving time to tenants until their produce is sold will disappear.

Mr. Happell (p. 44) sees no good in section 54 and would do away with it.

Section 53: The rate of interest is too high. Nine per cent. would be sufficient.

The Kallakota Zemindar (p. 180): The penalties laid down in sections 44 (4) and 45 are quite disproportionate to the offences.

Mr. Weir, Madura (p. 152) points out that receipts in that district are almost all on kadjans, and that unless time is given, the insistence on regular receipts will be hard.

Mr. Nelson (p. 162): In Malabar Courts will be swamped with deposits, and under sections 49-50 the Munsifs will be overwhelmed with work.

Mr. Justice Shephard (p. 147): *Section 51* should come after section 7. Why is the rule about rent being a first charge only given to landlords of one class?

CHAPTER VIII, SECTIONS 55-81.

Mr. Lee Warner (p. 26) thoroughly agrees with *Mr. H. J. Stokes'* minute of dissent in regard to this chapter. So does *Mr. J. G. Horsfall* (p. 35).

Seetharamiah, Coimbatore Tahsildar (p. 28), *Section 55*: Any tenant will be able to remove his crops from his holding and thus avoid distraint.

Cuddapah Tahsildar, Sivasaiba Row (p. 32), *Section 63*: The confusion in responsibility for the distrained crop between the defaulter and distrainer will produce much litigation and difficulty.

Ganjam Deputy Collector (p. 41), *Section 20*: Some arrangement should be made for the police to assist a landlord in making distress as in section 19 of present Act.

Mr. S. Russell (p. 51), *Section 67*: There should be a summary remedy provided against a distrainer not returning the distrained produce under this section (*vide* 2 M.H.C., p. 42).

Section 74: Should it not be provided that surplus proceeds from sale may be credited against arrears accruing subsequent to distraint? (But this would not give the tenant opportunity to show cause against such further demands.)

Mr. Wynch (p. 52), proviso (1) to section 55, will not meet the case of a tenant who has relinquished almost all his holding held in the previous year. The arrear may be small as calculated on the previous year's rent, but very large under existing circumstances.

District Munsiff V. Subramanyam (p. 55): Giving the landlord only power to distraint crops will drive him to distraint at a time when the tenant can least afford to pay. If he had power to distraint other moveables, he would wait until the crops were off the ground and sold.

Section 74: Payments should not be made to landlord for one month to give time to the tenant to dispute the matter.

Mr. Mounsey (p. 59), *Section 72*: Add "plus 25 per cent. of the value of the produce." (Not necessary as the culprit is further liable under the Penal Code. See section 108 of the Bill.)

Mr. Rajaram Row (p. 62) thinks that the conduct of sales by Revenue officers, as now, is much more convenient than that it should be done through the Civil Courts.

Section 70: If claims to crops cannot bar claims to rents, what is the use of the inquiry provided under this section?

The Bodinayakanur Zemindar (p. 63), *Section 55*: What is the course to be followed when rent has been due for more than one year? (*Answer*: Civil suit, or sale of holding of an occupancy tenant, or suit for ejection of a non-occupancy tenant.) If the section means that the arrears of one fasli should only be recovered by distraint in the succeeding fasli, the sections should be more plainly worded. He thinks that the summary mode of distraint allowed under the existing Act VIII of 1865 has worked well and should be left alone.

Mr. Moberly (p. 75): The only proviso should be that the landlord should have no power to distrain in the following cases, and that if he uses his power the distraint should be cancelled by Collector:—

- (1) Pattas and muchilkas not exchanged.
- (2) Written demand not served.
- (3) Notice of distraint not given to Collector.
- (4) Distraint excessive or made for items not included in the patta.

General Deputy Collector, Nellore (p. 72): Revenue Courts should have authority under this chapter.

Mr. LeFanu (p. 3): As regards section 81, strongly objects to legislation by rules in the Gazettees.

Mr. Andrew (pp. 4—6), *Section 55*: There should be some rule by law under which tenants should be protected from allowing their rents to become due at times when they can ill-afford to pay. There should be some arrangement for a kistbandi similar to that existing in the case of Government ryots.

Section 58: For 24 hours, 48 should be substituted, or a longer period.

Section 63, Clause (2): What is the meaning of "at the proper time"? The words might be omitted.

The omission of the provisions of section 45 of the present Act, which permits the arrest of a fraudulent defaulter, is inadvisable.

Vakil Raghava Mudaliar (p. 10): In Nellore no rent is due under a common form of agreement until gross crop is known and can be valued and the landlord's share estimated. This chapter will be therefore of little use as the crops are always removed from the holding in order to estimate their value.

The Karvetnagar Zemindar (p. 12) raises the same objection and says that unless landlords are allowed to distrain moveables as well as crops they will never be able to pay *pekhanaush* regularly. Until the crops are off the ground the rent is not due.

Mr. McWaters (p. 77) raises the same objection.

Mr. Wynne (p. 15) says that in Canara considerable use is made of section 82, Act VIII of 1865, under which security can be taken from tenant before he reaps crops, and thinks a similar section might well be introduced into this Bill.

Mr. Gundu Row, South Canara (p. 23), does not think the power of distraint should be limited to crops. To refer the landlord to the Courts for other means of recovering his rent is absurd. The tenant can easily transfer his moveables and evade the Court's decrees. The landlord should be allowed to distrain crops on his own responsibility, and he should, through the Courts, be allowed to distrain all moveables.

Mr. Gibson (p. 81) considers that the restriction distraint to crops will cause great delay in harvesting. The benefit to the tenant seems very doubtful. How are abkari farmers to recover their dues, where there are no crops to harvest—rule section 23, Madras Act I of 1866?

Deputy Collector, N. Gopalakrishna Chelli (pp. 86 and 87), *Section 55*: Where an estate has been sold, can the former owner recover as a landlord by distraint, though no longer the existing landlord?

By restraining the power of distraint to crops, the tenant's troubles will be much increased in every way. Harvest will be put off.

Sections 62 and 63 will encourage purloining and theft of crops by tenant. The whole chapter opens the door to every kind of abuse. The distraint of moveables by the revenue authorities would be a much better plan.

The Ettiyapuram Zemindar (p. 102), *Section 63*: In large estates it will be impossible to look after the defaulter, and purloining the attached crop will be the rule. *Sections 80 and 82, Act VIII of 1865*, should be re-enacted.

The Uthumalai Zemindar (p. 103): Attachment of crops only will impose a costly, tedious and tardy task on the tenants and landlords.

Mr. Willock (p. 107): The limitation of distraint to crops will do far more harm than good; agricultural stock and implements should be excepted, but all other moveables should be liable.

T. Appaji Row, Treasury Deputy Collector, Trichinopoly (p. 109): Tenants will be tempted to use every dishonest means to remove and make away with crops.

The divided responsibility under section 63 will be unworkable.

Manager, Udayarpoliem Zemindar (p. 111), *Section 55*: In this Zemindari the rent varies every year according to crop, so that proviso (1) of the section may operate hardly on the landlord. Tenants much prefer that their moveables should be attached rather than their crop, which they prefer to harvest.

Section 58. The costs of sending a notice to the Civil Court will fall on the tenant (section 74), and from the distance of the nearest Munsiff's Court in his Zemindari, these costs will be very heavy. The notice should be sent by post, but this is not provided for. The present system has given satisfaction and should be allowed to stand.

K. V. Muthusawmy Aiyar, Deputy Collector, Trichinopoly (pp. 120 and 117), thinks these new restrictions on the right of distraint needless and very hard on landlords. Why, he asks, should this power of distraint, which the landlords have exercised for four score years and to his belief very rarely abused, be taken away? The Government finds it difficult enough to collect its arrears with all the powers it has, and how can it expect landlords to pay their dues regularly when their powers of enforcing punctual collections from their tenants have been so much diminished? The tenants will not be benefited by the change as the landlords will be driven to be much more exacting.

Section 78: Who are inferior and superior tenants.

The General Duties Deputy Collector, Vizagapatam (pp. 131-3), raises the same objections. The closing expression, "or the like," is vague and will give rise to difficulties.

Section 55 (b): The words "Unless that sum is payable under a written contract"; but, under section 41, no proceedings at all can take place under the Act unless there is a written contract. (Section 41 applies only to landlords of the second class.)

Section 78 (1): In many cases there are three or four or more persons between landlord and the lowest tenant; are all these allowed to seize crops? The tenant will be harassed continually. No tenant should be allowed to be proceeded against if he can produce a receipt from his immediate landlord. Nobody who merely farms out his land to a sub-agent who does not cultivate should be allowed to proceed under the Act.

Section 79 does not provide for all possible cases of conflict of attachment.

The late Huzur Sheristadar, Vizagapatam (p. 143), *Section 63*: The responsibility for attached crops is confusing.

Section 67: When is distress "excessive"? *Section 68*: "By reason of his... due preservation." These words should be omitted. The distrainer's responsibility for crops in his possession should be the same as the tenant's or owner's. (But the section is in accordance with section 13, Act II of 1864.)

Section 76: The defaulter should be entitled to deposit any part of the rent due which he may be able. This will enable him to save at all events some part of his crops from sale at a probable loss.

He does not think a landlord's power of distraint should be restricted as in the Bill. Live-stock should be saved from distraint, but not jewellery and other immoveable property. *The Kallakota Zemindar* (p. 182) considers that this Chapter and Chapter VII will cause an enormous amount of litigation and give enormous trouble to landlords in the collection of their rents.

Mr. T. Weir (p. 152) is in favour of taking away the right of distraint of moveables from landlords, but doubts whether the very restricted powers given now are worth retaining. The landlord is given a good security in section 51, and with that it might be best to take away power of distraint altogether. (But section 51 only applies to occupancy tenants.)

Mr. Nelson (p. 162) thinks, with reference to section 57, that in no case should any substituted form of service be permitted. Process-servers always lie abominably on these points, and much trouble is caused in consequence.

Mr. Justice S'ephard (pp. 147-8) would prefer to see the landlord given no power of distraint except through and by means of Civil Courts.

He thinks section 70 unnecessary.

CHAPTER IX, SECTIONS 82—96.

Mr. Lee Warner (p. 26), *Section 87*: Kists are successive. Why should a landlord after instituting proceedings for arrears of one kist be prevented from suing again for three months? *V. Subramanyam, District Munsiff* (p. 55), *Section 88 (e)*: He would make a written answer necessary in every case; oral statements of ignorant ryots are difficult to understand and generally incomplete.

Section 89 (3): There does not appear to be good reason why in these cases the plaintiff who brings the suit should not be distinctly compelled to prove his position as landlord. Why should he be allowed to escape the burden of proof?

Mr. Moberly (p. 75) would allow transfer to the ordinary Courts of suits for damages, for enhancement and reduction of rent, for arrears of rent and for enforcing the terms of a tenancy; but Collectors should have exclusive jurisdiction in suits to compel exchange of pattas and

muchilkas. Reasons—ordinary Civil Courts are now overworked; in the Civil Courts as a rule the man with the longest purse wins; tenants dread a civil suit and will give in rather than have to defend themselves in Civil Courts. On the other hand, Divisional officers, who are constantly on circuit, can make use of Revenue Inspectors and Tahsildars to find out facts, and in divisions where, owing to the existence of large Zemindaries, there are many suits, have not much other work to do. The Divisional officer, as a rule, is looked to by the ryots as the tenant's friend.

Messrs. Willock (p. 105) and *Crole* (pp. 165–167) are strongly against transferring suits as to rates of rent, &c., from Revenue officers to the Civil Courts.

Rev. Mr. Foulkes (p. 78) points out how small arrears are in many cases, and in consequence what a trouble it will be if tenant and landlord are driven to Civil Courts in all such cases. Suggests that at all events suits for arrears should be left to Revenue Courts.

Mr. Brito (p. 19), *Section 89*: Why should not a landlord receive his rent at once on giving security?

Mr. Gundu Row, Canara (p. 23), *Section 87*: Why should a tenant thus be able to keep his landlord from his just dues for three months?

Why should tenants not be allowed to appear by agents (section 85)?

K. V. Muthusami Aiyar, Deputy Collector, Trichinopoly (p. 120), *Section 95 (c)*: How is a tenant to know when proceedings have commenced? When do they commence—with service of summons or with filing of plaint or when?

Mr. Happell (p. 44): *Section 90* is likely to fall very hardly on the tenant. A tenant may have ample means from which to meet his obligations for rent and yet not be able to raise ready money to pay into Court at the time he is required to do so.

Section 91 leaves too much discretion to the Courts.

The Zemindar of Kallakota, Tanjore (p. 183), *Section 93*: Why should the landlord have to wait so long for an enhancement of which the tenant must have had ample notice and which presumably is just?

He objects very strongly to the abolition of the present summary jurisdiction of Collectors which is free of stamp duty, and regards the whole chapter with disfavour.

Mr. Weir (p. 113) approves of the chapter, but thinks the increased work thrown on the ordinary Civil Courts will necessitate a strengthening of those Courts and an addition to the judiciary.

Mr. Nelson (p. 163) objects to section 88 on the ground that these suits will be treated as summary and so raced through, whereas they should be most carefully treated.

Mr. Brito (p. 19) considers the abolition of the jurisdiction of Revenue officers good, but thinks some arrangement should be made for the speedy trial of these suits in ordinary courts.

CHAPTER X, SECTIONS 97–102.

Mr. Lee Warner (p. 27), *Section 100 (a)*: Strange complications might arise under this section if there are two or more mortgages on an estate and the second or third mortgagee pays the rent under the section.

Deputy Collector, North Arcot (p. 7), *Section 98*: There should be some provision for putting a purchaser in possession, or he will be left to bring a suit for the property.

K. V. Muthusami Aiyar, Deputy Collector, Trichinopoly (p. 120), *Section 102*, would prefer to see section 294, Civil Procedure Code, applied in its entirety to sales under the Act.

CHAPTER XI, SECTIONS 103–105.

Mr. Broadfoot (p. 31), *Section 104*: Should be made plainer. What is wanted is a clear reversal of the ruling that the "Nattam" belongs to the inamdar.

Mr. Gundu Row, Canara (p. 23): It is not clear how much of Chapter XI applies to landlords under section 3 (a) and section 3 (b). This should be made clear. (It applies to all landlords except in regard to matters, such as occupancy right, which only arise between landlords of the first class and their tenants.)

The Ettiyapuram Zemindar (pp. 99 and 101) remarks that, under section 11, clause (1), Act VIII of 1865, contract was made the basis for determining rates of rent. He sees no reason for changing round to the proposal under the present Bill, under which usage is to take the place of contract. Tenants are very shrewd, quite enough so to avoid as a rule disadvantageous contracts. Act VIII of 1865 has not worked badly in this direction. He would like to see all sales free of encumbrances.

Section 104 should be made clearer.

CHAPTER XIII, SECTIONS 108–127.

Mr. Lee Warner (p. 27), *Section 80* of Act VIII of 1865 should be re-enacted. Some arrangement should be made to allow levy of prohibitory assessment on tank beds, &c., cultivated illegally.

V. Sirasamba Row, Tashillar of Cuddapah (p. 33): The provision of section 26, Act VIII of 1865, which renders fraudulent conveyance of property by a defaulter to avoid distraint a penal offence has been omitted in section 108.

Mr. J. G. Horsfall (pp. 35 and 36) does not see why a suit should always be necessary before ejectment under section 121.

Mr. Mounsey (p. 59) objects to section 111; several dasam fees and so on are now admitted.

Mr. Raja Ram Row (pp. 62–3) does not understand why in section 121 exception is made in favour of a registered lease.

Section 122: If holding means lands in one patta, there seems to be no object, and a distinct hardship, in restricting the tenant's power of surrender of a portion. The only restriction should be that the surrender does not prejudicially affect that or other land by the separation.

Section 125: Why not make Registration Officers give the landlord notice of any transfers of holdings in his estate?

Section 126: The procedure of individual notice would be quite impossible in big estates like Ramnad.

Mr. Le Fanu (pp. 3 and 4), *Section 110* will be unworkable as joint landlords seldom agree.

Section 111: Would *tirajasti* not entered in a patta be forbidden?

Section 114–6: Why is the Collector imported here?

Section 124: Thinks that whole fields should not be liable to sub-division. *Mr. Foulkes* (p. 78), *Section 111*, is as vague as section 5, Act VIII of 1865. A section containing such a stringent penal provision should be very plainly worded.

Clause (f), Section 112: This clause may lead to tenants taking up land on speculative building leases in the neighbourhood of towns, &c. It would be better to omit this clause and make a provision in the Bill for building leases as a special case.

Mr. Brito, South Canara, Section 112 (1), would add "useful" before "work" and "permanent" before "value."

Section 108 is a great change on the interpretation of criminal trespass in the Penal Code. *The Ettiyapuram Zemindar* (p. 101): Some provision should be made for the levy of prohibitory assessments.

Provision should also be made for the due carrying out of division of produce; section 83, Act VIII of 1865, is not in the Bill.

Section 126: Heirs of tenants should be compelled to register.

T. Appaji Row, Treasury Deputy Collector, Trichinopoly (p. 109), *Section 115*: The non-occupancy tenant under this section is practically full owner of his holding subject to payment of his rent. It would be better to give him occupancy rights at once.

Mr. P. Ramachandra Row (p. 114): The clandestine removal of produce ought, in certain cases, to be made heavily punishable than a mere criminal trespass.

The General Duties Deputy Collector, Vizagapatam (p. 133), remarks that most of the sections in this chapter would find a more suitable place in other portions of the Bill. They are too important to be left mixed up together.

Section 123 (1): In many cases the tenants desert their holdings after the cultivation season is over, say March or February, and under the section the landlord cannot, as he now does, enter on the holding before the close of the revenue year. This will operate hardly in Vizianagrum, where many ryots continually abandon their holdings and emigrate to Burma.

N. Gujapati Razu, Vizagapatam (pp. 144–5), protests against the injustice of sections 112, 113, 120 and 122.

Mr. Happell (p. 45), *Section 121*: Why should a tenant, not otherwise entitled to sublet his holding without the consent of his landlord, be allowed to do so by a registered instrument? Registration does not alter the character or amount of the injury the landlord may suffer by subletting.

Sections 122 and 123: considers that land should be surrendered on 31st March, not 30th June, and that six months' notice should be compulsory. The sections need amendment. Clause (6) of section 122 is very unjust on the landlord. How can a landlord in a large Zemindari be expected to know of the abandonment of a holding by a tenant?

The Kallakota Zemindar (p. 184) (Section 118): The landlord should be able to deduct the rent from the compensation value or rice *versá* in a suit for ejectment for non-payment of rent.

Mr. Justice Shepard (p. 148) (Section 111): What is wanted is a section to the effect that all impositions other than those mentioned in patta or agreement (section 41) are illegal. As it stands the section does not touch agreements mentioned in section 41.

Section 111: Such questions would often be more properly determinable by Civil Courts.

Section 125 and 126 should apply to all landlords and tenants.

CHAPTER XIV, SECTIONS 128—136.

T. Sircaramayya Pantulu, Retired Deputy Collector (p. 38): The word "Hetta" should be inserted after pannai.

A clause should be added to section 128, saving lands bought under the waste land rules and cultivated by tenants, to whom money has been advanced, and for whom houses have been built by the landlords.

The Ettiyapuram Zemindar (pp. 95 and 97) (Sections 128 and 131): The High Court have ruled that as a rule tenants in the Presidency are tenants-at-will. Why should the Bill go so much to the other extreme? It is not asked for by the people or ordered by Government.

A habit exists of granting land to temple-keepers, village servants, &c., on favorable tenure. Such land should always be treated as landlord's own private land.

Some provision should be made for the landlord registering fresh land bought at sales and so on as his *khas* land.

Mr. Hoppell (p. 46) thinks it important to give inamdars every facility for acquiring the occupancy rights possessed by others in their *minor* inams.

APPENDIX III.

PROCEEDINGS of the Board of Revenue, dated 2nd December 1864, No. 7743.

Read again letter from the Collector of Vizagapatam, dated 17th September 1864, in Board's Proceedings, No. 6381, dated 29th September 1864, forwarding copy of—

(a) A petition from the Proprietrix of the Mulagapaka Estate, praying for the ejectment of certain Ryots who have refused to receive Cowles stipulating for an increased rate of rent.

(b) Order thereon by the Collector, under Regulation V of 1822, rejecting the Petition for reasons stated.

(c) Judgment of the Civil Court in appeal from the Collector's decision, reversing the said decision.

1. Ordered that the above papers be submitted for the consideration of Government, with the following remarks.

2. The papers raise a most important question as to the relative rights of Zemindars and Ryots, which question may be briefly stated as follows:—

Is there any, and if so, what legal limit to the demands of a Zemindar on the Ryots holding land in his Zemindari? and (as involved in that question), what is the nature of the Zemindar's demand? and what is the nature of the Ryot's tenure?

The Board will state their views on these questions before noticing the decisions of Messrs. Collett and Carmichael on the individual case submitted.

And first, as to the nature of the Ryot's tenure.

3. Much stress has been laid upon the statement made in the preambles to Regulations XXV and XXXI of 1802, that from the earliest times the ruling power of the territories subject to the Government of Fort St. George had, in conformity to the ancient usages of the country, reserved to itself and actually exercised the proprietary right (Regulation XXXI), or the proprietary possession (Regulation XXV) of all lands whatever; but irrespective of the fact that Regulation IV of 1822 declares that the provisions of Regulations XXV, XXVIII, and XXX of 1802, were not meant to define, limit, infringe, or destroy the rights of any description of landholders or tenants, the context of the preambles in question shows that the facts on which this asserted proprietary right is based, amount to no more than that the Government demand on the land in past times had fluctuated, without any security to the Zemindars or other persons for the continuance of a moderate land-tax; that in view to obtaining an increased revenue, the Governments in times past, had not hesitated to remove Zemindars at their pleasure, and to appoint others in their place for the management of the Zemindaris; and that without the sanction of Government no one was competent to grant or hold land exempt from the payment of public revenue.

The Board consider that in these statements there is nothing inconsistent with the admission that the right of the *Ryot* in his land is that of a land-owner, and not of a mere tenant.

4. To obtain some more exact definition of *this* right, it will be well to ascertain the nature of the right claimed by the ruling power, as this is described in ancient records and in the earlier records of the British Government.

5. The Institutes of Menu form the earliest Code of Indian law of which we are in possession. In these Institutes, while we find the king's right asserted to *one-half* of buried treasure and precious minerals, because "he is the lord paramount of the soil," the king is declared entitled to only "an eighth, part, a sixth, or a twelfth" of grain, "according to the difference of the soil, and the labour necessary to cultivate it," a maximum of a fourth being fixed for times of urgent necessity, as war or invasion.

Verse 39, Chapter 8.

lord paramount of the soil," the king is declared

Verse 130, Chapter 7.
Verses 118 and 120, Chapter 10.

6. Here we have at once a limit put to the State demand against both the cultivator of land, the finder of buried treasure, and the miner, involving an admission of the universal theorem that individual property in an article is created by labour devoted to its improvement or production; and also a recognition of the superior right of the cultivator over that derived from the more temporary and intermittent exertions of the treasure hunter, or miner.

7. Menu elsewhere makes elaborate provision for determining disputes regarding boundaries and rights in relation to the land (as rights of possession), which are inconsistent with the hypothesis that individual property in occupied land was not recognized in these remote times; and so also as regards theft of produce.

Verses 149 and 245 to 265, Chapter 8.

Verses 339, 341, Chapter 8.

The same may also be deduced from the rules relating to inheritance, and the modes of obtaining a livelihood, inasmuch as the existence of individual property in land is repeatedly mentioned as a matter of ordinary course.

8. These brief quotations may suffice to prove the early existence in India of an individual right of property in land, and of a limit to the Government right to revenue.

9. To come to more recent times, we find in the records of the Mussulman Rulers of India, when they asserted the rights of conquerors over a people whom they deemed as "infidels" deserving of little consideration, that certain fixed limits to the Government demand on the land were still maintained, and that rules were prescribed recognizing and protecting individual property in the land.

10. In the Institutes of Timur, the following occurs, as quoted by Mr. Shore in a Minute, dated 2nd April 1788, and printed in Harington's Analysis, Volume 3:—

"Waste lands of which there is no owner, shall be brought into cultivation by the Khalsa or exchequer; and if there should be an owner, and he be distressed, the due means of holding possession shall be furnished to him that he may cultivate his own lands.

"I ordained that the duties should be determined in proportion to the produce of the cultivated lands; and that the taxes on the produce of those lands should be affixed and ascertained. Thus, first, that the cultivated grounds of the subject, which should be made fertile by the water of canals, or by springs, or rivulets, or rivers (if those waters flowed perpetually and continually) should be superintended by the officers of the Crown; and that of the amount of the produce of those grounds, two-thirds should be allowed to the possessor thereof, and one-third be paid into the Royal Treasury. If the subject should consent to pay the tax for the restricted lands in specie, that for the grain due to the treasury, the sum should be fixed on the subject according to the current price of the grain; and that, corresponding to the current price of the grain, the money should be paid to the soldiers. If the subject should not be satisfied with this mode of collection, and with the partition of the general produce into three parts, that the restricted lands should be divided into first, and second and third *Jurreeb*; that the produce of the first *Jurreeb* should be estimated at three loads, and the produce of the second *Jurreeb* at two loads, and the produce of the third *Jurreeb* at one load; and half thereof should be estimated as wheat, and half thereof as barley; and that of the total amount one-half of the produce should be collected. If the subject, notwithstanding this, should be unwilling to pay the tax in kind, that the value of a load of wheat should be fixed at five *Miskahs* of silver, and the value of a load of barley at two-and-a-half *Miskahs* of silver, and that the duty of the *Killaah* should be exacted over and above, but that nought else should be demanded of the subject under any pretext or denomination whatever. That the rest of the lands of the husbandman, those which produced in the autumn, and in the spring, and in the summer, and in the winter, and the lands which depended on the rain for fertility, should be divided into *Jurreeb*s, and that of the produce of these which were numbered, a third or a fourth should be collected."

11. The "Ayeen Akbery," or Institutes of the Emperor Akbar, who reigned from 1556 to 1605 thus records the principles of the settlement made in the fifteenth year of his reign.

"When His Majesty had settled the measurement he next divided the lands into different kinds, and fixed a different revenue to be paid by each.

"*Poolej* is that land which is cultivated for every harvest, being never allowed to lie fallow.

"*Perowty* is that which is kept out of cultivation for a short time in order that it may recover its strength.

"These two kinds of land are of three sorts, viz., best, middling and bad. They add together the produce of a Begah of each sort, and a third of that aggregate sum is the medium produce of one Begah of *Poolej* land, one-third part of which is the revenue settled by His Majesty. *Perowty* land, when cultivated, pays the same revenue as *Poolej*."

Certain crops were assessed at money rates. Others might be paid for in money or kind. Easy terms were provided to induce the cultivation of land which had lain waste for longer or shorter periods (Bunjer and Checher).

"From the extent of the Empire it was difficult to procure returns of prices, and the settlement was consequently often delayed, and the husbandmen would cry out against the exorbitancy of the demand, while those who had Tunkas to collect complained of balances.

"His Majesty, to remedy these evils, directed that a settlement should be concluded for ten years, by which resolution giving ease to the people, he procured for himself their daily blessings.

"For the above purpose, having formed an aggregate of the rates of collection from the 15th year of the reign to the 24th inclusive, they took a tenth part of that total as the annual rate for ten years to come."

12. It may be observed that there is no mention of Zemindars by name in the Ayeon Akbery; that the instructions relating to the husbandmen indicate direct relations between them and the Government officers; and that the "Amil Guzar," who appears to occupy the position of Collector from the Ryots, was merely a servant of the Crown.

13. A Firman of Aurungzeeb's declares that the sovereign's share of the produce shall never exceed one-half on any account, though the Ryots may be capable of paying a greater portion. This was the rule for the "Khiraaj Mocasimah," or *rateable* revenue.

Where the land was charged with the "Khiraaj Mowuzzuf" or *fixed* revenue, *that*, amount only was to be collected.

The *fixed* revenue might be converted into the *rateable* revenue with the consent of the Ryots, but not without.

Should calamity occur to land charged on the "Mowuzzuf" or fixed system, remission was to be allowed proportionate to the loss, in order that the Ryot might certainly obtain a complete half of the produce.

14. The Board do not see how it can be disputed, in face of the foregoing facts, that the custom of this country from time immemorial has been, to recognize limits in the State or public demand against the cultivators of the land, and (as a necessary consequence) the existence in the Ryot of a property in the land occupied by him.

15. This recognition of individual proprietary right in reclaimed and improved land is not opposed to the fullest recognition of the original common or natural right of all in unenclosed unreclaimed land; a common right which may be, and often is vested in the Crown as the representative of the community, but can only be exercised by the Crown for the benefit of all.

This theory underlies all property laws the whole world over, and is traceable in India as clearly as in any other country. The village system is not irreconcilable with it.

16. The origin of the Zemindar class dates from a far more recent period, and may be briefly traced.

17. It will not really admit of question that originally Zemindars as such were merely officers of Government or Farmers of revenue under the provincial lieutenants of the Mahomedan Empire.

18. In Grant's Political Survey of the Northern Circars, dated 1784, in which he has sketched the Revenue system of the Empire generally, and of those provinces in detail, the author designates Zemindars as "Farmers-general," "Officers of Government," "necessary servile links between the Prince and Ryot" who were entrusted with the collection of the "settled revenue of the Subah collected from the Ryots," and were remunerated for their services by the allowance of "Russooms and Nankar Saverums," or a *percentage* on the net receipts of the Treasury from their collections and small freehold possessions in land for family subsistence.

19. These men were doubtless selected from the more substantial Ryots in many instances, while in others they may have been the representatives of the former Hindoo princes, or their ministers whose local influence was still considerable, though their power had succumbed to the Mussulman sway.

20. Grant shows how, as the central authority of the Mahomedan Government grew weak, the position of the provincial lieutenants or Amildars was subverted, and how the Hindoo official

Zemindars attained an ascendancy over them, "lords became vassals, renters were called proprietors," and the revenue farmer's remittances of collections made on behalf of Government, were dignified with the term of *tribute*.

He insists strongly on the principle that "the proprietary right of the soil is constitutional," (meaning an element in the Governmental system of the country,) "and is solely vested in the sovereign ruler," and that the Government is "the sole legal known territorial proprietor." He defines the Indian Land Revenue to be "not a tax of one-fifth as in England on the proprietary income of freehold estates; far less a feu duty, or fixed perpetual quit-rent on such as are in vassalage, and by the ancient military tenures known in other parts of Europe; but in form and fact the landlord's proportion settled on a medium at one-fourth; the *Rebba*, or chout of the original produce of the land shared with the tenant; or rather a yearly rent variable according to the circumstances of the country at the period of adjustment, paid to Government as the sole legal known territorial proprietor, as generally understood by the Ryots or immediate cultivators of the soil, through the agency for the most part of a certain class of Hindus nominated on behalf of the State with suitable appointment in land and money, to the office of Zemindar or Superintendent of a local provincial sub-division; and who collectively, to the greater satisfaction of the people, as native guardians of the public peace and private rights, as well as receivers or rather farmers-general of the revenue, relieved their ignorant voluptuous Mussulman rulers from the intricate troublesome detail of internal police, and the management of Mofussil collections."

21. The Board are willing to accept this statement of the case, without quarrelling with some of its terms, although, in the more advanced state of the science of Political Economy at the present day, the correct use of the term "rent," to designate the *revenue* described, might justly be questioned. It is sufficient for their purpose to show that there was an acknowledged limit to the *maximum* demand of the State on the Ryots; that it was so fixed as to leave in theory an ample margin for the growth of proprietary rights in the cultivating occupant; that it could never have been for the interest of the State to rack-rent the Ryot, or to disturb his possession, as such policy, though possible towards an individual, would be suicidal towards a class, and destructive of the very sources of public revenue; and that the Zemindars were merely middlemen, farmers-general of the revenue, links between prince and peasant, entitled to certain service emoluments in the form of a *percentage* on their net collections after deducting costs of collection, and of freehold landed tenures, but in no way viewed as other than officials in their capacity of Zemindar.

22. Grant's information was so full and from so unquestionable an authority, his experience so wide and varied, and his freedom from bias in the question now at issue between Zemindar and Ryot under a system which did not exist when he wrote is so indubitable, that the Board deem it unnecessary to adduce further evidence on this point.

23. They proceed to consider the views and intentions of the Government when the present Zemindari system of Land Revenue administration was established, as expressed in the Minutes recorded by Lord Cornwallis and Mr. Shore in 1789-90.

24. Mr. Shore thus sketches the origin of the exactions which had converted the Zemindary system under the Mussulman Government into an intolerable instrument of oppression, in his Minute, dated 18th June 1789, printed in the Appendix to the "Fifth Report" of the Parliamentary Committee in 1812:—

"The principles of Mogal taxation, as far as we can collect from the institutes of Timor and Achar, from the ordinations of the Emperors, and the conduct of their delegates, however limited in practice, were calculated to give the Sovereign a proportion of the advantages arising from extended cultivation and increased population. As these were discovered, the Tumar* or standard assessment was augmented; and whatever the justice or policy of the principle might be, the practice in detail has this merit, that it was founded upon a knowledge of real and existing resources."

"An increase of revenue exacted from a Zemindar under these circumstances affected his profits, but made no alteration in the rates upon the Ryots. He paid a portion of the rents arising from discovered improvements in his lands, but the cultivators of the soil were not by this demand exposed to an enhancement of their rates."

"But the Abwab Subahdary, or *vice-royal* imposts, had a contrary tendency, for they enhanced the rates. They were in general levied upon the standard assessment in certain proportions to its amount, and the Zemindars who paid them were authorised to collect them from the Ryots in the same proportions to their *respective quotas of rent*;"—and he goes on to explain that what suggested this innovation to the lieutenants of the Empire was the known fact that for a long time "impositions under various denomination, and to a very considerable amount, had been levied from the Ryots, beyond the Tumar or standard assessment. In many places they had been consolidated into the *Assul*, and a new standard had been assumed as the

NOTE.—The "Tumar Jummah" is the settlement made on the Zemindars of Bengal by Turymul (Achar's Dewan) in 1582, and was based on the "Assul Jummahs," or the gross revenue due to the State from the land.

basis of succeeding impositions. Hence an idea was naturally entertained that the actual receipts from the country exceeded in a very great degree the demands of the State, and the Nazims, considering the impositions levied upon the Ryots as a fund of emolument enjoyed by the Zemindar and inferior agents, determined that they were entitled to exact a proportion for themselves.

25. It must be remembered that Mr. Shore was one of those who strongly advocated the theory of the proprietary right of Zemindars as opposed to that which maintained that this right belonged to the Crown; and it must, the Board think, be admitted that in the above statement there is an admission, implied throughout if not expressed, that of right by law and custom, there was a recognised limit to the demands of the Zemindars on the Ryots.

26. But more distinct evidence to the same point can be derived from the same paper, where Mr. Shore thus sketches the position of the Ryot in Bengal as existing prior to the Permanent Settlement.

"When Acbar ordered a settlement of the Government demand on the land to be commenced by a measurement of the lands, and by fixing the rates of them, the proportion he claimed for the State was one-third of the medium produce.

"The Assul Jumrah for Bengal fixed by Turymul under this ordinance nowhere now exists. No uniformity whatever is observed in the demands on the Ryots, the rates vary not only in the different Collectorate, but in the Pergunnahs composing them, in the villages, and in the lands of the same village, and the total exacted far exceeds the rates of Turymul.

"There are two fundamental distinctions in the tenures of the Ryots into which almost all the variations may be resolved.

"The first, when the rents are calculated upon an Assul or original rate with an addition of the cesses subsequently imposed.

"The second, when a fixed sum is paid for a specific quantity of land at so much per *bega* without any other distinction.

"There are two other distinctions of importance also with respect to the right of the Ryots.

"Those who cultivate the lands of the village to which they belong either from length of occupancy or other cause have a stronger right than others and may in some measure be considered as hereditary tenants, and they generally pay the highest rents.

"The other class cultivate lands belonging to a village where they do not reside. They are considered as tenants-at-will, and having only a temporary accidental interest in the soil which they cultivate will not submit to the payment of so large a rent as the preceding class, and when oppressed easily abandon the land to which they have no attachment.

"In general throughout Bengal the rents are paid by the Ryots in money. In some places the produce is divided.

"A Ryot pays his rent either by a formal or implied agreement.

"The first is a deed called a *Puttah*, which ought to express the nature and terms of his tenure and the amount of his rent. It often, however, refers some of the conditions to indefinite rules, as the custom of the village or *Pargunna*, the rates of an elapsed year or the rent of his predecessor.

"The terms of an implied agreement are sometimes specific, as in Chittagong where the rents are paid from year to year according to the rates established upon a measurement of the lands in the year 1767.

"Or indefinite as having a reference to the rates of the last and preceding year as in *Nuddea*.

"In some places as in the northern parts of the *Dacca* district, the collections are made by a measurement of the lands held by each renter immediately previous to the harvest, agreeably to which the lands are valued and rents received.

"The above distinctions have reference to some rule, but the abuses that subsist are great. Among them are the following on the part of the Zemindars:—

"The arbitrary exactions of the zemindars.

"The wants of formal engagements with the Ryots, rendering it almost impossible to detect exactions.

"The inequality of the assessment to the advantage of the superior and the great injury of the inferior Ryots.

"The indefinite terms of the *Puttah* in places, which specify neither quantity nor quality of land, nor rate of payment.

"The arbitrary levy of deficiencies due by some Ryots from the other Ryots.

"The want of regular discharges to the Ryots for payment made.

"The continual breach of engagements with the Ryots.

"And on the part of the Ryots artifice is opposed to exaction.

"They cultivate lands of which there is no account and to a greater extent than their engagements exhibit.

"They hold lands at reduced rates by collusion.

"They obtain land fit for immediate cultivation at the reduced rates for waste land.

"They procure the fabrication of fictitious *Puttahs* and accounts in view to defraud."

27. Mr. Shore then proceeds to review the measures necessary for preventing oppression on the part of the Zemindars, and collusion and fraud on that of the Ryot; and the following Extracts briefly sketch their relative rights:—

"I consider the Zemindars as the proprietors of the soil, to the property of which they succeed by right of inheritance. The sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it when there are any legal heirs.

"The origin of these proprietary and hereditary rights is uncertain. They probably existed before the Mahomedan conquest and have acquired stability by prescription and exist independent of the *Sunnud* which the Zemindars sometimes receive, though they may acquire confirmation from it.

"The revenues of the land belong to the ruling power, which being absolute claimed and exercised the rights of determining the proportion to be taken for the State.

"The rights of the Zemindars are limited and conditional. They cannot alienate lands from the public assessment without the permission of the Supreme authority. They are bound to make good their stipulated payments of revenue under the penalty of the loss of all their property if necessary to supply the deficiency. It is their duty to preserve the peace of the country and to protect it from floods by maintaining the embankments of the rivers.

"The Government in virtue of its claim to a portion of the rents is entitled to the fullest information regarding the land, its produce, the rents paid by the Ryots, or employed

"The Government sometimes interfered to regulate the rents paid by the Ryot, or employed their own officers to collect them. In such cases the Zemindar is entitled to subsistence allowance.

"The Institutes of Acbar show that the relative proportions of the produce were settled between the cultivator and the Government.

"Rights depending upon the discretion of the ruling power must be deemed precarious; despotism might subvert the rights of the Zemindars without avowedly infringing them.

"A property in the soil must not be understood to convey the same rights in India as in England; the difference is as great as between a free constitution and arbitrary power.

"The rights of the Ryots appear very uncertain and indefinite, whilst the demands of Government on the Zemindars were regulated by some standard, the latter had little temptation or necessity to oppress their Ryots.

"The rates of the land were probably fixed formerly according to the nature of the soil and its produce; the cesses imposed by the Zemindars were an enhancement of these rates, and arbitrary without being at first oppressive.

"It is generally understood that the Ryots by long occupancy acquire a right of possession in the soil and are not subject to be removed.

"The Zemindars when an increase has been forced upon them have exercised the right of demanding it from their Ryots.

"In every district throughout Bengal, where the license of exaction has not superseded all rule, the rents of the land are regulated by known rates called *Nirk*, and in some districts each village has its own.

"These rates are formed with respect to the produce of the land at so much per *bega*. These rates must have been fixed upon a measurement of the land. The settlement of Turymul may have furnished the basis of them. In course of time cesses were superadded. A ryot when the burthen is not too heavy will rather submit than resist or complain.

"When the rates of the land are specific and known a Ryot has a considerable security against exaction, provided the officer of Government attends to his complaint and affords him redress.

"The additional sanction derived from a *Puttah* is that it specifies, without reference to any other account, the terms upon which he holds the land.

"*Puttahs* to *Khodekosh* Ryots, or those who cultivate the lands of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands paying the rents from year to year. Hence the right of occupancy originates, which is admitted to extend to the heirs of those who enjoy it.

"*Puttahs* to *Pykosht* Ryots, or those who cultivate the land of villages where they do not reside, are generally granted with a limitation in point of time. When they deem the terms unfavorable, they repair to some other spot.

"Mr. Francis proposed that it should be made an indispensable condition with the Zemindar that in the course of a stated time he shall grant new *Puttahs* to his tenants either on the same footing with his own quit-rents, that is, as long as the Zemindar's quit-rent remains the same, or for a term of years as they may agree." The former is the custom of the country. This will become a new Assul Jumrah for each Ryot, and ought to be as sacred as the Zemindar's quit-rent. The *Puttah* should be expressed in the simplest terms possible without a single *Abwab* or *Muthote*, so much per *bega* of land which he cultivates, varying only according to the articles of produce or the quality of the soil.

"By some it has been proposed that the Collectors should grant *Puttahs* to the Ryots, and we have, I believe, on some occasions authorized this measure, but of late the applications on the subject have been postponed for general consideration."

"The peculiar position of each district shows 'the objection to the immediate establishment of general rules and the necessity of adopting them to the local circumstances of each district.'"

"When Mr. Francis proposed that the Zemindars should be compelled to grant Puttahs to the Ryots within a limited time, he was not aware perhaps of the little intercourse subsisting between the more considerable Zemindars and the Ryots, nor that Puttahs are generally granted by the farmers (*sub-renters*), Gumastahs, and *Munduls* (headmen) of the villages. To require that the Puttahs should be given for a definite time, would diminish the force of that prescription which established a right of occupancy in favour of the ryots. In some places the issuing of Puttahs at present would tend to the confirmation of existing abuses by which the Zemindar is more defrauded than the Ryots oppressed."

"In authorizing the Collectors to grant Puttahs to the Ryots, we certainly deviate in some degree from the established principle which I always assume, that the Zemindars are the proprietors of the soil. I have admitted, it is true, on the grounds of precedent, the right of the Government to interfere in regulating the assessment on the Ryots; but I object to the policy and propriety of this interference without evident necessity. Where a Zemindar has refused, or evaded the execution of the orders prescribed to him for the security of his tenants, or his unable to execute them, the interference of the Collector may be expedient."

28. After noticing some of the exactions and abuses which had been brought to light and the measures that had been adopted for checking them, Mr. Shore proceeds thus:—

"The leading principles upon which I shall ground my proposition for the ensuing settlement are two:—

"The security of Government with respect to its revenues."

"The security and protection of its subjects."

"The former will be best established by concluding a permanent settlement with the Zemindars or proprietors of the soil; the land, their property, is the security to Government."

"The second must be ensured by carrying into practice as far as possible an acknowledged maxim of taxation, that the tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and every other person."

"It is essential to the success of these principles that the settlement be made upon such fair and moderate terms that the Zemindars may derive advantage from their engagements after a due performance of the stipulations contained in them."

"With respect to Ryots, their security requires that the settlement made with them should become matter of record. In every Zemindary where the established laws of collections have not been infringed, this is the case at present." "We learn that the Zemindars continually impose new cesses on their Ryots, and having subverted the fundamental rules of collection, measure their exactions by the abilities of their Ryots. This is a very serious evil; for exclusive of the injury which the unprotected subjects of Government sustain from it, a necessity follows for our interference to regulate the assessment on them."

To eradicate these habits must be a work of time. The stability of our measures must promote self-interest. Government begins by setting an example of good faith. But in relying on the operation of the principle, "we must not during the process abandon the Ryots to caprice or injustice, the result of ignorance or inability. With knowledge, or the means of obtaining it, we may correct the consequences of both, and at present we must give every possible security to the Ryots as well as to the Zemindars."

29. From this Mr. Shore proceeds to state the general rules, records and accounts which he deemed indispensable for the permanent settlement, and concluded by submitting to his colleagues in the Supreme Government a series of thirty-four propositions for discussion.

30. These propositions formed the basis of the measures which were introduced for the Permanent Settlement of the Land Revenue—see Bengal Regulation 8 of 1793, Section 54, *et seq.*—and those immediately applicable to the point now under consideration are quoted *in extenso* below:—

"That whereas from the ignorance, inattention, and oppressions of the Zemindars, the greatest abuses have been practised in the collections, and the Ryots have been exposed to exactions, the following rules are now prescribed to all Zemindars, Talukdars, and persons entrusted with the revenues for their immediate guidance and direction."

"That the rents to be paid by the Ryots, by whatever rule or custom they may be demanded, shall be *specific as to their amount*."

"If by a Puttah containing the *asal* and *abwab*, the amount of both shall be inserted in it, and the Ryot shall not be bound to pay anything beyond the amount specified on account of *Kircha*, *Salamy*, or any other article."

"If by a *Ticka* Puttah, the whole amount payable by the Ryots is to be inserted in it; if by

any rule and custom such as the payment of the last and preceding year, the rate of the village Purgannah, or any other place, an account is to be drawn out in the beginning of the year

* NOTE.—A *Ticka* Puttah generally expresses a fixed rate for the land at so much per *Bega* without any other article."

showing what the Ryots are to pay by such rule or rate, and a copy of it be given to them; when the rents are adjusted by a measurement of the lands after cultivation, the rate and terms of payments shall be expressed in the Puttah."

"If by any established and recorded Jamabandy, that is to be the rule for demanding the rents"

"If the rents are paid in kind, the proportion which the Ryot is to pay shall be specified either in account or written agreement."

"In every *Mofussil* *Cutcherry* the *Nirkbundy* or rates of land shall be publicly recorded. Where no *Nirkbundy* of the land exists, the Zemindar shall be bound to form the same, either for his whole Zemindary or such parts thereof where it may be wanted, within a prescribed period to be determined by the Collector."

"No Zemindar, farmer, or person acting under their authority shall be allowed to cancel the Puttahs of the Khodkasht Ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below the rates of the *Nirkbundy* of the Purgannah, or that they have obtained collusive deductions, or upon a general measurement of the Purgannah for the purpose of equalizing and correcting the assessment."

"That when the *Jumma* of a Ryot has been ascertained and settled, he shall be authorized to demand a Puttah from the Zemindar or person acting under his authority, and any refusal to deliver the Puttah shall be punished by fine."

"That the Zemindar be not authorized to impose any new *Abwab* or *Muthote* upon the Ryots on any pretence whatever."

"That as the impositions upon the Ryots from their number and uncertainty have become intricate to adjust and a source of oppression to the Ryots, the Zemindars shall be compelled to make a revision of the same and to simplify them by a gradual progressive operation as follows."

"They shall begin with those Purgannahs where the impositions are most numerous, and having obtained an account of them shall in concert with the Ryots consolidate the whole, but so that in no case shall the sums demanded from the Ryots exceed three articles, viz., *asal*, *abwab* and *kurcha*. Having prepared this account they shall submit it to the Collector for his inspection, after which it is to be enforced by the authority of Government and any enhancement of the *abwab* or *kurcha* to be punished as an extortion."

"That when by mutual consent of the ryots and zemindars the *abwab* can be wholly reduced and constituted, it be done accordingly, and the rates of the land, according to the nature of the soil and the produce, to be the rule for fixing the rent."

"That the rents of each Purgannah in the Zemindary be annually adjusted in the same manner until the whole be completed, and that the exact proportion which the *abwab* and *kurcha* bear to the *asal Jumma* be precisely determined. The Zemindar is to be positively enjoined to regulate a certain proportion of his Zemindary annually, so that the whole be completely performed within—years from the date of his agreement."

31. It will be remembered that Mr. Shore was in favour of a ten years' settlement instead of a permanent one. Lord Cornwallis combating this view observes, in his minute dated 18th September 1789, "I understand the word *permanency* to extend to the *Jumma* only, and not to the details of the Settlement, for many regulations will certainly be hereafter necessary for the further security of the Ryots in particular." "I cannot however admit that such regulations can in any degree affect the rights which it is now proposed to confirm to the Zemindars; for I never will allow that in any country Government can be said to invade the rights of subject when they only require for the benefit of the State that he shall accept of a reasonable equivalent for the surrender of a real or supposed right, which in his hands is detrimental to the general interest of the public, or when they prevent his committing cruel oppressions upon his neighbours or upon his own dependants."

In a further minute recorded by Mr. Shore, dated 8th December 1789, after adducing the want of exact information as to the respective rights of Zemindars, Talukdars, and Ryots, as an argument in favour of a temporary Settlement rather than a permanent one, he continued thus:—

"The necessity of some interposition between the Zemindars and their Ryots is absolute, and the Government interferes by establishing regulations for the conduct of the Zemindars which they are to execute, and by delegating authority to the Collectors to enforce their execution. If the assessment of the Zemindar were unalterably fixed and the proprietors were left to make their own arrangements with the Ryots without any restrictions, limitations, or injunctions, which indeed is a result of the fundamental principle, the present confusion would never be adjusted."

"This interference, though so much modified, is in fact an invasion of proprietary right and an assumption of the character of landlord, which belongs to the Zemindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the Zemindar, and that we have a right to regulate the terms by which he is to let his lands to the Ryots, as it is to connect that avowal with discretionary and arbitrary claims. If the land is the Zemindar's, it will only be partially his property while we prescribe the *quantum* that he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned."

32. To these remarks Lord Cornwallis rejoined as follows in a minute, dated 3rd February 1790:—

"Mr. Shore's propositions that the rent of the Ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount; that the landholder shall be obliged within a certain time to grant Puttahs or writings to their Ryots in which this amount shall be inserted; and that no Ryots shall be liable to pay more than the sum actually specified in his Puttah; if duly enforced by the Collectors will soon obviate the objection to fixed assessment, founded upon the undefined state of the demands of the landholders upon the Ryots." • • • • •

"If Mr. Shore means that after having declared the Zemindar proprietor of the soil, in order to be consistent we have no right to prevent his imposing new *abacab* or taxes on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the Zemindars. Every *begah* of land possessed by them, must have been cultivated under an express or implied agreement that a certain sum should be paid for each *begah* of produce, and no more. Every *abwab* or tax imposed by the Zemindar over and above that sum, is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore has in such case an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion that the Zemindar neither now nor ever could possess right to impose taxes or *abwab* upon the Ryots; and if from the confusion that prevailed towards the close of the Mogul Government, or neglect, or want of information since we have had the possession of the country, new *abwab* have been imposed by the Zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future."

"Neither is prohibiting the landholder to impose new *abwabs* or taxes on the lands in cultivation, tantamount to saying to him that he shall not raise the rent of his estate. The rents of an estate are not to be raised by the imposition of new *abwabs* or taxes on every *begah* of land in cultivation; on the contrary they will in the end be lowered by such impositions; for when the rate of assessment becomes so oppressive as not to leave the *Ryot* a sufficient share of the produce for the maintenance of his family and the expenses of cultivation, he must at length desert the land. No *Zemindar* claims a right to impose new taxes on the land in cultivation, although it is obvious that they have clandestinely levied them, when pressed to answer demands upon themselves, and that these taxes have from various causes been perpetuated, to the ultimate detriment of the proprietor who imposed them."

"The rent of an estate can only be raised by the imposition of new taxes on the lands in cultivation, and this is prohibited by the law."

"The rent of an estate can only be raised by inducing the Ryots to cultivate the more valuable articles of produce, and clear the extensive tracts of waste land which are to be found in almost every Zemindary in Bengal."

"The question that has been so much agitated in this country, whether the Zemindars and Talukdars are the actual proprietors of the soil or only officers of Government, has always appeared to me to be very uninteresting to them, whilst their claim to a certain *percentage* upon the rents of their lands has been admitted, and the right of Government to fix the amount of those rents at its own discretion has never been denied or disputed."

34. The Bengal Regulations of 1793 show how far they proceeded at that time on this course; but as pointed out by the framers of the Fifth Report in 1812, the rights and customs of the Ryots varied so much in different parts of the country, and appeared to the Government to involve so much intricacy, that the regulations enacted only provide generally for engagements being entered into and Puttahs being granted by the Zemindars, leaving the terms to be such as shall appear to have been customary, or as shall be particularly adjusted between the parties; but it is to be observed that Mr. Shore's proposed provision prohibiting the Zemindar from cancelling Puttahs once granted to Khood-kusht Ryots, except under special specified cases, was maintained in the law (Clause 2, Section 60, Regulation VIII of 1793).

Section 6. "The approbation of the Collector required to be obtained to Puttahi by Section VIII of 1793 is to be considered to extend to the form only.

"Section 7. "The rules in the preceding Section are to be considered applicable not only to the Puttahs which the Ryots are entitled to demand in the first instance under Regulation VIII of 1793, but also to the renewal of Puttahs which may expire or become cancelled under Regulation XLIV of 1793. And to remove all doubt regarding the rates at which the Ryots shall be entitled to have such Puttahs renewed it is declared that no Proprietor or Farmer of land or any other person shall require Ryots whose Puttahs may expire or become cancelled under the last mentioned Regulation, to take out new Puttahs at higher rates than the established rates of the Purgannah for land of the same quality and description, but that Ryots shall be entitled to have such Puttahs renewed at the established rates, upon making application for that purpose to the person by whom their Puttahs are to be granted, in the same manner as they are entitled to demand Puttahs in the first instance by Regulation VIII of 1793."

37. It may be well to recall to mind here that the rate of assessment demandable from a Pykasht Ryot was always *less* than the established rate payable by the Khood-kasht Ryot, or cultivator of land in the village to which whether by present residence or ancient connection he belonged; because the latter enjoyed additional privileges in the way of permanency of tenure, which the former could not claim.

38. The Board proceed to consider how on the introduction of the Permanent Settlement in this Presidency it was attempted to secure the same object, viz., the security of the Ryots from exactions by the Zemindars.

39. In the Board's Proceedings, dated 2nd September 1799, on the proposed introduction of the Permanent Settlement the following remarks occur:—

"Rules will be established to enable the proprietors and farmers of land to realize with promptness what is justly due from their under-tenants and Ryots; at the same time they will be subject to prosecution and damages for the abuse of this authority."

"These rules will be substituted for the undefined power now exercised by the Zemindars and farmers in the collection of their rents from their Ryots, and will be enforced by the regular Courts."

And after referring to the case of Talukdars and Leaseholders (the Mocurrerydars of Bengal) they proceed thus:—"Distinct from these claims are the rights and privileges of the cultivating Ryots, who though they have no positive property in the soil have a right of occupancy as long as they cultivate to the extent of their usual means, and give to the Circar or proprietor, whether in money or in kind, the accustomed portion of the produce."

"To ensure the dues of the Circar or proprietor of the Estate, it has been already observed that rules will be prescribed and administered by the Judicial Courts, and that the same rules will also extend protection to the Ryots and under-tenants. But in order that there may be some standard of judgment between these parties, the proprietor or under-farmer will be obliged to enter into specific agreements or Puttahs with the Ryots and under-tenants. The rents to be paid, by whatever rule or custom they may be regulated, to be specifically stated in the Puttah, which in every possible case shall contain the exact sum to be paid. In cases where the rate only can be specified, such as when the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop, or when they are made payable in kind, the rate and terms of payments, and proportion of the crop to be delivered, with every condition shall be clearly specified."

"Every Zemindar, independent Talukdar, and other actual proprietor of land, will be required to prepare a form of Puttah or Puttahs conformably to the rules above prescribed, and adapted to the circumstances and usages of his Estate or Taluk, and after obtaining the Collector's approbation of it (to be signed by such Officer, superscribing the form with his name and official appellation), to register a copy thereof in the Adawlut of the District, and to deposit a copy also in each of the principal Cutcheries in his Estate or Taluk. Every Ryot will be entitled to receive corresponding Puttahs on application, and no Puttahs of any other than the prescribed form will be held valid."

"A Ryot whose rent has been ascertained and settled, may demand a Puttah from the actual proprietor of land, dependant Talukdar or farmer, of whom he holds his lands, or from the person acting for him; and any refusal to deliver the Puttahs upon being proved in the Court of Adawlut of the District, will be punished by the Court, by a fine proportional to the expense and trouble of the Ryot in consequence of such refusal. On the other hand, it will be required of the Zemindar or farmer to cause a Puttah for the adjusted rent to be prepared according to the form prescribed and tendered to the Ryots, either granting the same themselves, or instructing their agents to grant them under their special authority, and the necessary rules will be enacted to afford redress to the party acting in conformity hereto, in all cases of resistance on the part of the Ryot."

"It is to be hoped that in time the proprietary landholders, talukdars, and farmers, and the Ryots, will find it to their mutual advantage to enter into agreements in every instance for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit; and in the interim, to protect them against any new taxes under any pretence whatever, the person discovered to have imposed them will be liable to a very heavy penalty for the same. Indeed we wish to direct your attention to the impositions they are already subject to, which from their number, and uncertainty, we apprehend to have become intricate to adjust and a source of oppression. It would be desirable that the Zemindars should revise the same in concert with the Ryots, and consolidate the whole into one specific sum; by which the rents would be much simplified, and much inconvenience to both parties be thereby obviated in future."

41. Appended to these instructions were extracts from the Bengal Regulation VIII of 1793, relating to Talukdars, Mocurrerydars, and the appointment of Putwarries (or Kurnums) in every village, and it is deserving of remark that the quotations did not include the very indefinite provisions made in the Bengal Regulation for the maintenance of the rights of the Ryots, on the ground, it is reasonable to suppose, that these provisions were deemed inadequate.

45. There was also appended copy of Bengal Regulation I of 1793, which embodies Lord Cornwallis's Proclamation of the Permanent Settlement of the Government demand on the land, and from which Section 10 (Article 9) may be quoted as having an important bearing on the present question.

"From the limitation of the public demand upon the lands, the net income and consequently the value (independent of increase of rent attainable by improvements) of any landed property for the assessment on which a distinct engagement has been, or may be entered into between Government and the Proprietor, or that may be separately assessed although included in one engagement with other estates belonging to the same Proprietor, and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the

fixed Jummah assessed upon it (which agreeably to the foregoing declarations is to remain unalterable for ever, to whomsoever the property may be transferred) with the whole of its produce allowing for charges of management."

The Regulation goes on to describe how on a division of an estate the Jummah or fixed Government demand is to be apportioned on the shares of the original estate, for which purpose the rules in the Madras Regulations are more defined than are those originally prescribed in Bengal. But with reference to the above quotation it may be remarked that the assumption on which it proceeds is only compatible with the view on the part of the framer of the proclamation, that "independent of increase of rent attainable by improvements," the Zemindar's income from his estate after paying the fixed Government demand and the charges of management, would be permanent in amount, and always ascertainable by calculation from the Jummah, the amount of which was to bear a fixed proportion to the gross income from the lands included in the estate.

46. The Regulations enacted in this Presidency in connection with the introduction of the Permanent Settlement, are exactly conformable to the above views and instructions, and in some respects go beyond the Bengal Regulations.

There is no hesitation as to the "proprietary right." It is claimed (Regulation XXV of 1802) unreservedly as appertaining to the Government, and is then ceded of grace to the Zemindar.

One of the evils of the previous absence of permanency in the Government demand on the land is, as "must be obvious to the Zemindars, Mirasidars, Ryots and cultivators of land," that it was "destructive of the comfort of individual persons by diminishing the security of personal freedom, and of private property."

Therefore the Government resolves to fix for ever a moderate assessment of public revenue on such lands, and to give the Zemindars a Deed of permanent property in the land; to resume from the Zemindars the administration of the extra sources of Revenue, Salt, Sayer, Abkarry, Moturpha, and the duty of maintaining the peace of the country, with all lands, &c., assigned for Police expenses; to hold the Zemindars liable in their personal property, and in the real property now conferred on, or confirmed to them, for payment of the fixed demand; to require them to furnish the account necessary for the apportionment of the Government demand in cases of divisions of estates, and for this end to maintain the regular and established village Kurnums; to prohibit Zemindars from exempting lands from payment of assessment on lands already exempted by Government security for its revenue, or to charge assessment on lands already exempted by competent authority; and also to require Zemindars to "enter into engagements with their Ryots for a rent either in money or kind" and "within a reasonable period of time to grant to each Ryot a Puttah or Coule defining the amount to be paid by him, and explaining every condition of the engagements." (Section 14, Regulation XXV of 1802).

47. Regulation XXVI of 1802 provides for the sale and sub-division of the estates so created, and for the apportionment of the Government demand on each share.

Regulation XXVII enforces on Zemindars by summary process their liability to Government.

Regulation XXVIII confers on them powers for the prompt realisation of their dues from the Ryots, and at the same time endeavours to protect the Ryots from the oppressive exercise of such powers. The Zemindars may distrain and sell crops and products of the land, cattle, and personal property of defaulters, but not "lands, houses, or other real property of their under-farmers, tenants, and Ryots," but if it be made to appear on trial that "no arrears was due," the distrainer was liable to damages. No mortgage, &c., could bar the prior claim against crops or gathered products of the land on account of the "rent or revenue due from the ground, it being the undoubted right of the owner of the land, or his representative to consider the produce of it mortgaged to him in the first instance for the rent of the land, and in default of his rent being paid as engaged for (or determinable by local rates and usage where there may not be specific engagement) to distrain and sell such crops, &c." The Zemindar was also empowered to arrest defaulters through the agency of the Courts, to attach and manage the defaulter's holding, and when the arrear was not recovered within the current revenue year by these means, then further to proceed either to sell the tenure of the defaulter if saleable, or to eject leaseholders or tenants whose right of occupancy depended on payment of certain rents.*

48. Regulation XXIX provides for the establishment of village Kurnums, who, among other things, are required to register the gross produce of all lands when shared between the proprietors and the cultivators, the quantity of grain so divided and the rates of division, and where lands are liable to pay money rents, the extent of the land cultivated and the rates and amount of the money rent, and so in regard to the garden lands and to quit-rents.

49. Regulation XXX prescribes "Puttahs to be used between landholders and their under-farmers, tenants and Ryots," and needs to be more thoroughly analyzed.

In Campbell's Code of Regulations is printed as a Note to this Regulation a "Memorandum" by Mr. Webb, who, as Chief Secretary to the Government of this Presidency, had been appointed

* Note.—The only remedy given by this Regulation to the Ryots against the abuse of these powers of summary distraint was by regular suit, which defect was remedied by Regulation V of 1822.

a Member of the Special Commission for the introduction of the Permanent Settlement. This Memorandum was sent by him when resident at Poona to Messrs. Hodgson and Greenaway, then high in office here, who had insisted on the insertion in that Regulation of certain sections to secure to the possessors the rights of "Mircasi," regarding which rights it may be briefly observed that, as defined by Mr. Hodgson, he held them to be equally applicable to all cultivators "from the most Northern parts of India to Cape Comorin;" the definition being that no Zemindar, proprietor (or whatever name be given to these persons), was entitled by law, custom, or usage, to make his demands for rent according to his convenience, or in other words, that the cultivators of the soil had the solid right from time immemorial of paying a defined rent and no more for the land they cultivated." And he argued, as do the Board now, "that the first principle of the Permanent System was to confirm and secure these rights," as proved by "the discussions between Lord Cornwallis and Mr. Shore, the Bengal Regulations and the Proceedings of the Board at Madras;" and that the "proprietary right of the Zemindars is no more than the right to collect from the cultivators that rent which custom has established as the right of Government; and the benefit arising from this right is confined, first, to an extension of the amount or of the rate, of the customary rent, by an increase of cultivation; secondly, to a profit in dealings in grain where the rent may be rendered in kind; thirdly, to a change from an inferior to a superior kind of culture, arising out of a mutual understanding of their interest, between the cultivator and the proprietor."—See Mr. Hodgson's Report on Dindigul, appendix to Fifth Report.)

50. Mr. Webb wrote the preamble to Regulation XXX of 1802, and was a strong upholder of the rights of the Zemindar under the Permanent Settlement; and in the Memorandum in question he argues that the rights of the Ryots would best be developed in the Courts, then for the first time to be established, and that to suppose knowledge of them would be suppressed by the acts of the Zemindars was "contrary to the whole course of human experience." He did not however argue that that development might not be almost indefinitely postponed as the Board fear has been the case almost universally up to the present time.

51. Messrs. Hodgson and Greenaway, however, secured some modifications in the Draft. And the Regulation as it now stands, as the law of the land, and which the Courts are bound to administer, has now to be considered, the Board noting in the first place that all these Regulations were enacted on the same day, viz., 13th July 1802.

52. Regulation XXX begins in its preamble by declaring the necessity of abolishing "the existing indefinite mode of dividing the produce of the earth and of accounting for the customary ready money revenue" (alluding to the state of things existing at that time, "to the end that cultivators and under-tenants of land may have the benefit and protection of determinate agreements in their dealings with superior landholders and farmers of land," and it goes on to prescribe that with this object written engagements (Puttahs and Muchilkas) shall be executed within six months from the time of the permanent assessment being fixed, on any estate, which engagements may be of four kinds:—

1st.—For the rent of villages in gross sums of money.

2nd.—For a division of the produce of lands.

3rd.—For lands on which a money rent is assessed.

4th.—For lands charged with a grain rent.

The first kind are to specify among other things the amount of the rent, the dates for payment, and the coin in which payment is to be made.

The second is similarly to specify among other particulars the rate of the cultivator's share.

The third is similarly to specify "the rate of assessment according to the land measure in use, and the rents on each description of land or grain, as the usage may be."

The fourth, in addition to the particulars which are required for all alike, is to state the "specific quantity of grain to be rendered, and the species of grain."

Section 5 provides for the registration of Puttahs.

Section 6, for the consolidation of all items of demand "into one specific sum of money or quantity of grain."

Section 7 strictly prohibits the "proprietor from levying any new assessment or tax on the Ryots under any name or under any pretence," which provision as observed by Mr. Hodgson necessarily involves the recognition as established of an old and known tax, and contains internal evidence of a right having been confirmed to the ryots.

Section 8 declares the right of under-farmers and cultivators of land to demand Puttahs, and the liability to damages of all "proprietors and farmers of land" who shall be proved in the Courts to have refused or delayed to grant such Puttahs on demand beyond the period of six months calculating from the settlement of the permanent land revenue on their estates.

Section 9 provides that when disputes may arise as to rates of assessment in money, or of division in kind, the rates shall be determined "according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent Jummah on such lands, or where those rates may not be ascertainable, according to the rates established for lands of the same quality and description as those respecting which such disputes may arise."

Section 10 vests proprietors and farmers of land with power to grant to others "the lands of the under-farmers or Ryots refusing to exchange written engagements defining the terms on which such under-farmers or Ryots are to hold their lands."

Section 11 prescribes penalties for receiving any amount in excess of the terms of the written engagement.

Section 12 provides that "Puttahs executed for one year" shall be renewable at its close, and shall be in force till renewed, and must be renewed within two months from the commencement of the new Fasli.

Section 13 enforces on purchasers of estates the liability to grant Puttahs in their own names in lieu of those held by the Ryots from the former proprietors.

Section 14 provides for the grant of receipts for payments, and

Section 15 and last, makes binding on future proprietors building leases, and Puttahs for clearing and bringing waste lands into cultivation.

53. The Board maintain that the whole tenor of this Regulation is consonant with the expressed intention of the framers of the Permanent Settlement to put a fixed limit to the demands of the Zemindar on the Ryots, and to preclude the Zemindar from arbitrarily determining his demands, or modifying them at pleasure, except to relax them for a specific purpose which was equally to his and his successor's advantage, and to the benefit of the Ryots without infringing their rights, viz., to improve his estate, or to extend cultivation, the two sources indicated by the framers of the Permanent Settlement for the improvement of the Zemindar's income.

54. How these Regulations were interpreted by the highest Court in the country in the years immediately following their enactment, and when those who had part in framing them presided in those Courts, may here be fitly exemplified from the early decisions of the Madras Court of Sudder Udalat.

55. In Special Appeal Suit No. 15 of 1812 (Mr. Greenaway above mentioned being one of the Judges), a Ryot in Chingleput sued a Zemindar for recovery of certain land, and for a Puttah: The Zillah Court awarded possession of the lands on payment of a money rent at an expressed rate as "fixed by the Kuram."

The Provincial Court upheld the original decree, on the ground that the "annual fixed Beriz" decreed, "it was stated to have been proved was assessed on the lands in question, and was paid to Government by the Respondent (the Ryot) in the year Roudri" (A.D. 1800).

In the special appeal decree it was declared that "on the contrary, all the evidence taken regarding the assessment of the lands showed that it was not fixed, but derived from a division of the produce, which must fluctuate with the season, and the commutation price of which must be influenced by its plenty or scarcity."

"It was not for the Court to interfere in determining the rate at which the share in grain shall be commuted for a payment in money. This was a point clearly left to be settled by the parties themselves, and in adjusting the rate, each party would consult his own interest." "When the rate shall be settled by a written agreement, the Courts may be called upon to enforce it."

"It was therefore adjudged that the Respondent was entitled to hold possession of the land in question on a Puttah defining the rate of division of the produce; which rate as prescribed by Section 9, Regulation XXX of 1802, was to be determined according to the rates prevailing in the year preceding the assessment of the permanent Jummah on those lands, or if those rates were not ascertainable, according to the rates established for lands of the same description and quality."

"And that no dispute may arise hereafter regarding the rates of division of the land in question, the Court adjudged that the said rates should be determined by the Zillah Judge, who should take the evidence of the Kurams in open Court before the parties or their Vakceels."

The Zemindar to pay damages to the Ryot for the time he had been kept out of possession of the land.

56. In Special Appeal Suits No. 18 of 1812, and No. 10 of 1814 (Mr. Greenaway among the Judges) certain firewood merchants of Masulipatam sued to establish their right to cut firewood in the Divi jungles without paying any consideration to the Zemindar.

The Zillah and Provincial Court upheld the privilege as claimed. On special appeal, the Sudder Court thus stated its judgment:—

"The determination of the present question rested upon very simple grounds, and must follow the usage which prevailed before the introduction of the permanent assessment."

"By the Act of Permanent Settlement the Government transferred to Zemindars (with certain specified exceptions) the proprietary right exercised by itself. It could not do more without infringing the rights of others. All usages which are not specially abrogated by the regulation must be held to be confirmed, and if previously to the introduction of the permanent assessment, no payment was exacted by the Government for firewood cut in the jungles of Divi, none could be exacted by the Zemindar."

57. In Special Appeal Suit No. 8 of 1813 (Mr. Greenaway, one of the Judges) Plaintiff sued to establish his right to hold certain lands as Lakhiraz, or tax free, on which the Zemindar had levied a certain amount. "The Zillah Judge held it to be immaterial whether the collection made by the Zemindar was or was not justified by the common usage of the country; but in the opinion of the Sudder Court this was a point very material to the issue of the case; for if the collection in question were an ordinary collection, the Plaintiff's claim on that head fell at once to the ground; but if it were a new tax it was illegal."

58. There are two other Regulations which need to be briefly noticed, viz., Nos. IV and V of 1822. The first is entitled "a Regulation declaring the true intent and meaning of Regulations XXV, XXVIII and XXX of 1802, so far as they relate to the rights of the actual cultivators of the soil," and it states that "doubts having occurred regarding the meaning and construction of the Regulations enacted for ensuring the prompt realisation of the rents due and payable by the actual cultivators of the soil, either to the Officers of Government on the public account, or to Zemindars or others entitled to receive the same by inheritance, or purchase, or in virtue of special grants issued by the ruling authority on terms of a Permanent or Temporary Settlement of the Land Revenue." "It is hereby declared that the provisions of Regulations XXV, XXVIII and XXX of 1802 were not meant to define, limit, infringe, or destroy the actual rights of any description of landholders or tenants."

59. The preamble of Regulation V of 1822, states that "the provisions of Regulations XXVIII and XXX of 1802 have been found insufficient for the due protection of the Ryots," the powers conferred on landholders being prompt and summary, the defence of Ryots only by regular suit, the cost of which is beyond their means. Therefore the summary jurisdiction of the Courts ought to be transferred to the Collectors in such cases, and in those of sudden and violent disputes regarding the occupancy, cultivation, and irrigation of land, referred to in Regulation XXXII of 1802, and that provision should be made for dealing by Panchayet disputes regarding arrears of rent and rates of assessment, and the occupancy and cultivation of land.

The Regulation proceeded to confer on Collectors the summary powers which the Courts could exercise under Regulations XXVIII and XXX of 1802 ("which the exception of the cases referred to in Sections 35 and 40 of Regulation XXVIII of 1802," which it may be observed, conferred no summary jurisdiction whatever on the Courts).

It goes on to declare that property attached for arrears under Regulation XXVIII of 1802, shall not be sold unless Puttahs shall have been granted, or tendered and refused, and leave obtained for the sale, and to prescribe rules for distraint and sale, and for summary disposal of appeals against the distraint. "If it shall appear that the amount is justly due," the Collector shall order the sale. If a less amount shall appear on inquiry to be due, the Collector shall order accordingly.

Then Section 8 prescribes that the lands of under-farmers and Ryots shall not be granted to other persons by proprietors or farmers under Section 10, Regulation XXX of 1802, without the Collector's leave. "If the Collector on examination find the rates of the Puttah tendered by the proprietor or farmer to be just and correct, the under-farmer or Ryot shall be ejected under the Collector's order unless he assent to the terms. But if the rate shall exceed the just rate prescribed, an order shall be issued by the Collector to the proprietor or farmer prohibiting the ejection, and requiring the issue of a Puttah within one month from the delivery of the order to him, under penalty for delay as provided in Section 8, Regulation XXX of 1802."

Section 16 provides among other things for decision by Panchayet of disputes regarding "arrears of rent" or "revenue or rates of assessment in money or kind or of division in kind, as well as all questions of the right of occupancy or possession of lands or crops."

60. The foregoing complete the materials which the Board deem sufficient for a decision on the question under consideration. From the evidence these materials furnish they draw the following conclusions, bearing in mind that the earliest system of society of which we have any trace in this country is the village community, the boundaries of the village lands being perfectly known, and the whole of the country being in the eyes of the people parcelled out into villages.

61. The Board then consider it to be clearly shown—

That in the earliest times of which we have record, the right of the State to a share in the produce of the land was limited, and that this limit was such as to leave a sufficient margin for the growth of a valuable property in the land appertaining to the occupant, whose right to retain possession on payment of the limited share was inviolable and hereditary.

That a fixed limit was equally maintained by the Mahomedan conquerors.

That the origin of the Zemindar's office was comparatively a modern one, and that whatever its origin, the Zemindars derived their rights from the State, which could not confer more than it had possessed and exercised.

That the State asserted and often in later times exercised the power of resuming the exercise of its rights from the Zemindars without thereby altering the terms and conditions of the Ryot's tenure.

That any increase in the rate of the Zemindar's demand on the Ryots was only justified by the Zemindar on the plea that the State had raised its demands on him, although this ground

was by no means a sufficient foundation for any increase in the rate; inasmuch as the State share collected by the Zemindar could be legally increased by extension of cultivation, and its value enhanced by improvements in the cultivation, and when the superior kind of crops were grown, and as the State demand on the Zemindar was not fixed, though his percentage of the State share of the produce might have been so.

That the notorious prevalence of excessive receipts by the Zemindars from the ryots induced the Nizams of the Empire to raise the State demands on the Zemindars, which measure again excited the Zemindars still further to exact from the Ryots, till the latter were ground down to penury, or exasperated to resistance. Hence the Zemindars were themselves impoverished, so long as, and where the officers of the Empire were able to maintain their authority over them, or they fattened on extortion where the influence and authority of the Empire or its lieutenants had grown weak. In neither case was the State benefited.

That the object steadily kept in view by the framers of the Permanent Settlement was to remedy these crying evils by re-adjusting matters; in order to which they proposed to relinquish to the Zemindars an ample allowance for their personal benefit, out of the average State demand in past years on the Zemindari, and to fix the Zemindar's payment unalterably for ever, leaving to him all the benefits derivable from extension of cultivation and improvements in the culture of the lands, but to restrict his demands on the Ryot to the rate or share established for Government by prescription, which rate was to be registered in the village by officers appointed for the purpose; while the actual demand on the individual Ryot was to be recorded in a Puttah or written pose; while the actual demand on the individual Ryot was to be recorded in a Puttah when granted not engagement in accordance with this established rate or share, which Puttahs when granted not "without limit of time," but "for one year" should be renewable at its close, or in force till renewed.

That a limited time (6 months) was allowed to each Zemindar after the Permanent Settlement of the State demand on his Zemindari, for the necessary arrangements with the Ryots, after which time he became liable to fine if he failed to grant Puttahs to Ryots on demand.

That when disputes arose regarding the rates to be specified in those Puttahs, whether of assessment in specific quantities of grain or sums of money for a specified extent of land, or of shares in the produce, they were to be determined with reference to the rates in force in the particular case in the year preceding the Permanent Settlement of the State demand, or where that was not ascertainable then according to the rates in force in the case of neighbouring land of similar quality.

That no Ryot can be ejected from his holding, so long as he pays, or is willing to pay, this established rate.

That the Collector has summary powers to give decisions in such cases in a quasi judicial capacity, and may refer them for the decision of Panchayet when the parties agree.

That appeals lie by regular suit to the Courts from the Collector's decisions, but that the Panchayet's decision is final where unimpeachable on the ground of corruption.

62. The Board maintain that the above positions can be clearly established from the foregoing evidence, and that they are utterly incompatible with the claim now asserted by the Zemindars to raise their demands at pleasure on the ryots.

Even in the cases where the rate which ought to have been recorded at the time of the Permanent Settlement was that of a share in the produce, if for the last sixty years the money rate paid in commutation has remained unchanged, the Board question whether the Zemindars can now equitably raise that commutation rate on the Ryot, while the State demand remains unchanged on themselves.

63. It will not be necessary for the Board to discuss at much length the particular case which has led to the present discussion, or the views enunciated by the Collector and Judge.

The estate in regard to which the application was made to the Collector was one of the Havellies in Vizagapatam. These estates were sold in or about 1802, with a permanent Jummah assessed on them.

The proprietrix, through her Vakeel, asserted that "there is nothing in the Regulations to restrict Zemindars or Proprietors to a certain definite rate of rent in entering into engagements with their tenants, or to debar their taking advantage of the increased value of land in proportion to the enhanced value of produce;" and she drew attention to "the fact that the expired Cowles were for a limited term of years."

The Collector rejected the claim on the general grounds that the Zemindar's demands on Ryots were absolutely limited by the Puttah Regulation, and that the fact that Puttahs and Muchilkahs were for mutual convenience exchanged once in three years instead of annually, could not destroy the mutual rights and privileges of the parties as settled at the time of the "Permanent Settlement."

64. The Board are not able to judge how far the facts of the case would, according to their view, support the Collector's decision, as he did not go into the merits.

65. On appeal, the Zillah Judge being of opinion that the Collector's decision on the preliminary question was erroneous, remanded the case for investigation and decision upon the merits. No further steps were, however, taken, as the parties appear to have compromised the matter.

66. Mr. Collett recorded in an elaborate judgment the grounds for his opinion that the Collector's decision was erroneous. These grounds are briefly, that Sections 8 and 9, Regulation XXX of 1802, which provide a limit of time for the issue of a Puttah on demand, and the mode of adjusting disputes regarding rates of assessment, were intended to apply only to the first occasion of issuing a Puttah after the Permanent Settlement of an estate, and that there is nothing in the Regulation to preclude an enhancement of the demand in future years; while changes in the rate were clearly contemplated by the provision made for the renewal of Puttahs for one year.

He was further of opinion that the terms "just and correct rate" and "the just rate prescribed" used in Regulation V of 1822 are equivalent to *fair and equitable*; and that to suppose that rents were intended to be limited by the Regulations of 1802 is incompatible with the declaration in Regulation IV of 1822, that those Regulations were in no way intended to define, limit, infringe, or destroy the rights of any parties.

67. The Board need scarcely say that they entirely dissent from this view as regards both the intended operation of Sections 8 and 9, Regulation XXX of 1802, and also the interpretation of the terms "just and correct rate" and "just rate prescribed" used in Regulation V of 1822. They hold that these terms refer to the well known established rate, which was to be recorded on evidence, and to form the unalterable limit to the Zemindar's demand, although when the land was assessed at grain rates, or with a share in the crop, any commutation into money was a matter for mutual agreement, the fact and force of the agreement being fit subject for decision by the Courts.

68. The Board readily admit that the Regulations of 1802 did not define, or limit, or destroy rights, but they contend that the relative rights of the State as represented by the Zemindar, and of the Ryot, were already absolutely defined by long established custom, and that it was expressly intended, as a fundamental principle of the Permanent Settlement of the State's demand on the Zemindar for its dues less the portion relinquished to the Zemindar for his maintenance in the position which the Government desired him to occupy, that the rates to be levied from the Ryots should be unalterably maintained, and should (as already quoted from Mr. Shore's Minutes) be held, as to the proportion they bore to the produce of the land "as sacred as the Zemindar's quit-rent."

69. The Board also consider that, although Mr. Collett has laid much stress on the declaration in Regulation IV of 1822 that no rights were defined or limited by the Regulations of 1802, he has unconsciously allowed his view of the Zemindar's position and rights to be defined by the language of those Regulations and has throughout considered the Zemindars and Ryots as landlords and tenants, on which point the Board consider his decision to be entirely erroneous.

70. He, however, indicates at the close of his judgment an inclination to the opinion that Regulation XXX of 1802 very probably did intend to limit the Zemindar's demand to a fixed share in the crop, and to customary fees in money, an opinion scarcely consistent with the views expressed in the earlier part of the judgment, but one that is nearly in accordance with the Board's views on the subject.

71. The course which in the Board's opinion the Collector ought to have followed in this case was, to ascertain by full inquiry in each case the terms of the Ryots' tenure at the Permanent Settlement, or if that were not ascertainable, then the terms on which similar adjacent land was held. Then, to inquire how, if at all, those terms had been subsequently modified, and how far the Zemindar's present demand was justified either by the original terms of the Ryot's tenure, or by the conditions of any subsequent mutual agreement, whether expressed or fairly inferred from long proved practice, and to have admitted or rejected the Zemindar's claim accordingly as it was found to be within or beyond the terms either of the original tenure, or of the subsequent mutual agreement expressed or implied.

72. The Board have learnt with much regret from several Petitions addressed to them by Ryots holding land in the Kasimcoffah estate, that subsequently to the Proceedings in the case which has led to this review of principles, the Principal Assistant in Vizagapatam has upheld the proprietor's claim to raise his rents twenty-five per cent. all round, and to eject those Ryots who may not agree to this enhancement, solely on the grounds that the Permanent Settlement accounts show on the average of fourteen years that the value of the renters' aggregate receipts from this Havelly was estimated at somewhat less than two-thirds of the estimated value of the whole produce of the estate then formed, and the Ryots' aggregate share at somewhat more than one-third of that value; that the (Defendant's) Ryots' lands have benefited from certain improvements executed in former years by the ancestors of the present Zemindar and maintained at his expense; that they are assessed at a lower amount than adjoining land of equally good quality; and that prices of produce have increased in late years; but without making any inquiry whatever (so far as the judgment shows) into the nature and conditions of the Ryots' tenure at the time of the Permanent Settlement, or as to any subsequent modifications in the terms with reference to the alleged improvements by the Zemindar, or as to the force of the admitted long occupation of the land by the present Ryots at the rate which it is now sought to enhance.

73. The Board are of course powerless to interfere in these cases, but they none the less regret to see such disregard of principles which they consider of the highest importance. The very fact alleged as one reason for permitting the enhancement, viz., that the Ryots had long held the land at a lower rate than that paid for adjoining land of similar quality, should of itself have been viewed as *prima facie* evidence that the Zemindar had not the right which he claimed, as, had he possessed such a right, it is reasonable to suppose that the rates would have been equalised at an earlier period.

74. There is not one reason assigned in the judgment which necessarily justifies the Zemindar's claim; for the estimate of the proportionate value of the Renters' and Ryots' receipts on the aggregate of the whole estate proves nothing whatever as to individual rights. The fact of the improvements may (for any thing that is shown to the contrary) have been already considered in fixing the Ryot's payment at its present amount. The increase in the value of produce is no proof whatever by itself that the Zemindar is justified in raising his demand. The fact that the lands are comparatively favorably rated is *prima facie* adverse to his claim. And the willingness of third parties to pay the enhanced rate merely shows that if permitted to rob the Ryot of his lands, they are willing to relinquish a portion of the plunder to the Zemindar.

75. In conclusion, the Board desire to record here some remarks on the very lax assumption that Ryots pay rent to the Zemindar as landlord, and not a tax due to the State and to the Zemindar as the person entitled by Law to receive the State dues. The Board view this assumption as one of the fundamental errors in which these mistaken views of the relation of Zemindar and Ryot originate.

76. No one who has studied the subject disputes that the original right of the State was to a proportional share in the produce of all cultivated land, that is, to a tax on produce. Rent on the other hand, according to the most approved definition, is a payment made for the use of land, which, owing to its natural advantages of fertility or position, will yield to its owner larger returns than are derivable from the most inferior class of land which the circumstances of the time and of the locality will allow of being cultivated without actual loss to the cultivator. The worst kind of land in cultivation cannot possibly pay a rent according to this definition, although it may be able to pay the actual expenses of cultivation.

77. If then the Government or person to whom the Government has delegated its rights is entitled to only a share in the produce in the form of a tax; or to its equivalent in money, the Government or the Zemindar as the case may be, cannot claim a landlord's right in the soil.

The Government might possibly have the right to increase, for reasons of State, the share which it takes as public revenue, or it might possess a right in individual cases to increase the equivalent money payment if the price of produce should at any time advance; but a right to a share in agricultural produce, though laid on the land as a fixed charge, is essentially distinct from a landlord's interest in his land as the owner of the soil.

78. The landlord's interest in the soil in any country consists of the entire surplus produce which all the land in it may yield in excess of the produce which the worst land under cultivation may yield.

The least fertile land under cultivation must yield sufficient produce to cover at current market prices, the necessary cost of cultivation plus the tax, if that is a fixed money charge on the land.

As the demand for agricultural produce increases the people are compelled by circumstances to take up fresh land inferior in quality to the land previously cultivated, and the price of produce raised on this land must be equal to the cost of cultivation, or such land could not be cultivated; the necessary price of produce therefore must have increased, and with this increase of price, the value of the surplus produce derived from land of a superior quality to the lowest quality cultivated advances also.

79. The owners of such land are therefore able to claim and obtain higher payments in the way of rent for the use of their land; or, when selling their lands, a proportionately higher price; but this increase in the rent value of land, or in its sale value, does not give the Government any right to increase the tax on that land by claiming for the State revenue an increased proportional share in the produce; nor does the necessary value of the landlord's interest in the land in any way interfere with the productiveness of the land revenue as an item of the State income. The land in other words with the productiveness of the land revenue as an item of the State income, the means of increasing its Government still has its usual share, and has, at the same time, the means of increasing its revenue by collecting its dues (rates or shares) from the fresh land brought under cultivation.

80. In these portions of the country in which the land revenue has been "permanently settled" (so far as the State receipts are in question), the Government have transferred their right to an increase of revenue through the enlargement of the cultivated area to the Zemindars, who now, as to this point, stand in the place of the Government, and have the same kind or right to the Public Revenue, as the Government previously possessed.

81. When land (or a landed tenure*) is offered for sale in the market, its sale value is

based on the fact that the land is capable of yielding that kind of surplus referred to above. This surplus is that portion of the produce which remains after defraying the cost of cultivation, inclusive as a necessary item, of the amount of any tax to which the produce is liable. It is obvious therefore that the kind of returns which infests land with a sale value, cannot from any point of view be described as the share which belongs to the State as Land Revenue; nor can the Zemindar as owner of the State rights, assert a claim to raise his demand on the Ryot on the same grounds and principles as would justify a landlord in requiring an increased rent from his tenants.

(A true extract).

(Signed) W. HUDLESTON,
Secretary.

To J. D. Sim, Esq., Secretary to Government, R. D.
Copy to D. F. Carmichael, Esq., Collector of Vizagapatam.

P.S.—The Board have annexed for facility of reference some extracts from the documents referred to in the above remarks.

APPENDIX.

W. H.

I.

A Purganah granted by the Nabob Sahib Jung in A.D. 1758 for the Char Mahal Zemindari in the Manipaliam District.

"To the Aumilla for the time being and in future, the Desamooka, Despondiala, Soudleria, the principal persons and Conacopolies of the Vinnacottah Purganah in the Char Mahal District in the Circar of Mustafanagar under the Subah of Hyderabad. It is now written that the Russooms or fees, Mahall or Land Revenue, Sayer or Land Customs, Moturpha or quit-rent, Savarums and four villages allotted in lieu of the Savarums in the villages belonging to the Purganah is now confirmed and ratified as usual to Cundenah Paupiah, brother to Iyanah and Socriah, Zemindars of the abovementioned Char Mahall. You are therefore to give up to him the Russooma, Mahall, Land Customs, Quit-rent fees, lands in lieu of the Village Savarums according to the under recited list, as usual and customary as long as they shall continue attached to Government. They are to enjoy the benefits and perquisites thereof, and to remain faithful to the Government interest; this is to be strictly observed. Dated the 1st day of the moon Savai in the year 1172 of the Hegirah."

(Signed) with an initial letter.

List above alluded to.
The Purganah of Vinnacottah.
Do. do. of Goodetavulah.
Do. do. of Bittarazullee.
Do. do. of Cukindoo.

II.

Extract of a letter to the Bengal Government from the Honorable Court of Directors, dated 19th September 1792.

Paragraph 45. "From the materials which have been transmitted we are led to believe that the situation of the Ryots varies in different Districts according to local manners, customs, or particular agreements, and it appears as if in some instances the right of Ryots of different descriptions though in the same districts was considered more or less permanent and secure. The application therefore of any general principles must be guided by minute local investigation, and we shall expect particular regulations adopted to all the different circumstances to be prepared, and finally submitted to our consideration. In looking to the ultimate situation of the Provinces under our Government, we cannot indeed but hope that under the system which we now propose, the possessors of lands will gradually learn from experience that their own interests are permanently connected with the security and comfort of the cultivators of the soil, and that the time will come when the advantage of every class of the community will be best promoted by leaving to every man the care and management of his own property."

46. "But as so great a change in habits and situation can only be gradual, the interference of Government may for a considerable period be necessary to prevent the landholders from making use of their own permanent possession for the purposes of exaction and oppression. We therefore wish to have it distinctly understood; that while we confirm to the landholders the possession of the districts which they now hold, and subject only to the rent now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid by them with any view to any addition of revenue to ourselves, we expressly reserve the right, which clearly belongs to us as sovereigns, of interposing our authority, in making from time to time all such regulations, as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unarrantable exactions. A power exercised for the purposes we have mentioned, and which has no view to our interests except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition where it is necessary seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the Sovereign."

III.

Bengal Regulation I, A.D. 1793.

VIII. Article VII. To prevent any misconstruction of the foregoing articles, the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent talukdars, and other actual proprietors of land:—

First.—It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil; and no Zemindar, independent talukdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.

X. Article IX. From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements) of any landed property, for the assessment on which a distinct engagement has been, or may be entered into between Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed jumma assessed upon it (which agreeably to the foregoing declarations, is to remain unalterable for ever, to whomsoever the property may be transferred), with the whole of its produce, allowing for the charges of management.

Bengal Regulation VIII, A.D. 1793.

LIV. The impositions upon the ryots, under the denomination of abwab, mhatoot, and other appellations, from their number and uncertainty having become intricate to adjust, and a source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the assult into one specific sum, in large zemindari or estates, the proprietors are to commence this simplification of the rents of their ryots in the purgannahs where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the fasli and willait year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pattas, as hereafter specified.

IV. No actual proprietor of land, or dependent talukdar, or farmer of land of whatever description, shall impose any new abwab or mhatoot upon the ryots, under any pretence whatever. Every exaction of this nature shall be punished by a penalty equal to three times the amount ever.

imposed; and if at any future period it be discovered that new abwab or mohatoot have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.

LVI. It is expected, that in time, the proprietors of land, dependent talukdars and farmers of land, and the ryots, will find it for their mutual advantage to enter into agreements, in every instance, for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit. Where, however, it is the established custom to vary the patta for lands according to the articles produced thereon and while the actual proprietors of land, dependent talukdars or farmers of land, and ryots in such places, shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation that, in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of any new species being cultivated, a new engagement, with the like specification and clause, is to be executed accordingly.

LVII. *First*—The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the patta, which, in every possible case, shall contain the exact sum to be paid by them.

Second—In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop, or where they are made payable in kind, the rate and terms of payment and proportion of the crop to be delivered, with every condition, shall be clearly specified.

LIX. A ryot, when his rent has been ascertained and settled, may demand a patta from the actual proprietor of land, dependent talukdar or farmer, of whom he holds his lands, or from the person acting for him; and any refusal to deliver the patta, upon being proved in the Court of Dewany Adalat of the zillah, shall be punished by the court, by a fine proportioned to the expense and trouble of the ryot in consequence of such refusal. Actual proprietors of land, dependent talukdars and farmers, are also required to cause a patta for the adjusted rent to be prepared and tendered to the ryot, either granting the same themselves or entrusting their agents to grant the same. No farmer, however, without special permission from the proprietor of the lands, or (if the lands form part of a dependent taluk) the dependent talukdar shall grant a patta extending beyond the period of his own lease; nor shall any agent grant a patta without authority from the proprietor or dependent talukdar or the manager of disqualified proprietors.

LX. *First*—All leases to under-farmers and ryots made previous to the conclusion of the settlement, and not contrary to any regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion, or from persons not authorised to grant them.

Second—No actual proprietor of land or farmer, or persons acting under their authority, shall cancel the patta of the Khodkushit ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below the rate of the nirkhundiy of the pergunah, or that they have obtained collusive deductions, or upon a general measurement of the pergunah for the purpose of equalizing and correcting the assessment. The rule contained in this clause is not to be considered applicable to Behar.

LXI. The proprietors of estates, and the dependent talukdars and farmers of land in Bengal, are allowed until the end of the Bengal year 1198, and those in Behar and Orissa until the end of the fasli and willait year 1198, to prepare and deliver patta to the ryots, in conformity to the preceding rules, but after the expiration of the year 1198, no engagements for rent, contrary to those ordered, are to be held valid; and in the event of any claims being preferred by proprietors of estates, or dependent talukdars, farmers, or ryots, on engagements wherein the consolidation of the assal, &c., abwab, shall appear not to have been made, they are to be non-suited with costs.

Bengal Regulation, XLIV, A.D. 1793.

I. The public demand upon the estates of the proprietors of lands with whom a settlement has been, or may be concluded under the original regulations for the decennial settlement, having been declared fixed for ever, it is to be apprehended that many proprietors, either from improvidence, ignorance, or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent taluks to be held at a reduced jumamah, or fix the jumamah of the dependent taluks now existing in their respective estates at an under-rate, or let lands in farm, or grant patta for the cultivation of land at a reduced rent for a long term, or in perpetuity. Such engagements, if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors, to render their property of little or no value to their heirs; promote vice and injustice;

* For Behar there are distinct provisions in the Bengal Regulations.

occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent of revenue reserved by such proprietors being insufficient for the discharge of the amount of the public demand upon their estates; be an abuse of the great and lasting benefit which has been conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment; and, moreover, be repugnant to the ancient and established usages of the country, according to which the dues of Government from the lands (which consist of a certain proportion of the annual produce of every begah of land demandable according to the local custom in money or kind, unless Government has transferred its right to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public so long as he continues to discharge the latter), are unalienable without its express sanction.

Bengal Regulation IV, A.D. 1791.

V. The ryots in the different parts of the country frequently omitting or refusing to take out or receive patta, although the persons from whom they are entitled to demand them are ready to grant them in the form and on the terms prescribed by the Regulations, it is declared, that if a proprietor or farmer of lands or a dependent talukdar, after the approbation of the Collector to the form of the patta or patta for the lands in his estate or farm shall have been obtained, as prescribed in Section 58, Regulation VIII of 1793, shall fix up in the principal cutcherry or cutcherries of his estate or farm a notification in writing, under his seal and signature, specifying that patta according to the form approved, and at the established rates will be immediately granted to all ryots who may apply for them, and stating where, and when, and by whom the patta will be delivered, the notification shall be considered as a legal tender of a patta, and the proprietor of land, the farmer, or the dependent talukdar, shall be deemed to have complied with the orders in Section 59, Regulation VIII of 1793, and the persons so tendering patta shall be entitled to recover the rents due to them from such ryots, either by the process of distraint laid down in Regulation XVII of 1793, or by suit in the Dewany Adalat.

VI. The approbation of the Collector required to be obtained to patta by Section 58, Regulation VIII of 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand patta, regarding the rates of the patta (whether the rent be payable in money or kind), it shall be determined in the Dewany Adalat of the zillah in which the lands may be situated, according to the rates established in the pergunah for lands of the same description and quality, as those respecting which the dispute may arise.

VII. The rules in the preceding section are to be considered applicable not only to the patta which the ryots are entitled to demand in the first instance, under Regulation VIII of 1793, but also to the renewal of patta which may expire or become cancelled under Regulation XLIV of 1793. And to remove all doubts regarding the rates at which the ryots shall be entitled to have such patta renewed, it is declared, that no proprietor or farmer of land, or any other person, shall require ryots whose patta may expire or become cancelled under the last mentioned Regulation, to take out new patta at higher rates than the established rates of the pergunah for lands of the same quality and description, but that ryots shall be entitled to have such patta renewed at the established rates, upon making application for that purpose to the person by whom their patta are to be granted, in the same manner as they are entitled to demand patta in the first instance, by Regulation VIII of 1793.

Bengal Regulation I, A.D. 1801.

VIII. Section 10, Regulation I of 1793, prescribes the general rule and principle for the allotment of the fixed assessment upon all divisions of estates, whether publicly sold or transferred by the private act of the proprietors, viz., that the assessment upon the portion of the estate to be separated shall bear the same proportion to its actual produce, as the fixed assessment upon the whole estate may bear to its actual produce. This rule is to be strictly observed in all cases.

whether of public sale or private transfer, or of division between sharers, heirs, or joint proprietors of whatever description; and it is hereby explained, that by the term "actual produce" is to be understood the neat annual rent, or other neat produce receivable by the proprietor, after deducting from the gross rent, or other gross produce, the actual expense of collection and other usual charges of management.

IV.

Extract from the Sunnud-i-Milkut Islanrar.

"You shall enter into engagements with your ryots either for a rent in money or in kind; and shall, within a reasonable time, grant to each ryot, a patta or cowle, clearly defining the amount to be paid by him, and explaining every condition of the engagement; and you shall grant, or caused to be granted, regular receipts to the ryots for all discharges in money, or in kind, made by them to you, or for your account. If after the expiration of a reasonable period of time from the execution of your caboolat, you shall neglect, or shall refuse to comply with the demand of your under-farmers, or ryots, for the pattas and receipts above mentioned, you shall be liable to be sued in the Adalat of the zillah; and you shall also be liable to such damages as may be decreed by the Adalat to the complainant."

V.

Madras Regulation XXV, A.D. 1802.

XIV. Zemindars or landholders shall enter into engagements with their ryots for a rent either in money or in kind, and shall within a reasonable period of time grant to each ryot a patta or cowle defining the amount to be paid by him, and explaining every condition of the engagement. And the said zemindars or landholders shall grant regular receipts to the ryots for discharges in money or in kind made by the ryots on account of the zemindars. Where a zemindar after the expiration of a reasonable period of time from the execution of his caboolat may neglect or refuse to comply with the demand of his under-farmers or ryots for the pattas or receipts above mentioned, such zemindar shall be liable to be sued in the Adalat of the zillah, and shall pay such damages as may be decreed by the Adalat to the complainant.

Madras Regulation XXX, A.D. 1802.

III. Pattas and muchilkas shall be exchanged within six months, calculating from the time of the permanent assessment being fixed.

IV. First—Pattas and muchilkas may be of four kinds, first, for the rent of villages in gross sums of money; secondly, for a division of the produce of land; thirdly, for lands on which a money rent is assessed; fourthly; for lands charged with a grain rent.

Second.—Pattas and muchilkas shall contain the date of the month and the year on which they may be executed; the names and situation of the contracting parties.

Third.—Pattas for village rents shall contain the name of the village, the extent of the lands therein, the amount of the rent per annum, the period of the kists, which proprietors or farmers of land shall be compellable to adjust according to the time of reaping, or of selling the produce of the land, and the coin in which the rent is to be paid.

Fourth.—Pattas for the division of the produce of land shall be drawn according to the form prescribed in clause third; but in lieu of the money rent, such pattas shall specify the extent of the land, which the under-tenant, under-farmer, or ryot may engage to cultivate, and the rate of the cultivator's share of the different kinds of grain cultivated and produced.

Fifth.—Pattas for lands on which a money rent is assessed shall, in addition to the items described in clause third, specify the rates of assessment on such lands, according to the land measure in use, and the rents on each description of land or grain, as the usage may be.

Sixth.—Pattas for lands charged with a grain rent shall, in addition to the items prescribed by clause third, state the specific quantity of land occupied under this description of rent, the specific quantity of grain to be rendered, and the species of grain.

V. Pattas and muchilkas shall be regularly signed and registered by the gurnam of the village in which the lands engaged for are situated.

VI. Where the rents or revenues of land, payable either in money or kind to the proprietor, may have been collected under various denominations, in addition to that of the proprietor's share, such as canongoi and cavelly rissunias, or other charges, they shall be consolidated in the pattas into one specific sum of money or quantity of grain; and, in the event of claims being instituted by proprietors of land on engagements in which the rents or revenues may not be so consolidated, such claimants should be non-suited, with costs before the Adalat of the zillah, from and after the expiration of two years subsequently to the time when the permanent assessment of the land revenue may have been fixed.

VII. Proprietors or farmers of land shall not levy any new assessment or tax on the ryots, under any name or under any pretence; exactions other than those consolidated in the patta, or otherwise authorized by the Government, shall, upon proof, subject the proprietor or farmer, to a penalty equal to three times the amount of each exaction.

VIII. Under-farmers and cultivators of land shall be free to demand of proprietors or farmers of land pattas for the descriptions of land they may respectively occupy; and where proprietors or farmers of land may refuse or delay to execute or cause to be executed, pattas so demanded, such proprietors or farmers of land shall, after the expiration of six months (calculating from the settlement of the permanent land revenue on their estates), be liable to prosecution in the Court; and shall, on proof of such refusal or delay, be also liable to pay such damages as the Court shall adjudge to be equal to the trouble and expense incurred by the under-farmers or cultivators, in consequence of such refusal or delay.

IX. Where disputes may arise respecting rates of assessment in money or of division in kind the rates shall be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent jumma on such lands; or, where those rates may not be ascertainable, according to the rates established for lands of the same description and quality as those respecting which the dispute may arise.

VI.

Extract from the Madras General Conditions of sale of the estate in the Jaghire formed as the time of the Permanent Settlement in May 1802.

18. "All purchasers of land succeed to the signioral right which Government exercised in their capacity of general landlord; but in order to prevent abuse of the exercise of the right, Government will frame regulations for the protection of the ryots, prescriptions, immunities, and customary advantages of the lower class of people. In order, however, to prevent litigations on the part of the inhabitants, it is declared to all purchasers of land that the inhabitants of the jaghire are not considered entitled to a higher rate of caram than that inserted in the dowle of fasli 1210, nor is the purchaser entitled to a higher division of produce as succeeding to the rights of Government than the rate therein specified as the Government share."

19. "It is hereby declared to all purchasers of land that their rights in regard to punja teerwah and to backyards are defined in the dowle of fasli 1210, and that they are entitled to collect the revenue of Government as the substituted possessors of the land at the rates inserted in that dowle."

20. "All purchasers of land are entitled to collect the Rockadayem or ready-money collections at the rate inserted in the dowle of fasli 1210, with the exception of the ready-money payment fixed at the rate of 1 pagoda per cawny on topes of fruit trees. This rate Government has been pleased to abolish, and to recur to the usual mode of a division of the produce. It is therefore hereby declared to all purchasers of land that they are entitled to Government equally, or inhabitants the produce of all fruit trees heretofore paying a revenue to Government equally, or share and share alike. From this general rate of equal division, however, the fruit of tamarind trees is excepted. The purchasers of land shall be entitled to receive, as the constituted proprietors of the land, three quarters of the produce of all tamarind trees heretofore paying a revenue to Government, and shall be at liberty to make such agreement or commutation with the inhabitants as may best suit their mutual interests."

ORDER—dated 10th October 1893, No. 890, Revenue.

Miscellaneous.

Tenancy Bill which was referred for its remarks in the Madras No. 881. The history of landlord and tenant legislation in this Presidency and of the circumstances which led to the preparation of the Bill under report being given in full detail in paragraphs 3–21 of the Board's Proceedings, it will suffice here to notice only a few salient points.

2. The most serious defect in the rent law of this Presidency is that there is no clear statutory declaration defining the substantive rights of ryots in zemindari tracts. The law in force on the subject of landlord and tenant is the Madras Rent Recovery Act VIII of 1865 which, as its title indicates, deals almost exclusively with procedure. The only section in it which is of the nature of substantive law is section 11 which lays down certain rules for the decision of suits involving disputes regarding rates of rent. But on the more important question, whether ryots in zemindaris have occupancy rights in their holdings, there is no positive declaration either in this Act or in any other enactment. That such rights may exist is assumed in section 38 of the Act which enacts that when by "express contract or by usage of the country" a tenant whose rent is in arrear has a "saleable interest" in the land on which the arrear is due, it shall be lawful for the landlord to sell such interest in satisfaction of the arrear; but the question whether in any case such interest exists, is left, as appears from the wording of the section, for determination on ordinary principles of law by the civil courts; for the section quoted above clearly shows that up to 1865 ryots could be determined; and there has been no such law since. As for "usage," the received opinion has always been that a cultivator has the right to hold his land undisturbed so long as he pays the rent or revenue due thereon; and the Government has always respected this right in its dealings with ryots holding directly under it.

3. But this customary right has not yet received such judicial recognition as would place it on a safe basis. On this point it will suffice here to refer to the three marginally-noted judgments of the High Court. In the first judgment, the High Court held, "The tenancy of an

ordinary pattadar in this Presidency, when properly created entitles the tenant to the right of occupancy for the purpose of cultivation until default in the payment of the stipulated rent or surrender to the landlord in writing, and the right of the tenant is assignable as a mortgage security." There was here a recognition not only of the right of occupation, but also of the validity of a mortgage of that right which presumably implies a title to transfer occupancy right. If the law had remained as here laid down, the question of tenant-right in respect of two of its essential elements (fixity of tenure and freedom of sale) would have been placed on an assured basis. But in the second case above referred to, which is known as Chockalinga Pillai's case, the High Court held that a tenancy was terminable at the will of the lessor at the end of a fasli, except where a right of continuous occupancy was conveyed by the terms of the contract creating it or where by force of established general custom or positive law such right formed part of the contract of tenancy; and it went on to say that there was "nothing in any existing written law to render a tenancy once created only modifiable by a revision of rent but not terminable at the will of the lessor exercised in accordance with his obligations." So far, however, there was nothing in this judgment (which expressly saved "custom") to derogate from the customary tenant-right recognized in the first judgment; but, as one of the Judges in the second case remarked, in the course of his judgment, that the judgment in the first case (in which he had taken part) had gone too far in laying down the rule as to a pattadar's right of occupation in the broad terms that it did; and, as it also appeared from certain of his other observations both in this judgment and in his judgment in the third case above referred to (both of which judgments were delivered on the same day), that he regarded the ordinary patta granted to a cultivating ryot as constituting the contract of his tenancy not merely as regards the rent or revenue

payable by him for the period during which the patta is in force, but also as regards the duration of his tenancy; the judgment in the second case was regarded by the Board of Revenue as calculated to deprive tenants in zemindaris of all rights of occupancy and to convert them all into tenants-at-will. The Board of Revenue accordingly addressed the Government urging the immediate necessity of passing an enactment for the purpose of conferring by legislation occupancy right on the tenants of zemindars (Board's Proceedings, dated 8th September 1871, No. 3876).

4. The Government passed no orders on this reference until 1876 when it called on the Board to enquire and report whether the effects apprehended by it had ensued and to what extent. The Board called for reports from district officers and the reports showed that the judgment in question had had no effect except in three districts, Ganjam, Vizagapatam and Nellore; that in those districts the decision had had the effect of emboldening the landholders to impose arbitrary terms on their tenants and that, in the two last named districts, even the courts had interpreted the judgment as authorizing ejectment of tenants on the expiry of the terms of their pattas. The Board forwarded these reports to Government and in doing so stated that the relations of zemindars as landholders towards their tenants stood on a very unsatisfactory footing, and that the sooner the difficulty was dealt with in a thorough and efficient manner the better it would be for all parties concerned. A recommendation to the above effect was also made by the Famine Commission which reported as the result of the evidence it had taken on the subject, that the inadequate wording of the Rent Act of 1865, coupled with the ruling of the High Court (in Chockalinga Pillai's case) had been to alter the legal position of zemindari tenants and to render it precarious, exposing them to many forms of oppression; that legislation was therefore urgently necessary and that in its opinion the right course would be to provide that all tenancies should, *prima facie* carry a right of occupancy and to throw on the landlord the *onus* of proving the facts from which a non-occupancy tenure has to be inferred. This suggestion, along with certain others made by the Famine Commission, was referred for the remarks of the Board of Revenue, and certain selected officers, and nearly all of them agreed in the expediency of legislation in view to the protection of the occupancy rights of zemindari tenants.

5. The Government concurred in these opinions and appointed a Committee (G.O., dated 29th April 1882, No. 437) "to draft a Bill calculated to remove all doubts as to the conditions of a ryot's tenure of land." The Government stated that "it would be disposed to distinctly lay down that the ryot and his heirs or assignees possess a right of continuous occupancy subject only to the condition of payment to the Sirkar or its assignee, of the Sirkar's share of the crop or its value as established by proved custom . . . with liberty to dispose of such right by sale, gift or otherwise," and expressed the opinion that "as suggested by the Famine Commission the Bill should provide that all tenancies in zemindari or inam lands *prima facie* carry a right of proprietary occupancy and should throw on the zemindar or inamdar the *onus* of proving the fact from which a non-occupancy tenure has to be inferred." This Committee, however, never sat. Subsequently a short Bill was prepared by the Honorable Mr. Hutchins in which it was proposed to declare that "tenants have, according to the ancient custom of the country, a right of occupancy and are entitled to hold possession of their lands so long as they pay the rent legally due thereon and that the courts shall presume unless the contrary is shown that this custom is the custom of every particular estate." In a subsequent note on the Bill he suggested that it would be a direct benefit to land-holders as well as to the ryots to introduce a clause making all arrears of rent "a charge and perhaps the first charge on the land." This Bill, it will be noted, was so drawn as to apply both to zemindari and Government ryots, apparently because the framer of the Bill thought that the High Court's judgment affected both classes of ryots equally.

6. The Bill was not proceeded with although opinions were called for thereon. But in lieu thereof a Bill dealing with the whole subject of landlord and tenant was prepared by Mr. Carmichael (one of the members of the Committee appointed by G.O., dated 29th April 1882, No. 437) based on the first Bengal Tenancy Bill

introduced into the Supreme Legislative Council on 2nd March 1883. Opinions were invited on this Bill; but they were mostly unfavorable. The Bill was accordingly

Members.

The Honorable Mr. Master, President.
 " " Webster.
 " " Goodrich.
 " " S. Subramaniya Aiyar.
 Mr. J. H. Garstin, C.S.I.
 " H. J. Stokes.
 The Government Pleader.
 Mr. P. Chentel Row.
 " P. Rajaratna Moodelliar, Board's Secretary.
 " J. Lakshminanta Rao, Deputy Director, Revenue Settlement.
 " Adakki Sudarsana Rao, Deputy Collector.
 " Kanchi Subba Rao, Deputy Collector.
 " V. Bhashyam Iyengar.

Secretary.

Mr. T. Venkama Rao, First Assistant, Revenue Secretariat.

come to this decision the next question the Committee considered was whether the new Bill should be cast on the same model as the existing Madras Act or on any other improved and more perfect model. The conclusion they came to on this question is stated as follows in their report: "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 in every one of their possible aspects 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 tenants."

The new Bill prepared by this Committee was submitted in August 1887 along with a report explaining the main provisions thereof, and it was referred in G.O., dated 7th September 1887, No. 891, for the remarks of the Board of Revenue and of certain Judicial officers. The Board's remarks on the Bill are contained in its Proceedings, dated 26th August 1892, No. 470, now under disposal.

With its Proceedings the Board has forwarded a file of reports containing the views on the Bill of some Revenue and Judicial officers and of a few Zemindars. As, however, the Board has embodied in its Proceedings the more important of the opinions contained in these reports, it is sufficient to consider here the Board's criticisms on the Bill.

7. The Board's general objections to the Bill are—

- (1) that it fails to carry out the instructions of Government as to holding the scales evenly between landlords and tenants;
- (2) that it copies the Bengal legislation which is applicable to circumstances entirely different from those which obtain here;
- (3) that it provides for unacknowledged evils and does not meet acknowledged ones; and
- (4) that it will set class against class and foster litigation.

After a careful consideration of these objections the Government is of opinion that they are either quite unfounded or apply with still greater force to the Board's own proposals.

Obviously, the Board's scheme that all land except existing private lands of proprietors should be declared to be occupancy land is more open to its first objection than the scheme in the Bill which provides for the gradual accrual of this right.

8. The Board's second objection is that the Bill has copied the Bengal legislation. But far from regarding this as an objection to the general scheme of the Bill, the Government considers that the Committee has acted wisely in having adopted the Bengal Act as a pattern. The Board's view is that the conditions here are so different from those in Bengal that an Act framed to meet the latter province cannot be expected to suit the former. But the Government does not concur in this view; for, considering that, whatever local differences may exist between the two provinces, the tenures of the cultivators prior to the permanent settlement were mostly similar, that the permanent settlement regulations were the same and that both here and there nearly the same errors both of omission and commission were made at the time of the introduction of these regulations (in particular, the serious mistake of having left the substantive rights of the tenants undefined and unsettled, which is the main cause of the present unsatisfactory condition of the tenants in zemindaris), it follows that the same remedies and kind of legislation which the wider experience of the zemindari system in Bengal has dictated should be suitable here also. It is true, as observed by the Board, that so far as tenants are concerned matters are not so bad in the southern districts as they are in the northern districts, but a perusal of the papers connected with the Bengal legislation will show that between Bengal and Behar there was practically the same difference as now exists between the southern and northern districts in this Presidency. The Secretary to the Government of Bengal says in paragraph 6 of his letter to the Government of India, dated 27th September 1883, No. 972-T.R., "that in Bengal the demand for legislation came, in the first instance, from the landlords, who urgently pressed for increased facilities for enhancing and realizing rents, while in Behar the cry was from the ryots for protection from illegal enhancement and ejectment." This is substantially the difference between the southern and northern parts of this Presidency: in the south, the zemindars cannot get their rents, while in the north the tenants are being evicted and over-rented; and both are evils calling for remedy. The most that can be said in the matter of the alleged difference in the conditions of the two provinces is that owing to the existence in Bengal of a large variety of intermediate tenures between the zemindar and the cultivating ryots, some of the evils which have arisen here, some have not as exist here; and that even of those evils which had in Bengal. The first difference merely yet assumed the same dimensions as they had in Bengal. The first difference merely points to the necessity of careful selection in borrowing from the Bengal Act so as to avoid importing those provisions of the Act which were designed to meet evils special to that province. The second difference is one of degree only; and, if happily some of the evils which have to be remedied here are not so widespread or so intense as they were in Bengal, it seems prudent to anticipate them and to guard against their spread by providing at once those remedies which have been found suitable in that Province. The Government accordingly considers that the committee, in borrowing from the Bengal Act, has shown a wise discretion.

9. That the Bill has not provided for some acknowledged evils is an objection which does not affect the main principles of the Bill: the defect can be easily remedied.

10. As for the argument that the new legislation will set class against class and foster litigation, the Government is not disposed to attach any weight to it. That any remedial legislation which restores the balance and gives back to the ryots the rights of which to a great extent they have been unjustly deprived may at first irritate the landlords, is possible; but as to leading to litigation the Board's proposals seem more

obnoxious to that charge. Its scheme would produce a sudden and complete disturbance of the existing state of things and a universal ferment, to which the gradual and piecemeal readjustment of the relations between landlords and tenants which will be effected under the Bill is in comparison an infinitely smaller evil. It may also be noted that this objection that the new law would create an immense mass of litigation was one of those most loudly urged against the Bengal Act; but such has not proved to be the case. Even if the effects were different here, the result would be a small price to pay for the removal of present evils.

At the same time the Government is of opinion that as the Bill is not so one-sided as the Board's scheme is, but aims at strengthening the hands of the landlords quite as much as remedying the grievances of the tenants, there is every likelihood that the good sense of the landlords will reconcile them to those provisions of the Bill which, though depriving them of some of their assumed rights, will merely restore the balance by giving back to the ryots the rights of which they have been unjustly deprived.

So much for the Board's general criticisms on the Bill.

11. The Board concludes its general criticisms with the remark that it does not agree with those who consider that the present Act requires to be altogether repealed. It says that "a large number of gentlemen who have been consulted with regard to the new Bill advocate the retention of the existing Act (with the necessary amendments and additions), pointing out that it has been in force and has worked tolerably well for more than 26 years; that the doubtful points in it having been settled by the law courts at a great expense of time and money, it is now well understood, whereas a Bill of the sort proposed would be even less readily comprehended and much more productive of litigation; and that the Bengal Act in imitation of which it has been proposed was drawn to meet different conditions and has not been long enough in operation to be fully tested;" and it expresses its entire concurrence in these opinions. How far the last remark is true has already been considered. The question, whether the required object can be attained by a mere amendment of the present Act, depends upon the precise additions and changes to be made; but it may here be observed that the Government does not agree in the Board's estimate of the present Act. Reading it in the light of the commentary thereon furnished in the Digest of Rulings forwarded by the Bill Committee, it would seem to be very far from the truth, that judicial decisions have so cleared up the Act that it is now well understood and works smoothly. It is a sufficient condemnation of the Act that so great a Judge as the late Mr. Justice Holloway declared it to be incomprehensible. Its language is obscure and often inaccurate, every section is ill-drawn, it is pervaded by no clear conception of the nature of substantive law is section 11. All the rest deal with procedure either for distraint and sale or suits. It could not indeed be otherwise, seeing that the Act is a mere consolidation of the old regulations and that none of them defined or declared the rights of tenants. If therefore the Act is to be retained for any useful purpose so much would have to be added and so much cut out, if only to clear it of the defects above noticed, that in its new form it would be unrecognizable. It may also be remarked here, by anticipation, that as the Government is inclined to approve the proposal in the Bill to transfer the jurisdiction in revenue suits to the Civil Courts, the question whether legislation can proceed by amendment of the existing Act may be considered as practically settled in the negative, as this change alone will entail the excision of about two-thirds of it. And as in other respects also, especially as regards the additions to be made in the substantive law of landlord and tenant, the Government considers that the scheme in the Bill is preferable to the alternative scheme proposed by the Board, His Excellency the Governor in Council will adhere to the Bill and (with certain amendments which will be noted below) introduce it into the Legislative Council.

12. The main amendments will be considered in connection with an examination of the Board's suggestions under the following heads:—

- (1) Occupancy right.
- (2) Rates of rent.
- (3) Pattas and muchilkas.
- (4) Distraint.
- (5) Judicial procedure.

13. Taking these in order—

I. *Occupancy right*.—The Board's scheme for securing this right to tenants is as follows:—

(1) That all lands in proprietary estates should be divided into the two following categories:—

(a) *Private land* which is to embrace forest and uncultivable land other than public poramboke, land held and cultivated by the proprietor himself and land reclaimed by the landlord or granted under a reclamation lease;

(b) *All other lands*.

(2) That the proprietor should be required to get all his private lands registered as such by the Collector within a date to be prescribed by the Governor in Council for each district, and that when he has done so, he may be permitted to deal with such lands as he likes, perfect freedom being given him either to cultivate them himself by means of hired labourers or to give them on leases for a term of years and resume them at the end of the term just as a landlord does in England.

(3) That in regard to all other lands it should be enacted that they shall be held only on occupancy tenure; and that if any of these lands should become vacant by relinquishment or abandonment, the proprietor may if he likes cultivate them by hired labour, but the moment he lets them to a tenant, the latter should acquire full occupancy right with fixity of tenure and complete freedom of transfer and devolution. It may be added that it is also a part of the Board's scheme (as will be seen from its proposals under the second head "rates of rent") that in respect of these lands the rent payable to the landlord should be fixed once for all and that he should be debarred from raising it except when he executes improvements at his own cost.

14. In regard to this scheme the first question that occurs is, how is "uncultivable" land to be distinguished? Seeing that under this scheme there will be the strongest temptation for the proprietor to get as large an extent as possible of his waste land registered as private land, it is most likely that all land now waste, or at any rate by far the greater portion of it, would be classed as uncultivable and therefore forever excluded from the régime of occupancy tenure. If, however, measures are adopted to properly distinguish the cultivable portion of the waste, and thus to exclude it from the classification of "private land," the scheme will be open to the objection stated by Mr. Bliss in his minute of dissent that it is unjust to the zemindars, inasmuch as it reverses the gift of rights in the waste which Government conferred upon them at the permanent settlement.

The Board may contend that the Government could have given to the zemindars only such rights over waste lands as it itself possessed; but it must be remembered that in the matter of disposal of waste lands in Government villages the Government has not placed itself under any such restrictions as the Board proposes to lay on zemindars.

The Government does not permit free occupation of its waste lands subject only to payment of assessment. It reserves waste lands for forest purposes, sells it under waste land rules, and in fact does with it what it likes; and though in ordinary grants for cultivation it gives it on occupancy tenure, it does not consider itself to be bound to do so. The Government has frequently sold the occupancy right in waste lands for valuable consideration; and whatever of communal right in them may have existed at a remote period in village communities, it has disappeared completely except in Chingleput and Tanjore and had disappeared in other districts before 1802. The shred of it which remains in the preferential claims allowed to resident applicants under the darkhast rules was allowed as a concession. In these circumstances the

Government considers that it would not be fair to limit the zemindar's rights over waste lands in the manner proposed by the Board. It may also be observed here that in the instructions issued by the Board of Revenue in 1799 explaining the principles on which the permanent settlement was to be conducted, the Board stated that uncultivated, arable and waste lands forming part of every zemindari were to be given up in perpetuity to the zemindars free of any additional assessment (paragraph 27 at page 324 of the Fifth Report, Vol. II.)

15. Again, as regards occupied lands other than the proprietor's home-farm lands, the Board would rule that if any of them should fall to the landlord by relinquishment or abandonment, the proprietor may if he likes cultivate them by hired labourers, but if he lets them to a tenant, the tenant should at once acquire occupancy right therein. It is not apparent why the proprietor should not be allowed to let such lands for a term of years. The Board claims for its scheme the merit of its being in accordance with the traditional custom of the country. It is not clear what the Board means by "traditional custom." But it would appear from the Board's Proceedings, dated 5th January 1818, that the scheme in the Bill is more in accordance with what the present Board probably means by the traditional custom of the country, than its own scheme; for the Board of 1818 (paragraph 97 of the Proceedings quoted above) describing the usage in the Tamil country says: "The pyacarries or tenants are divided into two distinct classes, named *oolcoody pyacarries*, or permanent tenants, and *poracoodly pyacarries*, or temporary tenants." "The *poracoodly pyacarries* are strangers admitted into the village as tenants from year to year or for some other limited period." "But where land for a certain period, which varies in different places, has for several generations been farmed by the same family, the tenant is termed an *oolcoody pyacarry* and by prescription becomes possessed of an hereditary right to hold his farm in perpetuity on condition of the regular payment of the *mamool* or customary *warum* or *teerwa*" (paragraphs 98 and 99); and in a later portion of the same Proceedings the Board states referring to the Telingana country that "on the cession of the Telingana provinces to the British Government, the *cadeems*, whatever their former situation may have been, were possessed of no other rights than those of the *oolcoody pyacarries* in the Tamil country they continued the hereditary permanent farmers of their villages, and so long as they paid the public dues they could not be ousted from their lands" (vide pages 380—381 and 388 of Papers on Mirasi right.)

16. It may be observed in this connection that a scheme similar to that proposed by the Board was advocated by the Government of India in connection with the recent rent legislation in Bengal; but the Secretary of State disallowed it on the ground that it was opposed both to the customary law of the country and the statute law of the Province. He said, writing to the Government of India, "your proposal in the first place annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent, and the non-resident or temporary, cultivator. This, when your avowed intention is to restore to the ryots their original position and rights, appears to me anomalous and undesirable (vide the extract quoted in paragraph 137 of the Honorable Mr. Justice Field's minute on the Bengal Tenancy Bill, dated 11th September 1884, at page 82 of the extra supplement to the Calcutta Gazette, dated 15th October 1884).

17. It is however not on the above ground merely that the Government disapproves of the Board's proposals.

The Government considers that the scheme put forward, which, in respect of lands other than the proprietor's private lands, abolishes the distinction between occupancy and non-occupancy tenants, is both unfair to the landlord and inexpedient. It is unfair to the landlord because it gives him no opportunity of deciding by trial who among several new applicants wishing to become his tenants may be admitted to occupancy right or permitted to acquire it; and it is inexpedient because it would, by squeezing all tenancies into the single mould of occupancy tenant-right, convert the landlords into mere rent-receivers in respect of them and thus narrow the scope of their usefulness as landlords.

In view of these considerations the Government prefers the scheme in the Bill which recognizes a class of non-occupancy tenants, and, while affording to such tenants protection of a certain kind and considerable chances of acquiring the occupancy status, leaves it open to the landlord to prevent this accruing if he thinks fit.

The period of 12 years proposed to be prescribed for the accrual of occupancy right is doubtless arbitrary, but there is nothing to show that it is unsuitable. It is taken from the Bengal Acts where it appears to have been adopted at first (Act X of 1859) by analogy to the period of limitation for the recovery of immovable property.

18. As regards however the other conditions of the accrual of this right and the incidents thereof, the Government deems it expedient to amend the scheme in the Bill as follows:—

(1) To restrict the accrual of this right to such lands as have been held for the statutory period. According to the Bengal Act when a tenant has continuously held land (not necessarily the same land) by himself and by his ancestors for 12 years he acquires the status of a "settled ryot" and this status which is heritable but not transferable (unless by custom recognized as such) gives the ryot occupancy right in all lands he holds irrespective of the period of occupancy of the particular lands constituting his holding. These provisions were rendered necessary in that Act because it was found that in Behar some zemindars had adopted the device of frequently changing the land occupied by their tenants with a view to evade the provisions of Act X of 1859 which required 12 years' occupancy of the same land for the accrual of occupancy right; and that even where there was really no change in the holding it was often difficult for the tenant owing to absence of trustworthy village accounts to prove that he had held the same land for the statutory period.

But in this Presidency the Government trusts that the latter difficulty will not arise. It exists in Bengal because of the mistake which was there committed in abolishing the establishment of patwaris (village accountants) and because attempts recently made there to revive the establishment have not been successful. Here, however, this establishment has been continued and a Bill is now under the consideration of Government for bringing village officers in proprietary estates under the control of the Revenue officers of Government. This measure will, it is hoped, prevent tenants from being cheated by false accounts. As for the device of changing the holdings of tenants the Government considers that it need not be provided against by anticipation. If the evil should actually arise, it will be easy enough to counteract it by a short amendment of the law.

This restriction of occupancy right to lands actually held for 12 years will remove a disability which under the Bengal rule would attach to occupancy tenants; namely, that the landlords would generally avoid such tenants whenever they desired to lease non-occupancy lands. This is a disadvantage not only to the occupancy tenant but also to the landlord, inasmuch as the latter is likely to prefer his old tenants to new ones if he can let his lands to them without thereby converting them at once into occupancy lands. This disadvantage will be removed if it is left open to the landlord to lease to an occupancy tenant any non-occupancy land with limitation of the term of tenancy. Where no such term is stipulated it may be presumed that the landlord has no objection to the tenant holding the land on occupancy tenure.

(2) A provision to this effect giving the benefit of the presumption above mentioned to occupancy tenants will be inserted as clause (2) of section 5* in place of the present clause which will be struck out in consequence of the amendment of clause (1) proposed above.

* Section 8 of the amended Bill.

† Section 5 of the amended Bill.

(4) It will also be distinctly provided ‡ that all rights of occupancy shall be transferable by sale, gift or otherwise. This is recognized as an incident of the right wherever it subsists in this Presidency.

‡ Section 9 of the amended Bill.

(3) A section will † be added to the effect that occupancy right may be acquired by a grant from the landlord.

19. The Board says (paragraph 37) that, while providing in section 4 * a general

* Section 6 of the amended Bill.

presumption of occupancy right, the Bill proceeds to nullify that general presumption by the distinction it makes between occupancy and non-occupancy rights and by making tenures of land for 12 years a criterion of occupancy right.

The Board has apparently misunderstood the principles of the Bill as regards the 12-year period. This limit of time is one test of occupancy right but not the sole criterion. It is a test additional to all existing qualifications as will be seen by referring to section 105 †, which saves all customary rights. To make matters clear, however, a section ‡ will be added to preserve all existing rights of occupancy.

† Section 123 of the amended Bill.

‡ " 7 of the "

But, it will be noted, the great change which the Bill proposes to make in the present law is to enact (section 4) § that Courts shall presume that occupancy right attaches to every tenancy and shall throw

§ Section 6 of the amended Bill.

on the landlord the *onus* of proving its non-existence in every case in which he denies it. This shifting of the burden of proof from the tenant to the landlord, which is right and proper and was one of the measures recommended by the Famine Commission (paragraph 5 *supra*), is a change of enormous consequence and a vast security to the ryot. In the decision of such claims the burden of proof is the most important point, and the Government has no doubt that this shifting of the burden alone will secure occupancy right to a large majority of existing tenants. Where neither custom nor contract confers such right, it is only fair to the landlord that the tenant should be left to acquire that right by occupation for the statutory period.

The Board itself admits that non-occupancy tenancies exist and have always existed. It would therefore be wrong and unfair to convert them all into occupancy tenancies by a stroke of legislation.

At the same time the non-occupancy tenants should not be left to be dealt with as tenants-at-will. The solution adopted by the Bill Committee is to afford those tenants reasonable protection against rack-renting when they do not hold under registered leases, to give them a fair chance of attaining by length of occupancy the full occupancy right, and to confer on them the right to make and receive compensation for improvements (sections 115 ‖ and 118 ¶ of the Bill). It will no doubt be possible for a sharp landlord to prevent under section 39 (7) ** the accrual of occupancy right; but considering that the Bill gives the landlord ample facilities for securing for himself a fair and equitable rent and that he will be liable to pay for improvements, it will rarely be to his interest to eject his non-occupancy tenants.

‖ Section 133 of the amended Bill.

¶ " 136 of the "

** " 47 (7) of the "

Bill gives the landlord ample facilities for securing for himself a fair and equitable rent and that he will be liable to pay for improvements, it will rarely be to his interest to eject his non-occupancy tenants.

20. II. Rates of Rent.—In paragraph 52 of its Proceedings the Board asserts that landlords have no traditional or historic right to more than a fixed payment from their tenants, and in paragraph 63 that however much some zemindars may have usurped the power of raising the rents of their ryots, the law never intended to give it to them, and in support of these assertions it refers to the Board's Proceedings printed as appendix III. But the utmost that is there contended is that as regards the proportion of the produce taken, the demand of the zemindars was limited at the permanent settlement, and it appears to be admitted that the commuted value of that proportion might be liable to variation. But in the present Proceedings the Board takes no note of this distinction and talks of *rates of rent* in a general way. Even as regards the proportion of the produce, the Board's assertion is in the highest degree questionable, seeing that Government in its early settlements with its own ryots fixed the share pretty much as it pleased and has always assumed the right to revise the share at discretion. The Board's argument amounts to this: that a permanent grain settlement was secured to the ryots who came under zemindars, while those who remained under Government, or reverted to that position and whose tenure as ryots was

precisely similar, had no such right. If zemindari ryots had secured this indefeasible right to the rates of 1801, that right must have continued when by purchase or otherwise the Government stepped into the zemindar's place; but the Government has treated those ryots in respect to revision of settlements in no special manner. It may of course be replied that this merely shows that the Government was as extortionate as the zemindars; but the more reasonable inference seems to be that a Government which in 1802 recognized no such fixed limit of demand on its own ryots could not have intended to recognize, and did not in fact recognize, such a limit in the case of ryots made over to zemindars. At any rate, after a *régime* of contract, and regards rates of rent, has been established with the sanction of the legislature and has been in operation for some 30 years, if not since 1802, it is too late to say that it was entirely wrong and to deny the zemindar's right to enhance rents on reasoning so shadowy and academic as that put forward by the Board.

The Board fully admits at the end of paragraph 69 of its Proceedings that it would be inequitable to go back to the rates of 1802, but at the end of paragraph 70 it says that it is equally inequitable to hold the ryots to contracts which are the results of compulsion, and in paragraph 69 that it cannot be for the public benefit that the zemindars should reap the whole advantages of the increased price of agricultural produce which time has brought about and which there can be no doubt that the Legislature of 1802 intended should be retained by the cultivators.

With reference to the last remarks it may be noted that there is nothing to show that rents have increased in proportion to the price of agricultural produce or in fact in any relation to it; and as to the intention of the Legislature of 1802, it may be doubted whether such a thing as rise of rent owing to rise in prices ever entered into the reckoning of the framers of the permanent regulations.

Be this however as it may, it will suffice here to consider the Board's final scheme for the determination of rent. This scheme briefly stated is as follows:—

(1) That a survey and record of rights should be carried out forthwith for all estates in the Presidency;

(2) That attached to the record of rights a register of rates of rent as existing at the date of the introduction of the new legislation should be prepared. If such rent is in dispute then the latest admitted rate of rent should be entered;

(3) If it were decided that the rates determined as above were generally excessive, then the rent of each field should be fixed according to the rates of 1801, except when those rates are objected to by either party, in which case

(4) The parties should be required to get a fair rent fixed by filing summary suits before certain special officers to be appointed for the purpose, the decisions of such officers being subject to appeal to a Special Commissioner or Collector;

(5) That the rates as thus finally determined should remain invariable in the case of all occupancy tenancies and that the landlord should be debarred from raising them except on account of improvements executed at his cost.

21. The Government considers that this scheme is both inequitable and unworkable.

A general survey of all proprietary estates which this scheme requires is a measure which would be so unpopular that it should not be undertaken unless there is a clearly proved necessity for it and the Government does not consider that any such necessity exists.

The Board's scheme of determining "fair rents" proceeds on the assumption that rents are everywhere so excessive that some drastic measure is required in the interests of the tenants; but there is no evidence before Government of intolerable rack-renting anywhere such as would justify interference of the character proposed. The tracts where rack-renting is suspected to exist—the Northern Circars—are precisely the localities in which the 1801 rates which the Board would fix as fair rents are not ascertainable, the system then in force in that part of the country being chiefly that of village rents, and they are also the tracts in which the scheme of "Record of Rights" is likely to produce evils greater than it will remedy; since, if,

as the Board itself admits (paragraph 57), the mass of the tenantry in the northern districts had for a long time past been liable to eviction at the will of the landlords, the scheme of recording rights would be disastrous to them. But, on the other hand, by placing beyond question the occupancy rights of the vast majority of the ryots (which will be effected under the scheme in the Bill) the landlords' chief instrument of exaction will be rendered innocuous and there can be little doubt that as in the south where the occupancy right has not been questioned and with its aid the ryots have successfully resisted rack-renting, so in the north they will be able to do so in future.

22. The Board's scheme, moreover, for arriving at fair rates when the existing rates are high and when the 1801 rates are either unascertainable or objected to by either party is not well defined and would be found impracticable. Apparently, it is the intention that the decision that rates of rent are generally excessive should be left to the subordinate officer who is entrusted with the preparation of the "Record of Rights." No one can so decide who is not specially skilled as well as gifted with special judgment and impartiality and with large local knowledge. The "settlement" with all its attendant evils of disturbance and its admitted inequity to the landlord will be purely haphazard as to its inception and as to its execution will represent the arbitrary discretion of a more or less incompetent sub-divisional officer. The scheme is unworkable and is sure to produce evils greater than it is intended to remedy. Even if it were possible to fix fair rates which would satisfy both parties, the fixing of these rates as unalterable would be unjust both to landlord and tenant. It is on the other

hand fair to both that all rates* of rent should, within limits as proposed in the Bill, be variable with reference to prices or an alteration in the productive power of the land. This principle is fully recognised in regard to the revision of Government settlements.

The Government accordingly prefers the scheme in the Bill which, while paying due regard to the rights which have grown up during the last 90 years, affords adequate safeguards to both parties by laying down clear rules which will regulate all future enhancements and reductions of rents.

The Bill however, it will be noted, does not propose to bind tenants to existing rents in all cases. A special clause is provided in section 82 of the Bill† authorising an occupancy tenant to sue

for reduction of rent "on the ground that the rent has been unduly raised within twenty years before the date of this Act." This provision, says the Bill Committee in paragraph 31 of its report, "has been inserted with special reference to the effect of the High Court's ruling in Chockalinga Pillai's case, which is known in many cases to have enabled grasping zemindars to exact arbitrary terms by threats of evictions" (*vide* paragraph 4 *supra*).

The Board, however, objects to this provision and states (paragraph 80) that it "would in the Northern Districts unsettle for an indefinite period the relations between landlord and tenant." The Government considers that it would rather tend to settle them on a fair basis where they may be overstrained owing to recent rack-renting. It may also be noted that this provision will go a great way towards enabling that very revision of rack-rents to be brought about by the courts, which the Board proposes to effect by means of the Deputy Collectors who are to frame the Record of Rights and, where necessary, fix fair rents.

23. Another objection taken by the Board is that the provisions in the Bill for enhancement and reduction do not extend to cases where rent is payable in kind. The reason why these provisions have not been extended to produce-rents is presumably that where rent is payable in kind, that is, at a certain proportion of the produce, both landlords and tenants participate in the effects due to change in the productive power of the land as well as to change in prices which are the two main grounds on which enhancement or reduction is claimable in the case of money rents. As, however, cases may arise in which a readjustment of the proportion of division may be

required, for example, when improvements are effected by landlords or tenants or by Government, the sections relating to enhancement and reduction of rent have been amended so as to admit of their being applied to cases where rent is payable in kind.

But the Government anticipates that the provisions relating to commutation (section 34)* will be largely availed of and that the system of money-rents will soon replace the sharing system, which, wherever it exists, forms a most formidable obstacle to landlords realizing fair rents and offers to the tenants great opportunities for fraud.

* Section 42 of the amended Bill.

24. *III. Pattas and Muchilikas.*—The Board's remarks under this head refer almost entirely to defects in the existing Act, which have been for the most part corrected in the Bill. Some of the defects which the Board has alleged against the Bill do not exist as will be seen from a careful reading of it.

A few minor amendments in the Bill proposed by the Board under this head will be considered in a subsequent portion of this order under the head "Minor amendments."

25. *IV. Distraint.*—The Board disapproves the limitation in the Bill of the landlord's power of distraint to the crops only, and the Government agrees with the Board's remarks regarding this limitation. It would be regarded by the landlords as a considerable reduction of the facilities allowed them for the recovery of their rents. The provisions of the existing law on this point have accordingly been restored in the Bill as now amended by Government. The Bill gives the landlords much greater security for their rents than they now have in making the sale of such interest to be free of all of the tenant's interest and in declaring the sale of such interest to limit distraint incumbrances except those created before the passing of the Act or subsequently with the landlord's written permission. With reference to the proposal to limit distraint to crops, the Bill Committee says, "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" (paragraph 11 of the Committee's report); but as the Board considers that the provisions of Act VIII of 1865 on the subject of distraint have worked well and the majority of District officers are also of the same opinion, the Government would retain those provisions, but the power of sale of distrained property will be vested in the Civil Courts as in the old and new Bengal Acts.

26. *V. Judicial Procedure.*—The last of the more important questions discussed in the Board's Proceedings is whether it is desirable that jurisdiction in rent suits should be transferred to Civil Courts.

The Government, after a careful consideration of this question, has arrived at the conclusion that the arguments urged by District officers and the Board for the retention of the jurisdiction of Revenue officers in rent suits are mainly sentimental and that on the whole it would be a great improvement on the existing system to adopt the scheme in the Bill.

The change proposed in the Bill is two-fold—

- (1) abolition of the present summary procedure in rent suits, and
- (2) transfer of the jurisdiction thereof to the ordinary Civil Courts.

Most of the District officers who have reported on the Bill are strongly in favour of retaining the present summary procedure on the ground mainly that parties are enabled thereby to obtain cheap and speedy justice, and the Board is apparently also of the same opinion. But the Government does not concur in this view.

The retention of summary procedure is advocated chiefly in the interests of the tenants, but there is nothing to show that this procedure is more helpful to tenants than to landlords. Where the matter in issue is of real importance, summary adjudication will benefit neither party as it will only postpone a final determination of the question and increase the cost of obtaining it.

The Government is accordingly of opinion that the Committee has acted wisely in proposing to abolish the present summary procedure in rent suits. It will be noted that, in extending the Code of Civil Procedure to such suits, suitable omissions and

alterations have been made so as to simplify the procedure of the Code as much as possible, and that, under the power given to the High Court to make rules on this subject, such further modifications in procedure as may be deemed expedient can be introduced from time to time.

27. As for the transfer of jurisdiction to the ordinary civil courts, the only argument of any force which has been alleged against it is that Revenue officers are better qualified than District Munsifs to decide what is a fair rent. If the Board's scheme of a general settlement of fair rents were undertaken, it would, no doubt, be advisable and even necessary to leave the settlement of rents to Revenue officers; but under the scheme in the Bill, cases in which fair rents will have to be determined will probably be few, and the Government considers that an average District Munsif is as competent as an average Deputy Collector or other Divisional officer to decide what is a fair and equitable rent in any given case.

The comparison instituted in paragraph 110 of the Board's Proceedings as to the relative pendency of suits in Revenue courts and in the courts of District Munsifs is not really relevant. For, in the first place, the suits coming before District Munsifs are generally of a more complicated and difficult character than rent suits, and the procedure to be followed is also more elaborate. In the second place, the main question for consideration here is whether, under the altered procedure in rent-suits proposed in the Bill, Revenue officers or District Munsifs would be more competent to deal with such suits. The Government considers that, in view of the wider judicial experience of the latter class of officers, it is desirable that the jurisdiction in rent-suits should be transferred to them. The change will, moreover, get rid of the present restriction under which appeals in rent-suits are triable only by District Judges.

28. It would appear from the Bill Committee's report that one reason why they considered the transfer desirable was that Revenue officers were already overworked; but the Government considers that the District Munsifs are harder worked and that the really strong argument against the transfer is that it is likely to necessitate an increase in the number of this class of officers. This contingency, however, the Government will be prepared to face, but in view to minimize the additional strain on District Munsifs large use may be made of section 82* of the Bill which authorizes the Governor in Council to invest any revenue officer with all or any of the powers of a civil court under the Act, especially in those districts and parts of districts which are mainly zemindari and where the Divisional officers without rent-suits would have very little work. It is however quite possible that the Bill, when it becomes law, will, instead of stimulating, check litigation.

The Board considers that the proposed transfer of jurisdiction to civil courts will be disadvantageous to the tenants unless rent-suits are exempted from stamp duty in ordinary courts just as they have been in Revenue courts. As the Government concurs in this view, application will be made to the Government of India for exempting from stamp fees plaints in revenue suits brought before civil courts under the new Act.

29. *Minor criticisms on the Bill.*—Of the criticisms on individual sections of the Bill, the most important relates to section 21 which the Board says has been universally condemned as giving to the zemindari tenant far more than the Government ryot can claim under similar circumstances.

The first part of this section declares that no rent will be payable on irrigated land when, owing to the landlord's neglect to keep the irrigation work in order the crop on the land has substantially failed in any year. This provision does not give the zemindari tenants a greater concession than is allowed by Government to its ryots; on the contrary it gives less, inasmuch as the remission will be claimable by the former only when there has been neglect on the part of the landlord, whereas a Government ryot can claim remission whether there has been neglect on the part of Government or not, provided that there has been no neglect on his own part. The objection raised by the Board must therefore apply to the second clause of this section which allows full remission of rent even when a crop has been raised, if it can be

shown that the crop was secured chiefly by means of irrigation provided at the tenant's own expense. This, though sound in principle, would, the Government considers, open up too great opportunities for contesting the landlord's claim to rent, for, as the vast majority of rainfed tanks in the country are and have always been insufficient to completely irrigate their ayacuts and are often supplemented by ryots' wells, every ryot who has such a well would be able to claim remission under this section even in a good season if the tank were even slightly out of repair. The Government would accordingly omit this part of the section.

It appears advisable to omit the first part of the section also. In fairness to the landlord remission should be allowed only to the extent to which his neglect may have contributed to the failure of the crop. Loss of crops may often be largely due to tenants having omitted to make the best use of the irrigation available; and in places where the system of "kudimaramut" obtains, to their having also neglected to do the necessary repairs in time. A fair apportionment of responsibility in these cases would not be an easy matter and any attempt to fix it would be sure to lead to vexatious litigation and produce evils quite out of proportion to the benefit resulting. The Government would accordingly omit the first clause of this section also but insert in its stead a few sections to ensure the fair performance of the landlord's duty in regard to the upkeep of irrigation works, which is a subject on which the Government considers that there ought to be some specific provisions in a tenancy law. Sections 25 to 29 of the Bill as amended by Government have been accordingly inserted to take the place of section 21.

30. These sections, following the suggestion made on this subject by Messrs. Happell and Crole, provide that the Collector shall have power, on application received from any occupant of wet lands for repair of any irrigation work on which his land depends and after due inquiry as to the liability of the landlord to keep the work in proper repair, to authorize the applicant to execute the necessary repairs and to reimburse him the cost thereof by deduction from the rent payable to the landlord by the general body of tenants holding land under the irrigation work. Both Messrs. Happell and Crole would authorize the tenants to execute the repair only when the landlord, after due notice given, has neglected to do so; but the Government considers that it would not be of much use ordering the landlord to effect the repairs, as in nine cases out of ten he would not do it and time would only be lost; it is sufficient to let him show cause against the issue of an order to the effect stated above.

In making this provision in the matter of irrigation works, the Government has not overlooked the facts that the existing bad state of zemindari irrigation works is probably largely due to the default of the ryots in rendering such aid towards their maintenance as the custom of the country requires in the shape of kudimaramut, and that the complete restoration of them would entail an expenditure so great as to absorb the whole of the zemindar's net revenues for many years. In view of these considerations it is essential that strict limitations should be imposed on the power to authorize the execution of repairs by the ryots. It is accordingly expressly declared in the sections added to the Bill by Government that the power of the Collector is restricted to authorizing executions of repairs only; that he is not to authorize anything in the shape of improvements or additions to irrigation works without the consent of the landlord, or works which are of the character of "clearance" of supply or distribution channels; that the amount to be authorized to be deducted from the rent is not to exceed one year's rental of the wet lands constituting the ayacut of the work; and that the order for repairs is not to be made oftener than once in twelve years in respect of any particular work. It is further provided that the order for stoppages from the rent is not to be issued by the Collector until he is satisfied that the works specified in the order authorizing repair have been actually executed by the ryots.

There remains the case in which an irrigation work may have completely failed. In such a case, it is reasonable to suppose that the landlord would make a fair reduction in the rent; but to provide for cases in which landlords may neglect their duty in this matter, a clause will be added to section 32 (i) authorizing a suit for reduction of rent in such cases.

* Section 40 of the amended Bill.

trusts that the above provisions will go far towards enforcing the legitimate duty of the landlords in the matter of irrigation works and will not be complained of as unduly rigorous. The jurisdiction in regard to authorizing repairs will be confined to district Collectors.

31. It is unnecessary to notice in detail the Board's other minor criticisms on individual sections of the Bill or its suggestions for the improvement thereof, but the more important points will be briefly noticed below:—

(1) With reference to the doubt expressed in paragraph 50 of the Board's Proceedings as to the precise areas to which the Bill should apply, a section will be inserted in the Bill defining its "local extent."

(2) The following suggestions of the Board are accepted and will be embodied in the Bill:—

* Section 4 (a) of the amended Bill.

(a) The term "Mokhassadars" will be included in section 3 (a) *—

(b) The definition of "Rent" in section 3 † will be amended by including under tenancy easements connected with "water" and "trees" and by making it clear that the "money" referred to in the

† Section 4 of the amended Bill.

latter part of that definition relates to dues payable in respect of the "tenancy" (paragraph 44).

(c) Section 13 ‡ will be amended by providing that "patta" may also be tendered *before* the commencement of the revenue year to which it relates (paragraph 92).

‡ Section 17 of the amended Bill.

(d) The vagueness of the term "local" in the expression "average local prices" in sections 25 (a) § and 32 (c) || will be removed by specifying that the local unit of area is the taluk or zemindari division (paragraph 125).

§ Section 33 of the amended Bill.
|| " 40 of the "

(e) A sub-section will be added to section 42 ¶ of the Bill to enable landlords to defer taking summary processes for collecting rent in times of famine—*vide* Famine Commission's recommendation referred to in paragraph 39; also paragraph 154.

¶ Section 51 of the amended Bill.

(f) It will be provided in section 100 ** that when more than one person having an interest in a holding advertised for sale wishes to make payment into court as provided in that section, preference should be given to the person having priority of interest (paragraph 137).

** Section 117 of the amended Bill.

(g) It will be provided in section 118 †† that in cases of ejectment for non-payment of rent all arrears due by the tenant at the date of execution of the decree should be deducted from any amount ordered to be paid to him as compensation for improvements.

†† Section 136 of the amended Bill.

(h) A section ‡‡ will be added empowering "farmers" of public revenue other than land revenue to proceed against their sub-renters under the Rent Act (paragraph 142).

‡‡ Section 154 of the amended Bill.

(i) There being no necessity for any provision about sub-letting by tenants in this Presidency, section 121 of the Bill will be struck out (paragraph 146).

32. A few of the more important of the Board's suggestions which have not been accepted are noted below:—

(a) The Board states in paragraph 46 that to the definition of "Inamdars" the following words should be added, namely, "provided that such persons hold at least a whole revenue village." But the term "revenue village" has no recognized meaning in zemindari tracts, and there are cases in Tanjore and possibly elsewhere in the south of tenants with occupancy rights under inamdars holding less than a whole

village, *e.g.*, all cases of mohini inams will be such where they form part of Government villages—*vide* G.O., dated 4th November 1892, No. 1124, paragraph 4.

(b) The Board considers it a serious defect in the Bill that it does not contain provision for clearing the ryots of arrears accumulated against them (paragraph 83). The Board would provide "that rent of land whether secured by bonds or otherwise shall not be recoverable after the lapse of three years from the date on which the rent so secured became payable." But the Government considers that a provision to this effect would be entirely out of place in a Tenancy Bill and that, if the condition of zemindari tenants anywhere requires such a provision, it should form the subject of a special legislation similar to the Deccan Agriculturists' Relief Act. The expediency of legislation of this character is, however, questionable, and when the arrears have been converted into bond debts, to go behind the bonds and scrutinise their origin would be a prodigious undertaking. The Government trusts that the provisions of the Bill will go far towards preventing extortionate proceedings of the kind referred to by the Board in this paragraph.

(c) The Board states (paragraph 122) that "the absence of any indication as to what constitutes a 'material' injury to the value of the land or the rendering of it 'unfit for the purposes' of the tenancy is calculated to lead to much litigation." But the Government considers that these matters must be left to the courts.

(d) The Board objects to section 87 * of the Bill which bars a second suit for fresh arrears for a period of three months. But this section is intended to prevent a tenant from being harassed by too frequent suits for rent. In its remarks on this section, the Board would seem to have overlooked section 98 † clause (1) (c) of the Bill which provides for the recovery from the proceeds of sale in execution of a decree of all arrears *up to the date of the sale*. A similar provision will be inserted in section 74 ‡ of the Bill.

* Section 104 of the amended Bill.

† Section 115 of the amended Bill.

‡ " 91 of the do.

(e) With reference to the Board's remarks in paragraph 136, the Government observes that it would not be fair to avoid encumbrances created before the passing of the Act.

(f) The provisions of Act VIII of 1865 alluded to in paragraph 141 are mere surplusage.

(g) The Board remarks in paragraph 144 that there is no crying want for those sections of the Bill which relate to improvements. But they are required for carrying out the provisions of the Bill regarding enhancement of rent and compensation to be paid to ejected tenants on account of improvements.

(h) The Board objects (paragraph 145) to section 120 § of the Bill, but the Government considers that it ought to be retained. It is a moderate and reasonable concession to landlords who might often be thwarted in useful projects by the contumacious opposition of tenants.

(i) The Board's proposal (paragraph 153) that provision should be made for the levy of prohibitory assessment on unauthorized and improper cultivation of tanks and channels does not commend itself to Government. The zemindars or any one else interested should be left to the ordinary remedies against such trespass.

33. The Bill amended with reference to the foregoing remarks || will be transferred to the Legislative department.

|| Appendix A.

(True Extract.)

(Signed) E. GIBSON,
Ag. Secy. to Government.

To the Board of Revenue (Land Revenue).
" Legislative Department.

Govt. of {1893} Madras.
REVENUE.

Issued

Recd.

Encl.

G.O., 10th October 1893, No. 890.

OCTOBER.

Madras Tenancy Bill.

Amending and transferring the — to the
Legislative Department.

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THE MADRAS TENANCY BILL, 189 .

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ABBREVIATIONS.

B. T. A. = Bengal Tenancy Act.

[The section-numbers in square brackets denote the sections in the Committee's Bill.]

SURRENDER AND ABANDONMENT.

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- 142. Tenant to give notice to the landlord in case of transfer of his interest in the land.
- 143. Landlord to give notice to tenants in case of transfer of the whole or part of his estate.

EJECTMENT.

- 144. No ejectment except in execution of a decree.

CHAPTER XIV.

LANDLORD'S PRIVATE LANDS.

- 145. Saving as to Private lands.
- 146. Power for Government to order survey and record of landlords' Private lands.
- 147. Power for Revenue officer to record Private land on application of landlord or tenant.
- 148. Rules for determination of Private land.
- 149. Publication of record.
- 150. Disputes as to entries in record to be heard and decided.
- 151. Procedure to be adopted by Revenue officer.
- 152. Appeals against Revenue officer's decisions.
- 153. Undisputed entries to be presumed to be correct.

CHAPTER XV.

FARMERS PUBLIC REVENUE.

- 154. *Farmers of revenue may proceed against sub-renters.*

SCHEDULE I.—Form of Receipt.
SCHEDULE II.—Limitation.

ABBREVIATIONS.

B. T. A. = Bengal Tenancy Act.

[The section-numbers in square brackets denote the sections in the Committee's Bill.]

SURRENDER AND ABANDONMENT.

SECTIONS.

- 139. Surrender.
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SUB-DIVISION AND TRANSFER OF TENANCY.

- 141. Division of tenancy not binding on landlord unless made with his consent.
Apportionment of rent on sub-division under the law of inheritance or a court's decree.
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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:—

CHAPTER I.

PRELIMINARY.

B.T.A., S. 1.

[1]

1. This Act may be called the Madras Tenancy Act, 1885.
Short title.

B.T.A., S. 2.

[2]

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

3. This section and sections 1 and 2 shall extend to the whole of the Presidency of Madras outside the limits of the town of Madras. The remainder of the Act shall extend to the whole of the Presidency as aforesaid, except the districts of South Canara, Malabar and the portion of the Nilgiri district known as the South-East Wynaud. But the Governor in Council may by notification declare that from the date of such notification any of the provisions of this Act shall be extended to any of such excepted areas.
Local extent.

B.T.A., S. 3.

Act VIII of 1865, S. 3.

[3]

4. 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, Mokhassadárs and Inám-dárs; also assignées, 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.

"Inámdár" means a person to whom a grant of land on favorable tenure or of land revenue has been made or confirmed, or in whose favour 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 or other easement appertaining to the land, water or trees held by the tenant, and includes also money recoverable by the landlord from the tenant in respect of such land, water or trees 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.

"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.

CHAPTER II.

OCCUPANCY RIGHT.

5. Occupancy right in land may be created at any time by written agreement between landlord and tenant.

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

7. Every tenant who has by the operation of any enactment, by custom, or otherwise a right of occupancy in any land shall have a right of occupancy in that land under this Act.

B.T.A., S. 193.

B.T.A., S. 20 (7).

B.T.A., S. 19.

S. 20, B.T.A., omitting clauses (5), - (6). Clause (7) is provided for in section 6.

[5]

8. 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 4, 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 such land.

(2) When a tenant having right of occupancy in land is admitted to the occupation of other land without limitation of the terms of the tenancy of such other land it shall be presumed that his occupancy right extends thereto.

(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

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

[6]

10. 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.

[7]

11. An occupancy tenant of any of the landlords mentioned in clause (a) of section 4 shall not be ejected by such landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(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. 23.

B.T.A., S. 25.

4
12. (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.

(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 *ijá-rádár* or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his *ijára* 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 *ijára* or farm.

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

CHAPTER III.

PATTÁS AND MUCHILKÁS.

14. No landlord mentioned in section 4, 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.

[8]

B.T.A., S. 22.

[9]

B.T.A., S. 26.

[10] Act VIII of 1865, S. 7.

Act VIII of 1865, Ss. 3 and 6. [11]

Act VIII of 1865, S. 4. [12]

Act VIII of 1865, S. 7. [13]

Act VIII of 1865, Ss. 8 and 71. [14]

Act VIII of 1865, Ss. 8 and 65. [15]

5

15. In the case of occupancy tenants the engagement of the landlord shall be termed "Pattá" and that of the tenant "Muchilká" and shall be signed by the respective parties or persons duly authorised in that behalf.

16. 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 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.

17. Pattás and Muchilkás may be exchanged for periods of one year or more; but the tender of *pattá* shall always take place within or before twelve months from 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.

18. When any of the landlords mentioned in section 4, clause (a), shall, for 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.

19. When a tenant of any of the landlords mentioned in section 4; clause (a),* shall for one month have refused to accept the Pattá

6
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.

20. 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. [16]

21. The terms of Pattás and Muchilkás exchanged or decreed between landlords mentioned in section 4, clause (a), and their tenants shall remain in force until fresh Pattás and Muchilkás are exchanged or decreed. [17]

CHAPTER IV.

RATES OF RENT.

22. In the decision of suits between landlords and their tenants involving disputes regarding rates of rent, the rules contained in the following section shall be observed. [18]

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

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.

Act VIII of 1865, S. 10.

Act VIII of 1865, S. 11.

Act VIII of 1865, S. 11 (I, II, III).

7
(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.

(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.

(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.

Act VIII of 1865, S. 11 (IV). [20]

24. (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.

(b) Notwithstanding any law or custom to the contrary, every *bona 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.

25. Any tenant or tenants holding wet lands under any of the landlords of the classes specified in clause (a) of section 4 may apply to the District Collector stating that the irrigation work whereby the land held by the applicant or applicants is served is out of repair, and praying for the issue of an order under section 26 for the repair of the said work. The application shall state in sufficient detail the nature of the repairs deemed necessary and the probable cost of the same and the extent and rental of the land irrigated by the work. The District Collector shall then cause to be served on the landlord a copy [21 omitted.]

of the application and a notice to show cause on a date to be stated in the notice why the order prayed for should not issue. The notice shall also be placarded in the village or villages wherein the land irrigated is situated.

26. On the date fixed in the notice or on any other date to which the enquiry may be adjourned the District Collector shall hear the applicants, the landlord and any tenants of land irrigated by the work who may attend, and may take any evidence that he may think fit. If satisfied that the irrigation work is in disrepair and that the landlord is by custom of the country or otherwise bound to provide for its maintenance, the District Collector shall pass an order authorizing the execution by the applicant or applicants, or by them and any tenants willing to join with them, of any of the work stated in the application or shown at the enquiry to be necessary to restore the irrigation work to efficiency, and stating the estimated cost of the same. The order shall also fix a reasonable time within which the works should be executed.

Provided that such works shall be works of repair only, and shall not include additions or improvements unless with the consent of the landlord; nor shall they include any works such as the clearance of supply and distribution channels which by the custom of the country, should be carried out by the tenants.

Provided further that twelve years shall have elapsed from the completion of repairs to the irrigation work, authorized by a previous order, if any, passed under this section.

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

Enquiry by Collector and order on application.

Recovery of cost of repairs from tenants.

28. The amount recovered less the cost, if any, of inspection of the works executed, shall be paid to the parties authorized under section 26. The cost of estimates and of inspection may be included in the amount to be stated in the order passed under section 26.

29. Every tenant from whom any sum may be recovered under the last preceding section shall be entitled to deduct such sum from any rent payable by him to the landlord; and a receipt for the sum recovered shall be valid as a receipt for rent due by such tenant.

ENHANCEMENT.

B.T.A., S. 27.

[22]

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

B.T.A., S. 28.

[23]

31. The rent of an occupancy tenant shall not be enhanced except as provided by this Act.

B.T.A., S. 29.

[24]

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

- (a) The contract must be in writing and registered;
- (b) The rent must not be enhanced so as to exceed by more than one-eighth 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 improvement 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.

33. Any of the landlords mentioned in section 4, clause (a), may institute a suit to enhance the rent of an occupancy tenant on one or more of the following grounds, namely—

- (a) that, where the rent is payable in money there has been a rise in the average local prices of staple food crops in the taluk or zemindari division 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;
- (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.

34. Where an enhancement is claimed on the ground of a rise in the average local prices of staple food crops—

- (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

[25]

B.T.A., S. 30.

VIII of 1865, S. 11 (IV).

[26]

B.T.A., S. 32.

- 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;
 - (f) the Local Government shall make rules for determining what are to be termed staple food crops in any local area and for the guidance of officers preparing price lists under this section.

B.T.A., S. 39 (7).

B.T.A., S. 33.

B.T.A., S. 110.

[27]

35. (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.

36. Where an enhancement is claimed under section 33, clause (c), the Court shall have regard to—

Rules as to enhancement on ground of improvement by Government.

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

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

Rules as to enhancement on account of 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.

38. 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.

[28]

New.

[29]

B.T.A., S. 34.

[30]

B.T.A., S. 36.

B.T.A., S. 37.

[31]

39. (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 42, 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 372 of the Code of Civil Procedure.

REDUCTION OF RENT.

[32]

40. (1) An occupancy-tenant may institute a suit for the reduction of rent

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 in the case of wet land that the irrigation work on which it is dependant has completely failed, or
- (c) on the ground in cases where rent is payable in money that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops in the taluk or zemin-dari division during the currency of the present rent, or
- (d) on the ground that the rent 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.

[33]

41. (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.

Limitation of right to bring successive suits for reduction.

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

COMMUTATION.

42. (1) Where an occupancy-tenant pays for a holding ^{Commutation of rent payable in kind.} 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 those 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 reason 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.

[34]

B.T.A., S. 40.

CHAPTER V.

NON-OCCUPANCY TENANTS.

B.T.A., S. 41.

[35]

43. This chapter shall apply to tenants of the landlords mentioned in section 4, clause (a), not having a right of occupancy, who are in this Act referred to as non-occupancy tenants.

B.T.A., S. 42.

[36]

44. 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.

B.T.A., S. 43.

[37]

45. The rent of a non-occupancy tenant shall not be enhanced except by registered agreement or by agreement under section 47:

Provided that nothing in this section 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.

B.T.A., S. 44.

[38]

46. 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):—

- (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 47, or that the term for which he is entitled to hold at such a rent has expired.

47. (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.

(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.

[39]

B.T.A., S. 46.

B.T.A., S. 45.

B.T.A., S. 47.

VIII of 1865, S. 13.

VIII of 1885, S. 14.

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

48. A suit for ejectment on the ground of the expiration of the term of a lease or of the expiration of the term fixed by section 47 sub-section (7) shall not be instituted against a non-occupancy tenant unless notice to quit has been served on the tenant not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

[40]

49. 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.

CHAPTER VI.

LANDLORDS SPECIFIED IN SECTION 4,
CLAUSE (b).

[41]

50. All landlords specified in section 4, 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.

CHAPTER VII.

ARREARS OF RENT.

[42]

51. (1) 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.

(2) If in times of distress a landlord desires to postpone demand on his tenants he may do so by a general declaration to be published in each village in such manner as may be prescribed by rule to be framed by the Governor in Council in this behalf: and a declaration so published shall operate as an agreement as to the time of payment within the meaning of sub-section (1).

52. (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.

RECEIPTS.

53. (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.

(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.

54. If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 53 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.

DEPOSIT OF RENT.

55. (1) In any of the following cases, 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;

[43]

B.T.A., S. 55.

[44]

B.T.A., S. 56.

[45]

B.T.A., S. 58.

[46 omitted.]

[47]

B.T.A., S. 61.

(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 *bond 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.

[48] 56. (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.

B.T.A., S. 62.

(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.

57. (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.

(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 55, 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.

58. (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.

[49]

B.T.A., S. 63.

[50]

B.T.A., S. 64.

(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.

[51]

59. 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.

[52]

60. (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 favour 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.

[53]

61. 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.

[54]

62. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has,

B.T.A., S. 65.

B.T.A., S. 66.

B.T.A., S. 67.

B.T.A., S. 68.

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.

PRODUCE RENTS.

63. (1) Where rent is taken by appraisement or division of produce,—

(a) If either the landlord or tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or (b) if there is a dispute about

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

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

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

64. (1) Where a Collector appoints an officer under the last foregoing section, the

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

B.T.A., S. 69.

B.T.A., S. 70.

(2) The officer shall before making any appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed ex-parte.

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

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

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but subject as aforesaid, his order shall be final and shall on application to a Civil Court by the landlord or the tenant be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

65. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

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

(3) In either case, the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

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

CHAPTER VIII. DISTRAINT.

66. When an arrear of rent is due and has not been due for more than a year and no security has

B.T.A., S. 121.

[55]

been accepted therefor, the landlord may, in addition to any other remedy to which he is entitled by law, distrain the moveable property of the defaulting tenant or the crops or the ungathered produce of the land or trees held by him while in his possession:

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 Revenue year preceding that for which the arrears accrued unless that sum is payable under patta and muchilika or decreed under this Act, or under written contract; or

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

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

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

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

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

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

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

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

Provided that property 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.

68. The distrainer may at any time before sale-release the property distrained on the payment of the arrear with interest and costs of distress or on security therefor being furnished to his satisfaction.

Regulation XXVIII of 1802, S. 4.

[56] Act VIII of 1865, S. 15, Clause 1st.

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

Act VIII of 1865, S. 22.

Act VIII of 1865, Clause 2nd. [57]

69. 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.

Act VIII of 1865, S. 16. [58]

70. 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 48 hours of its service on the defaulting tenant, to the Civil Court having jurisdiction.

Act VIII of 1865, S. 19.

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

Act VIII of 1865, S. 23.

72. The distrainer shall not work the bullocks or cattle or make use of the property distrained. He shall provide necessary food for cattle or live stock and the cost of doing so shall be a charge against the owner.

Act VIII of 1865, S. 24.

73. The amount of value of property distrained shall be as nearly as possible proportionate to the arrears due.

Act VIII of 1865, S. 28.

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

Act VIII of 1865, S. 29.

75. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling-house, the outer door of which may

be shut, or within any apartments appropriated to women, which, by the usage of the country, are considered private, such distrainer shall represent the same to the officer in charge of the nearest Police station. On such representation, the officer in charge of the said station shall send a Police officer to the spot, in the presence of whom the distrainer may force upon the outer door of such dwelling-house, in like manner as he may break open the door of any room within the house except the zenana. The distrainer may also, in the presence of the Police officer, after due notice given for the removal of women within a zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who according to the customs of the country cannot appear in public), enter the zenana apartments for the purpose of distraining the defaulter's property deposited therein, but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants.

76. On receipt of the copy of the notice of distraint forwarded by the landlord as required in section 70, 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 property 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 Court why the distraint should be withdrawn, the property will be sold on a day and at a place to be fixed by the Court and set forth in the notice.

77. 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 property distrained shall, subject to the provisions of section 93, be sold by the Court to realise the said arrear with interest and all costs.

78. The sale shall ordinarily be held in the village where the property was distrained or is stored, unless the Court is

[59] Act VIII of 1865, S. 18.

[60] Act VIII of 1865, S. 18.

[61] B.T.A., S. 128.

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 property at the time and place of sale, and the cost of the transport thereof shall be considered part of the cost of distraint.

B.T.A., S. 129.

Act VIII of 1865, S. 21.

[62]

79. (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.

(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.

B.T.A., S. 126.

[63]

80. (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.

(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.

Act VIII of 1865, S. 33.

[64]

81. The property 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 thereof the distraint shall be immediately withdrawn with respect to the remainder.

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82. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered

for it, and if the owner of the *property*, or a person 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*.

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

84. The officer appointed to sell *property* distrained shall bring to the notice of the Court any material irregularity committed by the distrainer under colour 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 67, or failed to publish the notice as required by section 70, or that the distress was excessive, the Court may direct the restoration of the distrained *property* 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.

85. When *property* distrained may be stolen, lost, damaged or destroyed, while in the keeping of the distrainer, by reason of his not having taken the necessary precautions for its 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.

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

87. Claims to crops distrained under section 66, whether founded upon a previous sale, mortgage, or otherwise, shall

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B.T.A., S. 132.

Act VIII of 1865, S. 35.

[67]

VIII of 1865, S. 17.

[68]

VIII of 1865, S. 20.

[69]

VIII of 1865, S. 25.

[70]

VIII of 1865, S. 32.

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 distress, 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.

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

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

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

91. (1) From the proceeds of every sale of distrained *property* 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 by the Governor in Council in this behalf.

(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 to the discharge of any arrear which may have accrued between the date of distress and the date of sale; and the surplus (if any) shall be paid to the person whose *property* has been sold. The defaulter shall receive a receipt for arrears of rent discharged from the proceeds of sale.

[71]

VIII of 1865, S. 26.

[72]

VIII of 1865, S. 27.

[73]

B.T.A., S. 133.

[74]

B.T.A., S. 134.

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

[75]

B.T.A., S. 135.

93. If at any time after a distraint has been made under this chapter and before the sale of the distrainted *property*, the defaulter, or the owner thereof 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 76, 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.

[76]

Act VIII of 1865, S. 22.

94. 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 *property* distrainted shall have instituted a suit against the landlord contesting the legality of the distraint and claiming compensation in respect of the same.

[77]

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

95. (1) When an inferior tenant, on his produce being lawfully distrainted 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.

[78]

B.T.A., S. 137.

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

B.T.A., S. 139.

[79]

96. 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 distrainted by such landlord, the landlord's distraint shall prevail; but if the *property* is sold by a Court in consequence of such landlord's distraint, the surplus proceeds of the sale shall not be paid under section 91 to the owner of the *property* without the sanction of the Court by which the order of attachment or sale in execution of a decree was issued.

B.T.A., S. 140.

[80]

97. No appeal shall lie from any order passed by a Court under this chapter, but any person whose *property* is distrainted by his landlord under section 66 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.

B.T.A., S. 142.

[81]

98. 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.

CHAPTER IX.

JUDICIAL PROCEDURE.

99. 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 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.

[82]

New.

100. (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

[83]

B.T.A., S. 143.

under this Act or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(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.

101. (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.

(2) When under this Act a Civil Court is authorised 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.

102. 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.

103. 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.

104. 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.

[84]

B.T.A., S. 144.

[85]

B.T.A., S. 145.

[86]

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

[87]

B.T.A., S. 147.

B.T.A., S. 148.

[88]

105. 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, whether an appeal is allowed or not:

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears:

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

(i) the notice and proclamation referred in sections 274 and 289 of the Code of Civil Procedure shall also be fixed up in the cutcheries of the Tahsildar and Deputy Tahsildar of the taluk or division of a taluk in which the land is situated.

106. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

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

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

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

107. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

108. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying such reasonable portion of the money as the Court directs.

109. When a defendant pays money under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

110. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of any revenue year, shall

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B.T.A., S. 149.

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B.T.A., S. 150.

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B.T.A., S. 151.

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B.T.A., S. 152.

[93]

B.T.A., S. 154.

ordinarily take effect on the commencement of the revenue year next following; and, if passed in a suit instituted in the last four months of the revenue year, shall ordinarily take effect on the commencement of the revenue year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

[94]

111. (1) A suit for the ejectment of a tenant on the ground—
Relief against forfeitures.

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

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to 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. 155.

112. The following rules shall apply in the case of every tenant of the land-lords mentioned in section 4, clause (a), who is ejected from a holding :—

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

(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.

113. 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

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

[95]

B.T.A., S. 153.

[96]

B.T.A., S. 157.

possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

CHAPTER X.

SALE FOR ARREARS UNDER DECREE.

[97] 114. Where 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 but to no others.

Liabilities of purchaser as to incumbrances.

B.T.A., S. 159.

[98] 115. (1) In disposing of the proceeds of a sale of a holding or of any property under a decree 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 the property 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 institution 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.

116. (1) Sections 278 to 283 (both in- [99]

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.

clusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree

for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the 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 cost incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release 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.

117. (1) When any person having in a [100]

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

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 to him;

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

(c) he shall be entitled to possession 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.

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

118. When a holding is advertised [101]

Inferior tenant paying into Court may deduct from rent.

for sale under this chapter in execution of a decree against

B.T.A., S. 170.

B.T.A., S. 171.

B.T.A., S. 172.

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.

[102]

119. (1) Notwithstanding anything Decree-holder may bid at sale; judgment-debtor may not. contained in section 294 of the Code of Civil Procedure, the

holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.

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

(3) When a judgment-debtor purchases by himself or through another person 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.

B.T.A., S. 174.

120. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, Application by judgment-debtor to set aside sale. at any time within

thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs and for payment to the purchaser a sum equal to five per centum of the purchase money.

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

Provided that if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding he shall not be entitled to make an application under this section.

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

XIV of 1882.

XIV of 1882.

XIV of 1882.

CHAPTER XI.

CONTRACT AND CUSTOM.

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

Restriction on exclusion of Act by agreement.

[103]

B.T.A., S. 178.

- (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 10;
- (c) take away the right of a tenant to surrender his holding in accordance with section 139;
- (d) take away the right of a tenant to transfer or to bequeath his holding in accordance with any law to which he is subject;
- (e) take away the right of a tenant to apply for a reduction of rent under section 40;
- (f) take away the right of a landlord or a tenant to apply for a commutation of rent under section 42; or.

(g) affect the provisions of section 61 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 *bona 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 8, 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.

[104]

122. When a tenant holds his homestead, 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.

B.T.A., S. 183.

[105]

123. 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.

CHAPTER XII.

LIMITATION.

124. (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,

B.T.A., S. 184.

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Limitation in suits, appeals and applications in Schedule II.

after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or 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.

125. (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.

(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.

126. (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.

(3) Persons entering the apartments of women or forcing open the outer door of dwelling houses contrary to the provisions of this Act shall

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B.T.A., S. 185.

[108]

B.T.A., S. 186.

Act VIII of 1865 S. 30.

be deemed to have committed house-trespass within the meaning of the Indian Penal Code.

B.T.A., S. 187.

[109]

127. (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.

[110]

128. 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.

[111]

B.T.A., S. 75.

129. (a) The landlords mentioned in section 4, 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.

[112]

130. (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 cultivable;

(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.

131. (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.

(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.

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

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

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B.T.A., S. 77.

[114]

B.T.A., S. 78.

(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.

[115]

133. (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.

(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.

[116]

134. (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.

(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.

[117]

135. (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.

(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.

136. (1) Every tenant who is ejected from his holding shall be entitled to compensation for improvements which have been made in 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. *All arrears of rent due by the tenant at the date of the execution of the decree shall be set off against the amount of compensation for improvements ordered to be paid.*

(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

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B.T.A., S. 82.

B.T.A., S. 83.

[119]

determining the qualifications of those assessors and the mode of selecting and remunerating them.

137. (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 expended on 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.

[120]

Acquisition of land for building and other purposes.

138. 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.

SURRENDER AND ABANDONMENT.

139. (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 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) 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.

140. (1) If a tenant voluntarily abandons his residence in the village without notice to his landlord and without arranging for payment of his rent as 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.

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B.T.A., S. 86.

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B.T.A., S. 87.

(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 one year, 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) If an occupancy tenant who has abandoned his holding does not sue for recovery of possession within the period above prescribed, his occupancy right shall be extinguished.

SUB-DIVISION OF TENANCY.

141. 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:

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 and for separate pattas or engagements therefor.

142. When a tenant of any of the landlords mentioned in section 4, clause (a), has a transferable 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, they shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer and all proceedings taken under this Act against the

B.T.A., S. 88.

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

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

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

Jointly and severally liable to the landlord for arrears of rent accruing due after the transfer and all proceedings taken under this Act against the

B.T.A., S. 75.

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tenant shall be as effectual and binding upon the transferee as if they had been taken against the transferee himself.

143. When any of the landlords mentioned in section 4, 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, *no tenant shall be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred before notice of such transfer was given to him, and 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.*

EJECTMENT.

144. No tenant of any of the landlords mentioned in section 4, clause (a), shall be ejected from his holding except in execution of a decree.

CHAPTER XIV.

LANDLORD'S PRIVATE LANDS.

145. 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 4, known as Kambattam, Khás, Séri, Pannai, or the like, or to lands held by the tenants of inámdárs who possess occupancy right independent of the inam grant.

146. 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.

147. 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

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B.T.A., S. 72.

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B.T.A., S. 89.

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B.T.A., S. 116.

[129]

B.T.A., S. 117.

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B.T.A., S. 118.

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.

148. (1) The Revenue officer shall record as a landlord's 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.

149. (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.

(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.

150. If at any time before the final publication of the record under the last foregoing section, a dispute arises as to the correctness

B.T.A., S. 120.

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B.T.A., S. 105.

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B.T.A., S. 106.

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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.

151. 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.

152. (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 150 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter.

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

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

CHAPTER XV.

FARMERS OF PUBLIC REVENUE.

154. All farmers of public revenue shall be entitled to proceed against their sub-renters for the recovery of arrears either by distress or by suit under this Act as if such arrears were rent, if they shall have taken written engagements from such sub-renters specifying the amount of rent to be paid by them.

[134] B.T.A., S. 107 modified.

[135] B.T.A., S. 108.

[136] B.T.A., S. 109.

Act VIII of 1865, S. 80.

SCHEDULE I.

FORM OF RECEIPT.

Patla No.

of Patti

situated in the taluk of

in the district of

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

tenant of the village of

Signature of the
landlord or his agent
or village officer
acknowledging
receipt thereof.

Amount paid.

In ready-money.

In kind.

Items.

For which paid.

Name of Payer.

Date of payment, Month and Year.

Amount paid.

In ready-money.

In kind.

Items.

For which paid.

Name of Payer.

Date of payment, Month and Year.

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SCHEDULE II.

LIMITATION.

(See Section 124.)

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 ejection 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 53 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 unauthorized exactions and penalties under section 129 of this Act.	One year	... From the date of the exaction.

PART II.—Appeals.

Description of Appeal.	Period of Limitation.	Time from which period begins 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.

STATEMENT OF OBJECTS AND REASONS.

The law in force in this Presidency on the subject of landlord and tenant is Madras Act VIII of 1865, generally known as the Rent Recovery Act. The imperfections of this Act have long been recognized and, from time to time, efforts have been made to remedy them. The most serious defect is that this enactment contains no definition of the substantive rights of ryots in zemindari tracts, although section 11 lays down certain rules for the decision of suits involving disputes regarding rates of rent. But whether ryots in zemindaris have any occupancy right in their holdings there is no positive declaration either in this Act or in any other enactment. Nevertheless that such right exists is implied in section 38 of the Act, where the "saleable interest" of a tenant in the land which he holds is referred to as well as in the earlier legislation of 1822, but the right has never been defined. As for "usage," the received opinion has always been that a tenant is entitled to hold his land so long as he pays his rent. Speaking generally the occupancy right of the tenant has been always recognized by the zemindars in the south of the Presidency, while in the north the rights of tenants have been encroached upon steadily by proprietors, and the right of occupancy on the part of a zemindari tenant in certain districts has been absolutely denied. In the absence of statute law, the judicial decisions upon this question have been unsatisfactory and often conflicting.

2. It is one of the main objects of the present Bill to remove doubts upon this subject and to define the relations between landlord and tenant in regard to occupancy right. The terms "landlord" and "tenant" are defined in chapter I, and chapter II treats of "occupancy right" providing for the acquisition of such right by written agreement or by continuous holding for 12 years, and enacting that every tenant of zemindars, &c., shall be presumed to have a right of occupancy in his holding until the contrary is proved or admitted.

3. Chapter III, which relates to the interchange of pattas and muchilkas, follows substantially the provisions of the Rent Recovery Act, but it is provided, elsewhere in the Bill, that suits regarding pattas and muchilkas shall ordinarily be tried by the Civil Courts instead of by the Revenue Courts as at present. By section 21 of the Bill pattas and muchilkas exchanged or decreed are declared to continue in force until fresh documents are exchanged or decreed.

4. The next chapter (IV) prescribes rules for regulating the rates of rent and for their enhancement or reduction in the case of occupancy tenants, while chapter V provides for the determination of rent in the case of a non-occupancy tenant and for his ejection in certain circumstances. These two chapters are based upon the Bengal Tenancy Act.

5. Chapter VI, following Act VIII of 1865, authorizes ryotwari landlords, who have taken written agreements from their tenants, to ed under this Act for the recovery of rent.

6. Chapters VII and VIII relate to thereof, the provisions of these chapters being those of the Bengal Tenancy Act, combined with those of the Madras Rent Recovery Act.

7. Chapter IX follows the Bengal Tenancy Act in laying down rules of judicial procedure under the Bill, and chapter X regulates sales for arrears under decree. Chapters XI and XII deal respectively with "Contract and Custom" and "Limitation" following also the Bengal Tenancy Act.

8. Chapter XIII treats of miscellaneous matters including "improvements," "acquisition of land" for special purposes, "surrender and abandonment" of holdings and "sub-division of tenancy" and provides (section 144) that no tenant of a zemindar, &c., "shall be ejected from his holding except in execution of a decree." Chapter XIV deals with the "landlord's private lands" saving such lands from the operations of the previous chapters of the Bill in regard to occupancy right. Both these chapters XIII and XIV are founded upon corresponding provisions of the Bengal Tenancy Act, while chapter XV, which empowers "farmers of public revenue," who have taken written engagements from their sub-renters, to proceed against such sub-renters "by distress or by suit under this Act" is in substance a reproduction of section 86 of Act VIII of 1865.

9. The foregoing statement shows that, in its main provisions, the proposed Bill is based upon the Bengal Tenancy Act VIII of 1885, modified, to suit local conditions, chiefly by embodying in the Bill those provisions of the existing law, viz., Madras Act VIII of 1865, which it is considered desirable to retain. The Bengal Act has been taken as the model because it was the outcome of very full discussion and was applied to a state of facts in the main the same as that which obtains in this Presidency. Should this Bill become law, Madras Act VIII of 1865, Act II of 1871 and section 7 of Act III of 1890 will be repealed by section 2 thereof.

10. Full details of the views of the Committee which drew up the present Bill and of the Revenue Board and the reasons of Government for rejecting the latter, will be found in the papers * appended.

* Board's Proceedings, dated 26th August 1892, No. 1470, and G.O., dated 10th October 1893, No. 890.

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