1899

Revenue (~~191~~) Department.

MISCELLANEOUS SERIES.

G.O., No. 513

DATED 4-2-1899

[Despatch Abstract.]

Communicating for Communication to the Select Committee on the Malabar Compensation for Tenant Improvements Bill Certain opinions on the said Bill.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
C No	1172/99						
C No	1665/99						

7

Revenue

~~Judicial~~ (1899) **Department.**

CURRENT No. 336

12

To be stitched with G.O. 513 4-2-99.

Order MS 2/2/99.

From The District Judge of North Malabar

No. 46.

Dated 14th January 1899.

Received 16 JAN 99

Registered 16 JAN 99 " "

Enclosures —

Spare copies —

SUBJECT.

Report on the Tenancy Bill to secure to tenants in the Malabar District Compensation for Improvements called for in the Proceedings No. 502 dated Decr 17th.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No. 46

Tellicherry 14th January 1899.

From

A. Thompson Esqre.
District Judge
of North Malabar.

To

The Secretary to Government
Revenue Department.

GOVERNMENT OF MADRAS
10 JAN 01

Proof sent

To Lis.
Two copies of the proof are submitted.
MS
20.1.99

Reminder has been sent to the press for proofs of the opinions of the Dt. Judge S. Malabar & Mr. Sankaran Nair
RS
20-1-99

Sir,

I have the honour to submit the report called for in your proceedings dated December 17th 1898.

2. Legislation is certainly necessary in order to do away with the decisions of the High Court that the tenant is entitled, not to the value of his improvements but only to the cost of making them, but the "statement of objects and reasons" shews that nothing need be now said on this point.

3. Section 3. The so called explanation to the definition of Tenant is really a substantial change in the law. If a mortgagee under clause (d) of section 58 of the Transfer of Property Act be excluded from the definition of tenant, questions will be raised as to the now undisputed right of Kanomdars. The explanation should be omitted.

4. The definition of "Landlord" is quite insuffi-
cient. Many, if not most, suits for Eviction or Redemption are brought, not by the landlord but by the person to whom the landlord has granted a new demise. T-

to

tenant in such suits does not hold under the Plaintiff so that it might be a question whether section 6 applied and the object of the Bill might be defeated-

In any case the word "immediately" should be omitted, so as to provide for the case of sub tenants-

5. The explanation to the definition of "Improvement" should also be omitted; I have never heard of a case, to which the explanation would be applicable, and it will be only a cause of unnecessary disputes.

6. The list of improvements contained in clause (2) might be omitted the excellent definition contained in clause (1) making it quite superfluous-

7. Section (6) Clause (2) is a very excellent change in the law of Civil Procedure. At present if a landlord does not wish to pay the compensation fixed by the decree, he leaves the decree hanging unexecuted over the head of the tenant for the next 12 years, and the tenant is powerless although he may be anxious to quit the land on receiving his compensation. In order to give full effect to this change in the law it will be necessary to add after the word tenant "as if the sum "ordered to be paid to the tenant as compensation had "been decreed against the landlord in a suit for money".

8. Clause 3 should be omitted, it can only cause disputes and afford a loophole for the landlord to evade section 16-

9. Clause (4) - The District Munsif, Talipparamba, suggests the insertion of the words "to the person by whom arrears are due" after the words "ordered to be paid" so as to meet the case of the value of the improvements being due to a sub tenant-

10. Clause (6) should be omitted as utterly useless. I have never heard of a case, in which recourse has been made to assessors under the present Act-

11. Clauses (c and d) of section 8 should certainly be omitted as being quite inconsistent with the object of the Bill, which is to secure to the tenant the value of his improvements and not their mere cost. Moreover, these clauses will impose upon the Courts the work of calculating the compensation twice over, firstly under section 8 and secondly under Section 10 in order to see if the sum ascertained under section 8 exceeds the sum ascertained under section 10. The clauses are an illogical combination of two inconsistent ideas; compensation according to market value is intelligible and so is compensation according to cost, but compensation calculated at $\frac{3}{4}$ of the market value and $\frac{1}{4}$ of the cost seems to be based on no rational principle-

12. Section 9. Why should the tenant receive only $\frac{3}{4}$ of the market value of trees and plants sown or planted by him or by a previous tenant? Why again should the tenant receive half the market value of trees planted by the landlord or spontaneously grown, the cost of maintaining such trees being virtually nil?

13. Clause 2 of this section is superfluous as if the trees are immature, this will be considered in estimating their market value-

14. The proviso to section 10 should be omitted as

as it will only cause unnecessary disputes - The tenant is hardly ever overburdened with capital and it may be safely assumed that in 999 cases out of 1000 he will carry out his improvements in the least expensive way and it is hardly necessary to legislate for the odd 1000th case -

15. Section 12 - Why should the Court have to carry back its enquiry for ten years? The market price at the time of valuation is sufficient -

16. Schedules II, III and IV should be omitted. I have heard of nothing like them in the way of legislation since the mediæval days when the price of almost every article and the costume of all classes of the population were fixed by Statute - It may be said that the figures given in these Schedules are presumptive only and may be rebutted by evidence but the practical result will be that the Courts will require so much evidence to rebut them, that they will be virtually treated as conclusive -

These schedules will merely reintroduce in a greatly aggravated form the evil, which Madras Act I of 1887 was passed to remedy - That Act was passed in order to abolish the tables of rates, by which the Courts then calculated improvements - It is manifest that such tables can, at the utmost, be correct only for the time, at which they were prepared -

18. Section 14 will be of hardly any practical value owing to the difficulty of obtaining an alteration of the rates once fixed by the Legislature -

19.

19. Section 15 should be omitted - The Malabar tenant is not destitute of sense, he plants trees in order to get as much profit as he can out of them during the term of his tenancy and he is much more likely to know how many trees his land will sustain with advantage than is the legislature. If a case of overplanting were to occur, it would carry its own remedy with it as the overplanting, if real, would result in a diminution of the yield of the trees and this would be taken into account under section 8 -

I have the honour to be,
Sir,
Your most obedient servant.

S Bashyam

District Judge.

Ch

to
tion

Revenue

~~Ecclesiastical~~ (1899) Department.

CURRENT No. 705.

From

The Collector of Malabar

Dated 25th January 1899.

Received 28th January 1899.

Registered 28th January 1899.

Enclosures . . . 9 . . . .

Spare copies —— . ——

Order Forms.

Two proofs submitted.

2. The opinions will be noted on in the office; meanwhile copy may be sent to H.M.

RJ
1-2-99

Leave
11/1/99

Yes: advance proof has been sent to H.M.

8/1

Stitch with 513
4.2.99

Region C No. 1653
13898.

SUBJECT.

Submitting with remarks opinions regarding the Bill to secure to tenants in Malabar Compensation for improvements.

Note the enclosures with the collector's letter transmitted to the press.

RJ
28.1.99.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Reference No. 1653
3 & 4-98

Malabar Collectors office
Calicut 25th January 1899

From,

G. V. Dance Esquire
Collector of Malabar.

To,

The Secretary to Government
Revenue Department

Sir,

With reference to G.O. No. 5021 Mis. dated 17th ultimo calling for remarks on the Bill "to secure to tenants in Malabar District compensation for improvements" I have the honor to submit herewith the opinions received from the officers and non-official gentlemen named in the margin.

2. I have no remarks to offer. The subject is not one on which I am competent to offer an opinion.

3. I respectfully submit that the time allowed is too short to admit of the Bill being carefully criticised.

I have the honor to be
Sir,
your most obedt Servant

Collector.

1 Rao Bahadur P. Sivaswamy Pillay.
Chairman, Municipal Council.
2 Khan Bahadur Moopil Nair Saheb.
Member, District Board.
3 Lt. Col. Spencer, Assistant Collector.
4 Mr. R. H. G. Stokes, Sub-Collector.
5 " K. Govinda Menon, Asst. Collector.
6 " A. Sankara Menon, Sub-Collector of Kottayam.
7 " T. Krishnan " Palghat.
8 Rao Bahadur C. Kanaran " Tellicherry.
9 Mr. K. Krishna Menon, Asst. Collector.
10 " A. Govinda Menon, 1st Grade Pleader, Calicut.
11 " Parappanad Raja.

Enclosure

Palghaut 20th
5th January 1899.

From,

Rao Bahadur P. J. Chinnaswamy Pillay
Land holder, Chairman of the Palghaut
Municipality and Member of the Malabar
District Board, Palghaut.

To,

G. W. Dance Esqre I.C.S
Collector of Malabar.

Sir,

I have the honor to acknowledge the receipt of your Ref $\frac{1653}{Rev.}$ dated the 26th Ultimo, forwarding a Copy of a draft bill to secure to Tenants in the Malabar District Compensation for improvements, and in reply to submit the following remarks.

I have not had time to consider fully the details of the Bill, but I beg to express my opinion that the present Malabar Compensation for Tenants' Improvements Act I of 1887 is quite vague and defective, and requires to be replaced by fresh legislation. It is not Necessary for me to notice the alterations, particularly as the Honourable Member in Charge of the Bill - one of the

the greatest authorities on Matters Connected with Malabar — has fully and clearly treated the subject in his Statement of Objects and Reasons, and has dealt in an exhaustive Manner with the principles to be followed in framing the New Compensation Act. I think that the additions and Modifications made in the proposed Act will prove beneficial both to Landlords and Tenants, and that the Bill may be passed into Law.

I have &c

(signed) P. L. Chinnaswamy Pillay.

(True Copy:)

Thanjavur

for Collector

1
REVENUE DEPT.
Encl. No. 1
Cur. No. 705

Note

3 A

Section 3. Clause 1. The object of the bill is to secure to tenants the full market Value of their improvements; and it is therefore dreirable that the word "tenant" should include all such persons as may be entitled by law or Custom to claim Compensation for any improvements made by them. The word is defined to mean "a person who holds land under another person and is, or but for a special Contract or Custom would be liable to pay rent for that land to that person". This definition restricts the class of persons to whom this enactment is applicable, to those who hold lands with the Consent of another person. It excludes persons who occupy lands — without Consent being applied for and obtained. I would instance the large number of Cowle holders who never obtained the jenmis Consent before cultivating land. The Cowle holder acquires an absolute right if he holds the land for the statutory period but if the proprietor establishes his title within that period and obtains a decree to eject the Cowledar, the latter is entitled to the Value of improvements but not being a tenant the question arises as to how the Value should be assessed since the Bill refers only to improvements by "Tenant". Similarly Squatters entering upon waste lands in Malabar without obtaining the proprietor's title as also purchasers of the Squatters improvements are entitled to the Value of improvements. They are practically trespassers but so long as they are liable to be ejected at the instance of another person having superior title it seems to me that it should be distinctly expressed that they fall within the definition of "Tenants," and that the Value of improvements will be fixed in accordance

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accordance with the provisions of the bill. I note that section 17 provides that "Nothing in this Act shall take away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act." The right of trespassers to compensation for their improvements probably fall within the purview of this section; but it seems to me that since the Act is expressly framed for the purpose of securing the full Market Value of improvements it will be better to include in the definition of the word "Tenant" all classes of persons who are entitled to the Value of improvements. This may be done by defining "Tenant" as including a person who is liable to be ejected at the instance of another person having superior title and adding an explanation that a person who without title occupies land and is liable to be ejected at the instance of another person having superior title is a tenant within the Meaning of this section.

2. Section 3 clause 1. Explanation

"A mortgage under clause c, d and e of the transfer of property Act 1882 is not a 'tenant' within the provision of this Act." The object of this exclusion is not stated. Usufructuary Mortgagees were not excluded from the operation of Act I of 1887 and it appears to me that though Mortgagees under clause ~~'d' should~~ c and e may be excluded, Mortgagees under clause 'd' should not be so excluded. Clause (c) of section 58 deals with a Conditional Mortgagee clause 'd' with a usufructuary Mortgagee, ~~with~~ clause 'c' with an English Mortgagee

3. With reference to "Mortgage by Conditional Sale"

Sale" I find that it is the same as "Pemvarttam" in Malabar (Commentaries on the Transfer of Property Act by Mr. Justice Sheppard page 185) and "Pemvarttam" is defined to be a deed under which the Jenmi has received the full Value of the property Mortgaged and is not entitled to any, the smallest share of the Pattam or even the smallest token of acknowledgment of proprietorship". (Malabar Manual Vol II p. cc xxviii) The Jenmi is entitled to the Market Value of the land at the time of redemption so that there is no objection to excluding mortgage under clause c from the operation of this Act.

4. But with reference to usufructuary Mortgages, I consider that they should not be excluded. Otti and Kanom are usufructuary Mortgages (Commentaries on the transfer of property act page 190). It is inequitable that the very large class of Kanom tenants in this District should not have the protection which it is intended should be conferred upon the Malabar tenants by this Act. They have not been excluded from the benefit of Act I of 1887 and I do not see good grounds for their exclusion from the operation of the proposed enactment. Section 17 is no adequate protection. The object of the proposed measure is to ensure that the full Value of improvements is secured to the person who makes those improvements and it is but reasonable to suppose that the Kanomdars and Mortgagees in possession should find a place among the "tenants" who are to be benefited by this Measure.

5. With regard to English Mortgage I think this

proved

this may be excluded since it does not prevail in this District.

6. I therefore suggest that clause d may be omitted from the explanation.

7 Section 4 clause 1 "The protection and maintenance of such trees and plants the same having grown spontaneously or having been planted by the landlord or any previous tenant." The last portion "or having been planted by the landlord or any previous tenant" did not find a place in Act I of 1887 and for reasons which I shall state below I consider the amendment unnecessary.

The principle on which the bill has been drafted is that an evicted tenant is entitled to the full Market Value of improvements effected by him. Clause Class 1 contemplates three classes of improvements: Protection or Maintenance of trees and plants.

(1) grown spontaneously

(2) planted by the landlord.

(3) planted by any previous tenant. There is nothing to be said about the class of improvements specified as No. 1 but I take objection to Nos 2 and 3.

No. 2 Protection ~~and~~ or Maintenance of trees planted by the landlord.

A, a landlord plants a Cocoanut tree and after it has come into bearing demises the property with the tree to B. The rent payable is the share due to the landlord after incurring Expenses incidental to protecting the tree. The protection of the tree is a duty imposed upon the tenant and is necessary for the safety of his own investment. If he neglects to protect the tree it results in deterioration and Consequent loss to himself. If the tree decays in Consequence of the neglect of the tenant to protect the tree, the Courts will hold the tenant liable to pay damages and I do not think that the landlord should be asked to pay to the tenant for performing a duty which is cast upon him by his acceptance of the demise and which he is bound to perform in his own interest.

No. 3 Protection of trees and plants planted by any previous tenant. This again has to be divided into two Classes - one is a Case where a landlord after recovering the land from one tenant (A) demises it to another (B) and the other is a Case where a tenant assigns his demise to another tenant. In the former Case the landlord when recovering possession pays the Value of the improvements made by A and demises the land to B and if the landlord is again to pay to B for the protection and Maintenance of trees for which he paid to A, he will have been paying twice for the same set of trees though for different periods. The trees though not planted by the landlord became the property of the landlord on his recovering possession of the land from A and as stated in the above para it is the duty of the tenant — in the interests of the land lord as also in his own interests to protect and maintain what has been demised to him. The protection and Maintenance of trees belonging to the landlord Cannot therefore be Considered a Separate Charge since in the absence of such protection and Maintenance the tenant would not be able to enjoy the produce of the trees or secure the interest on the money advanced by

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1
REVENUE DEPT.
Encl. No. 2
Cur. " 705

by him. The property Mortgaged is the Security for the money advanced ~~by him~~ and that for keeping the property in good order in his own interest the tenant should be paid is hardly fair to the landlord. In the other Case referred to, where a tenant assigns his right to another tenant the tenancy so far as the landlord is Concerned is what was created by the original tenant and provisions for the protection and Maintenance of trees planted during the tenancy has already been made in Clause (h). I think therefore that the amendment is unnecessary.

8. Section 6 Clause 1. The portion referring to the redemption of the land Comprised in the demise to the tenant is new. This amendment certainly refers to a Manom tenant and supports my argument in favour of including a mortgagee Mortgagor in the definition of a tenant (Vide supra 1 above). In clause i the expression "for the redemption of the land Comprised in the demise to the tenant" might be made clearer. In a case where a landlord waiving his right over two out of ten items of lands demised to a tenant sues for the recovery of the remaining eight items, the question arises whether the Court should Compel such landlord to pay the Value of improvements on all the items or ~~mearly~~ only on the eight that he seeks to recover. The Value of all the improvements is ordinarily payable to the tenant and the Expression "Due to the tenant for improvement under this Act" might be interpreted to mean that the landlord is liable to pay for the Value of all

all the improvements irrespective of the fact that the landlord has given up his right over two of the items.

9 Clause 3. "When under an express agreement in writing &c". With reference to this Class I have only to observe that a landlord is not likely at the time of the grant or renewal of a demise to enter into an "express agreement" so that the Clause will practically be a dead letter.

10 Section 8. I have had hardly time to Carefully Study the various aspects of the question involved in this Section, but I am afraid that the object with which this Amendment was proposed has not been sufficiently Met. In the Statement of Objects and Reasons it has been observed that the "provisions of Act I of 1887 leave too much to the discretion of the Courts and the Assessors appointed under the Act while the absence of clear uniform and definite principles to guide them in awarding Compensation is a Serious defect". So far as the question of assessors is Concerned I have not heard that any Court appointed assessors for the purpose of fixing the Value of improvements. The next question is whether the discretion of the Courts has been in any degree restricted by the present Act. Reading illustration (b) I find that the age of the tree the probable future fruitful life and the future average annual yield are questions that have still to be left to the discretion of the Court with the result that no two Courts in the District are likely to agree in determining these points. I may add that the same Court cannot be Expected

proved

Expected to arrive at the same result in consequence of the different modes of classification adopted by different individuals deputed for that purpose by the Court.

11. Section 9. I would omit "Planted by the landlord or a previous tenant" with reference to my remarks in para 7 above.

12 Section 12. In practice this can be worked only with the greatest difficulty. It casts upon the Courts an unnecessary amount of labour and holds out inducements to commit perjury in fixing the Value "during the last 10 years". I would therefore suggest the omission of this particular portion and leave it to the discretion of the Court to assess the Market Value with reference to Schedule II of the Act.

Camp Tellicherry
6th January 1899

(Sd) C. Gopalan Nair
Special Dy Collector
Walluvanad

(True Copy)

Respectfully
For Collector

1
REVENUE DEPT.
Encl. No. 2
Cur. No. 705

Kottayam Taluk office
Tellicherry 16th January 1899.

No. 310/R-99

To,

The Collector of Malabar,
Calicut.

Sir,

With reference to your Memo. Ref on Ch. No. 1653/B+99, of the 26th December last asking for my opinion and remarks on the "Bill to secure to tenants in Malabar Compensation for improvements", I beg to state as follows:—

2. The general provisions of the Bill go no doubt to materially improve the present hard Condition of the tenants in general. Such an improvement in the Case of the moplah tenants of Ernad and Walluvanad Taluks is particularly desirable in the way of removing at least one of the two Causes (agrarian discontent) of the moplah outbreaks, though the other more powerful Cause (Fanaticism) must yet remain unaffected, the only remedy for their religious wild notions being Consistent with their general education in which respect that Community as is well known - is now most backward indeed.

3. The proposed Commutation rates of paddy and Cocoanut areca nut and jack trees are fair and reasonable. The Compensation rates also appear to be so and, as Compared with the present state of things, are very favourable to the tenants and unfavorable to the Jenmies. Yet I doubt whether the rates are so unfavorable to the latters' interests that one has any good reason to Complain.

A jenmy choosing to recover his property on ejecting the tenant secures and can enjoy (vide the illustration under section 8) on the money given away as Compensation, more than 7 p.c. interest in the shape of the Net Value of the annual produce. This is a good investment of money on landed property. The wealthy jenmies can very well afford to do so and might not Complain. But to such of them as are not in a position to afford to invest the money at so low a rate, it might be, I fear, difficult to recover their properties and the tenants concerned might also be tempted to take advantage of, and add to, their difficulties by wilfully withholding payment of the rent or by committing some acts to the prejudice of the jenmies' title and their future interests. It seems to me that some provisions require to be made on the point defining the circumstances under which a jenmy might reasonably eject the tenant and the latter is denied wholly or partially the benefits of the Bill.

4. The proposed Costs of the original cultivation and the subsequent maintenance of some of the improvements dealt with in the Bill also, in my humble opinion, require modification or elimination. A charge of Rs 2-10-- for cultivating and bringing up a jack tree is obviously excessive. This tree is seldom looked after, after it has grown up sufficiently high to be free from being injured by Cattle, and afterwards practically no expenditure is incurred for its maintenance. It seems to me that the above charge might therefore be reduced to 8 annas or Rupee 1 the utmost, and no Cost requires to be provided for its maintenance while in bearing. As regards the Cocoanut trees - these are particularly looked after (watered, manured and fenced) only so long as they remain in the "Kili" stage, and afterwards they are as a rule, manured only once a year. The Costs of bringing up a cocoanut tree and maintaining it afterwards might also be reduced in the formal Cases to Rupee one where the ground is low and the soil light and Rs 1½ where the ground is high and the soil heavy, and, in the latter, to ½ anna in both the Cases.

5. Having had no personal experience of any agricultural operations or of the management of Tarawad affairs and so being not in a position to verify the provisions of the Bill by my own experience, I have had to make enquiries on doubtful points. Hence the delay in submitting this report which I hope to be kindly excused.

I beg &c.

(Signed) K. Govinda Menon
Tahsildar.

(True Copy)

For Collector

1
REVENUE DEPT.
Encl. No. 3
Cur. No. 705

Malabar Special Assistant Collector's office
Camp Calicut 10th January 1899.

To

The Collector of Malabar
Calicut.

Sir,

With reference to your endorsement Ref $\frac{1653}{B+G}$ dated 26th December 1898 on Tenants' Improvements Bill I have the honor to state that the only remarks I have to offer are as follows:—.

I doubt whether the provision of Sec: 5 is not in Conflict with the provisions of the Transfer of Property Act but this is a point for officers Versed in Civil law to examine.

I note that though the word Kanom occurs in section 6 (3) it is not defined and it is not clear whether the phrase 'Kanom or lease' means that the terms are to be Considered as interchangeable which is hardly the Case. The Kanomdar is both landlord and tenant a fact which might be noted as an explanation perhaps.

As the Court has power under Section 15 to grant the full rate for trees in excess of the scale - a fact which is implied but not expressed - it does not seem necessary to add the extra classification of tracts favourable to Cocoanuts. The limit number of trees that should be planted will always be a matter of evidence when it is over 60 because it will have to be proved

proved that the land is specially favourable. There are tracts specially favourable to areca-bearing parambas where they will grow hardly four feet apart. The scale allows them at 8 feet apart and in every case of overplanting it will naturally be put in evidence that the land could bear the extra crop- so that if it is clear that the Court has discretion to exceed the scale no additional classifications for favourable areas are called for.

I have &c

(Signed) Lionel Vibert

Ag: Special assistant Collector.

(True Copy)

for Secretary

for Collector

1
REVENUE DEPT.
Encl. No. 4
Cur. No. 705

Memo

1024

It has long been found that the Madras Act 1 of 1887 has not been working satisfactorily. The present attempt to repeal that Act and to re-enact its provisions with required additions and modifications is indeed desirable. No one is in a better position to know the real wants of the tenants in Malabar than the Honorable Mr. Moore with a copy of whose bill has been forwarded to me for remarks.

Section 4 (1) Improvements should mean only Kudikkur Vittu chamayam and such Chamayam as is suitable to the holding and consistent with the purpose for which it was let. I doubt the justice of demising costly buildings unreasonably extended and unsuitable to the holding, as improvements under the proposed act unless they were erected with the special permission of the landlords. On the one hand it is hard on the Tenants to be left with a farm-house and buildings in the centre of paddy fields and cocoanut plantations in which he has no interest. On the other hand it is hard on the land-lord to be improved out of his own land. It is the duty of the courts to check

Capricious

capricious conduct on the parts of either. (A.A. 156 & 161 of 1877 South Malabar)". I would add ~~—~~ the words "suitable to the holding and consistent with the purpose for which the holding was ~~out~~ let" after the word buildings in the third line of para (a) (clause) 2 of this section.

Section 6 (b) For various reasons I seriously doubt the necessity of this clause. ~~Now~~ the Courts in Malabar depute a commissioner to ascertain the value of improvements. The Courts on receiving the Commissioner's report hears the objection of the parties to the valuation and their evidence if any, offered and records a finding". I think this is more simple and less costly way to determine the value of improvements.

Section 9 (1) In the case of trees and plants planted by the land lord or a previous tenant if they had to be protected and maintained by the tenant the compensation may be one-half but in the case of trees spontaneously grown it must be only one-fourth of the sum which the trees or plants might reasonably be expected to realize if sold by public auction to be cut and carried away.

Section 10. In the eighth line the words "including supervision" may be omitted it being very difficult to estimate the value of supervision.

Schedule II. I would put Rs 15 & 18 as prices of a thousand cocoanuts in localities respectively, unfavourably and favourably situated.

These are my views. They are certainly from a Jenmi's standpoint.

Parapanapady
1st Janu 1899

V. Rama Varma Raja
Jenmi of Parapanad

(True Copy)

Vice President

for Collector

Ms
26/1/99

REVENUE DEPT.
Encl. No. 35
Cur. No. 705

REVENUE DEPT.
Encl. No. 5
Cur. No. 705

Remarks.

Section 6(4). This is in accordance with the Malabar usage. I think it may be made clearer by the provision that the right of the land-lord to set off against the value of improvements, any rent due to him must prevail against any alienation made by the tenant, as was decided in Eressa V Thamu Pattar (I. L. R. 21 Mad. 138 dated 19th August 1897.)

Section 8. The mode of calculating the value of improvements herein laid down with the tables appended has simplicity to recommend it but I think that in very many cases it will work a great hardship on the land-loud - may it will tend to improve off his jenmam right altogether. I think that in no Case should the Compensation for a Cocoanut tree planted by the tenant exceed Rs 10. That should be the maximum limit whereas Rs 21-8-11 is put down as such in the schedule. What is proposed to be given as Compensation is almost equal to full pre-prietory value of trees. The hard and fast rule laid down appears to me to ignore the jenmi's share in the trees grown on his soil. A deduction should be made in his favour in Consideration of his ownership in the soil.

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This right to a deduction was distinctly recognised in several Talukas as shown in Schedules of value of improvements appended to Mr. C. Ramachandra Iyer's Manual of Malabar of laws. I think the better plan would be to ascertain the net annual value of the produce of the trees planted by the tenant and allow a Com-pensation 5 to 10 years' purchase of that value according to circumstances. I am of opinion that it will be injurious to give to the tenant more than 10 years value. I have no objection to the present value system being adopted provided the Maximum be limited to Rs 10. Supposing a jenmi letting out an acre of pure Zanikan land of first class soil and the tenant plants it up with 60 Cocoanut trees, let alone the other trees mentioned as capable of simul-taneous cultivation in Section 15. and these 60 Cocoanut trees on attaining full bearing age produce each 100 nuts a Year and their estimated future fruitful life is 50 years, the jenmi on eviction of the tenant have to pay according to Schedule IV Table II 60 times Rs 21-8-11 viz Rs 1293-7-11. I doubt if a paramba of that area however well improved will fetch Rs 1293-7-11 as jenmam

price

13 a

price. The unfortunate jenmi cannot even elect to abandon the land to his tenant for Compensation due to him because under Section 6 (2) the decree for ejectment Con-ditional on payment to the tenant of the Compensation determined under the act, may be executed at the instance of the tenant and the jenmi's other lands may be sold up to satisfy the tenant's claim for Compensation in respect of the one acre land here suffered. In my opinion, the bill as it now stands, if passed, will be disastrous to jenmam interest in Malabar.

Tellicherry
7th January 1899

Sd/ E. K. Krishnan
Retired Sub Judge.

(True Copy.)

Ms
26.1.99

V Ramapaniker
for Collector

1
REVENUE DEPT.
Encl. No. 6
Cur. No. 705

Ref on C $\frac{2510}{C\&D\,98}$

Palghat Taluk office
Dated 7th January 1899.

To

The Collector of Malabar
Calicut.

Sir,

Adverting to your memo dated 26th December 1898 Ref. on C. no: $\frac{1653}{B.E.\,98}$, I beg to submit the following remarks regarding the provisions of the Malabar Compensation for tenants improvement bill.

1. The first change which the bill proposes to introduce is the right of the tenant to execute the decree in a redumption suit against the jenmi — Vide section 6 clause 2 — I think this right though a novel one is very necessary for many jenmis when they find that they have to pay heavy compensation decline to execute the decree and thus place the tenants without any remedy. This defect will now be removed.

2. The provision contained in clause 5 is also a wholesome one.

3.

3. The classification of improvements – Vide Sections 8, 9 and 10 – are no doubt essential, but the rules laid down for capitalizing the value of improvements are too much in favour of the tenants and if they are adopted finally, I do not think that any jenmi in Palghat would dare attempt to evict a tenant from his holding. In this Taluk the chief dispute between the jenmi and the tenant in a redumption suit is as regards the Vettu chamayam (improvement for converting dry into wet-) and if it is to be capitalized according to the provisions of this bill the jenmi will be swamped. The same remarks apply to the improvements proposed to be given for fruit trees in the Coast Talukes. I think if the bill is passed the necessity for Tenancy Bill for the District will be considerably lessened as jenmis will not seek to redeem their lands on payment of such heavy compensation.

4. The figures in the several schedules appear to have been worked out as correctly as

as the circumstances of the case would admit. The effect of clause 16 under which a tenant can claim compensation contrary to the provisions of this bill in spite of any contract to the contrary will be very disastrous to many jenmis in this Taluk. I have known several instances in which contracts have been entered into by jenmis and tenants limiting the Vettu chamayam to Rs 8 for land sowing one para of seed. The contemplated provision to enable tenants to claim compensation according to the new bill will render such contracts null & void and this will be very disastrous to the jenmis as observed before.

I beg etc.

(Signed) S. Ananta Pattar

Tahsildar.

(True Copy)

for Collector

RH

1644

Dio No. 23/Rev: 98.

Wallwanad Taluk Office
Camp. Anamangad.
10th January 1899.

To

The Collector of Malabar
Calicut.

Sir,

With reference to your memo dated 26th December 1898 No. 1653/B.Rg. 98 directing to submit opinion and remarks on the Bill to secure to Tenants in the Malabar District compensation for improvements, I beg to submit the following :-

Section 3 (1). Tenant.

1. A mortgagee with a term of 12 or more years may make improvements for which he is entitled to compensation under the existing law. By the explanation given to Sec: 3(1) in the bill in question, he is deprived of that right. Instead of therefore excluding him from the definition it would be well to include him also.

Section 4 (1). Improvement.

2. The explanation given here does not appear to be necessary In the explanation the term holding occurs which is not defined. As generally understood the term holding includes all items of lands included in one document executed by a landlord to his tenant. Say in a document

1
REVENUE DEPT.
Encl. No. 7
Cur. No. 705

document there are 10 items. The work executed in respect of one of them may add to the value of the holding by Rs 100 a year, but may diminish the value of another part by Rs 75 a year. Would this be an improvement? The term holding requires definition.

Section 4 (2) (d). 3. This should include "conversion of one or two crop-land into three crop land" also. As it is, three crop land is not included in the definition. Conversion of dry or garden parambas into Pallial or one crop land is an improvement under the existing law. Do not such conversion an improvement under the proposed law? The definitions given in sec. 4 do not seem to be clear so as to include the same also. Is a flower garden intended to be excluded from the definition of improvement? If not, I think it is necessary to define the term "improvement" so as to include the same also.

Section 6 (1). 4. Under a sale certificate granted under the Revenue Recovery Act a purchaser can be put in possession of the land by a Civil Court. Under the proposed law it would appear that the purchaser has to pay for improvements inasmuch as the Civil Court is bound to enquire into and determine the amount of compensation to be paid to the tenant before ejectment. Is it intended to be so done and, if so, who is to pay such compensation?

Section 6(3). 5. This clause – a powerful instrument for landlord – in effect deprives his tenant of the value of his improvements. Ever since Act I of 87 was introduced, some landlords – especially in North Malabar – used to make in renewal leases an agreement to the Effect that the compensation is settled (when as a matter it is not really settled) or that so much money is paid in cash to the tenant in consideration of improvement to be made by him (tenant) (when as a matter of fact not a single cash is paid) then there might be a question as to why the tenant yields to such a false agreement. The answer is simple. It is simply because he has no fixity of tenure. The agreement is evidently for the purpose of depriving the tenant of his improvements and is made simply because the law provides therefor. The tenant cannot but yield to the terms dictated by his landlord so long as the latter (landlord) can eject him

174

him (tenant) of his holding even by payment of heavy compensation if necessary. Before the introduction of Act I of 1887 it was the practice both in North & South Malabar to grant one demise in respect of all wet and dry lands to a tenant, that is to say, it was the practice to include all lands, - wet and dry - in one and the same document executed by a land-lord to his tenant. Subsequent to the Act separate demises are granted exhibiting all wet lands for which no compensation can be claimed in one document, and dry and garden lands alone in which improvements are likely to be effected by tenant in another document. North Malabar tenants depend more on garden produce which is not the case in South Malabar, where wet lands yielding 2 or 3 crops a year are extensive. A tenant in South Malabar possessed of wet lands only which yield immense produce, if ejected, is entitled to get no compensation therefor. He cannot therefore lose such lands which it is his desire to retain at any cost. This - his weakness - is too well known by his landlord who can if to

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REVENUE DEPT.
Encl. No. 8
Cur. No. 7185

separate

separate demises as aforesaid are granted, sue the tenant as it suits his purpose. If therefore after the expiry of the lease the tenant does not yield to the terms dictated by the landlord in respect of settlement regarding compensation for improvements effected by the tenant, then the landlord can sue under the demise granted for wet lands & evict the tenant who, if dispossessed of wet lands, would not be able to support his large family. He must then necessarily yield to the landlord's wishes. Separate demises are therefore granted to drive the tenant to the necessity of yielding to his landlord. In respect of dry lands landlord does not want to evict his tenant simply because he has to be compensated for the improvements effected by him (tenant).

Section 6(2). 6. Giving power to the tenant to execute a decree or order against his landlord appears to be hard. It may be given under exceptional circumstances. If the amount of compensation awarded is large, the landlord would not care to pay the same and eject the tenant. By giving the power to the tenant he may be able to proceed against the

landlord

landlord's other property. It would certainly be imposing a penalty on the landlord merely because he let his land to the tenant. It is more so when the landlord happens to be an innocent jenmi. The case may however be different when the landlord's case is otherwise. I would therefore like to have a proviso added to it as follows:- "The latter can only apply for execution if it is proved to the Court that the sink was not due to any fault on his part".

Section 6(5).

7. Who is to prove the substantial injury referred to in this section? The section must be modified so as to enable the tenant to remove the improvements for which no compensation is awarded unless the landlord satisfies the Court that such removal would cause injury to the holding.

Section 6(6).

8. The object in the which the law is enacted can be gained only by an impartial valuation of compensation. Such valuation will never be made by irresponsible commissioners now existing in Courts. If paid Commissioners

Commissioners or assessors are appointed, they are likely to realize the importance of their position and do justice to their work. In making rules it is therefore a point for consideration whether or not paid servants ought to be appointed.

Section 9(1).

9. Are flower plants (not in pots) such plants as are mentioned in this section? If so, how is the compensation therefor to be calculated? They cannot be sold by public auction inasmuch as some of them cannot be cut and carried away.

Section 12.

10. The presumed price of cocoanuts &c is given in Schedule II and it is laid down in this section that the Court should ascertain the average price and determine the money value &c. I think it would be well to frame the section in such a way as to make the Court presume that the price of cocoanuts &c is that shown in Schedule II. unless the party disputing the same proves to the contrary.

11. In conclusion I am

respectfully

respectfully beg leave to state that any stringent provision in the Act would not deter Malabar jenmis from ousting their tenants unless and until some law which provides for fixity of tenure is enacted.

I beg to remain &c

Sd/- A. Chandu Nambiar

Tahsildar

True copy

Malabar Collector's office
January 99

for Collector

E.
25.1.99

Mg
25.1.99

1
REVENUE DEPT.
Encl. No. 8
No. 705

Notes on the Bill to amend the Malabar Compensation for Tenants' improvements Act by P. A. Krishna Menon 1st pass Reader.

—

Section 3. The definition of tenant does not take in all classes of persons who are entitled to get compensation for improvements.

A Cooldar who enters upon land independent of the jenmi and makes improvements but pays no rent to the land-lord is entitled to get compensation for improvements and does get compensation now when evicted by the rightful owner.

Trespasser. Even a trespasser is allowed compensation for improvements according to the custom of the country. (See Wigram's Manual page 137 para 1).

For instance a person believing himself to be the owner of a land enters upon it and effects improvements. The real owner establishes his right in a Court of law and turns him out

Courts do allow him compensation for the improvements made by him. The word tenant might also be defined as to include such persons or an explanation added to include such persons.

Explanation to Sec: 3 :- It seems to me that this explanation will create serious difficulties and hardships which the framers of the bill have never thought of.

A Kanom tenant who does not pay rent or purapad comes in under this explanation and such a tenant will not get compensation for improvements. Ittidar Teppudar and Palisa Kutakku mortgagee do not ordinarily pay rent. They are all usufructuary mortgagees under the Transfer of Property act. Such mortgagees are ordinarily allowed compensation for improvements in Courts. In fact their right is superior to that of a Kanom tenant. If the explanation is allowed to stand they will be deprived of the rights which they now possess.

Transfer of property act is an Indian act applicable to the whole of British India; any reference to it in a purely local act is unnecessary; Malabar tenures by specific names may be mentioned. It is the indiscriminate application of the term "mortgage" as defined in the Transfer of Property act to Malabar Kanom that resulted in the reintroduction of Melcharth into the district because Melcharth was considered a second mortgage which is lawful under act IV of 1882.

Tenant should include sub tenant also. Otherwise in a redemption suit a sub tenant of the demisee who does not hold directly under the Plaintiff and pay rent thus may not be able to claim compensation for improvements.

Rent. This word should be made to include Puraped or Michavaram payable by a Kanom tenant.

Section 4. clause [5.] "Having been planted by the land-lord". This phrase may work some hardship on the land-lords. Trees belonging to the land-lord are generally put in possession of the tenant on the latter agreeing to take care of them and to pay rent on account of

of them. In such cases the tenant is not entitled to claim anything for protecting such trees.

Section 6. clause 4. It is nothing but fair that the land-lord should have the right to set off all arrears of rent due by the tenant against the amount of compensation for improvements. But it is very hard to extend this privilege to the improvements made by the sub tenants.

Example ——. A demises land to B. B sublets it to C. C makes improvements. There is no privity of contract between A & C. C is not to pay any rent to A. A & B collude together to defeat C who owns large improvements. B who is liable to pay rent to A does not pay. A sues B and C for redemption and for arrears of rent. C's improvements are all under clause 4 of section 6 made liable for the rents due by B. Such instances are common.

I would therefore suggest that the right to set off arrears of rents should be given to the land lord only against the improvements of the tenant between whom and the land lord there is privity of contract and not against the improvements of the sub tenant.

Section 8. The scheme proposed is too complicated to be worked in ordinary cases. A simpler process is very desirable. The Commissioners appointed in the Mussiffil Courts are not likely to be able to work out the scheme correctly.

The result however is satisfactory if the bill be passed into law the tenant will get some justice which is now practically denied him.

Section 14. Para 1 seems to be very desirable. It is very difficult to get an amendment passed by the Legislature. The Government should have the power of amending the schedules.

Section 15. Jack trees. 30 is too small 40 trees may safely be planted in an acre of land.

Schedule II. 2 annas 6 pies is too low a value for 100 areca nuts. The usual price is from 4 to 6 annas.

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REVENUE DEPT.
Encl. No. 9
Corr. No. 1615

Schedule III. cost of cultivating a crop of paddy for an acre has been admitted to be more than 10 Rs in the memorial submitted by the Mahajana Sabha whose members are mostly pundits, the Settlement Officer and to the Government.

The tenants who require protection at the hands of the Government are tenants of Walluvanad, Ernad and Palghat Talaks. In the coast Talaks where there are large Cocoanut gardens the tenants do not suffer much and in such places even now landlords do not very rarely resort to Courts and wantonly turn out tenants. It is in the interior talaks where there is no scope to make much valuable improvements eviction is more freely resorted to. Jack trees and Palmyra trees are the only trees that can be advantageously planted in those talaks.

I would very earnestly suggest that a table giving a liberal scale be prepared for Jack trees and some reliable guidance be given for

for valuing Palmyra trees. Palmyra trees have now became very valuable after the introduction of the Abkari act and much revenue is collected by the Government and the owners of such trees also get a correspondingly advantage. It is nothing but fair that the tenant who plants such trees ought to be fairly compensated. Within the last few years Palmyra trees have become an important item of plantation in Walluvanad & Palghat Talaks.

On the whole I welcome the amending act in the interests of the labouring classes.

Pdy. T. R. Krishna Menon
1st Grade Pleader
Calicut.

/True copy/

V Ramayyangar
for Collector

25-25 Dft 25.1.09

12/2/05

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REVENUE DEPT.
Encl. No. 9
Cir. No. 705

O/18 4,000-18/10-98.

Revenue (1899) Department.

CURRENT No. 372

From The Honble C. Sankaran Nair. Madras.

Order

No. —

Dated 17th January 1899
Received
Registered
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SUBJECT.

Submitting his remarks on the Malabar Compensation Bill.

24/1/99

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G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

1

Do

The Hon. mr. G. S. Forbes. I. C. S.

Secretary to Govt.

Revenue Department

Sir,

I have the honor to forward herewith my remarks on the Malabar Compensation for Improvements Bill. with reference G.O No. 5021 Y/ 17th December 1898.

17. January 1899.
Egmore

I have the honor to be
Sir
Your obdt Servant
C Sankaran Nair

Called for clean
proof on margin

Telephone remarks
Sent on 23.1.99.
for clean proofs.
AAA

Rec'd urgent VR

Rec. G. O. 5021 of 17.12.98

GOVERNMENT OF MADRAS
REVENUE DEPARTMENT
17 JAN 99

Bill No. 6 of 98.

Sec 3. cl(1).

To Mr
two copies of
proof are submitted
MS
20-1-99
RS
21-1-99

Secy
21.1.99

The result of this definition & explanation will be, when taken with Sec 5 & 6, that usufructuary mortgagees, English mortgagees, & mortgagees by conditional sale will be excluded from the operation of the act, and if the holders under Kanom and analagous tenures are held to be usufructuary mortgagees, the operation of the act will be very much restricted.

1) Men who obtain Cowles from Government for the cultivation of waste lands without recognizing any Jannies title; neither the Government nor the Cowldar claiming the Jann right.

2) A trespasser or mere squatter who cultivates waste land either in ignorance of or in full knowledge of the owners right but without recognizing any such right and having no title whatever to cultivate the land.

3) Persons claiming under an invalid alienation (say under a Kanavaan) whether by way of mortgage or lease who have built houses on waste paramba.

4) Any mortgagee, even those falling under C, D, & E of Sec 58.

5) In fact any holder of land not claiming jamm right and who may not be included in this definition of 'tenant'. ~~These will not be entitled~~ These will not be entitled, under this bill, to claim the value of improvements ~~under Sec 51b~~ ~~of the act~~ as they are apparently not included in the definition Sec(3). & Secs 5 & 6 will not therefore apply to them.

Further if A in possession lets the land to B, who makes improvements then B is now entitled to their value from C who proves his title and obtains decree for ~~from~~ possession against A.

In this case B no doubt is a tenant according ~~to~~ the definition in the Bill, but he is only a tenant of A and the bill as drafted leaves it open to fair argument whether C is bound to pay B the value of improvements.

The right of the holders of land above referred

referred to claim the value of their improvements has never been doubted - at least I Cant remember any instances. Till now the term 'tenant' has been understood by the Jannies & tenants in Malabar to include any holder of land who is not a Janmi and who does not claim Janm.

I trust that the legislature will not throw any doubt on those rights which till now have been recognized unquestioned.

~~This definition & Sec 5 & 6~~ These provisions (Secs, 3, 5, 6) seem therefore open to the grave objection that they will tend to exclude from the operation of the bill, perhaps the majority of Cases in which the Courts have to award the value of improvements.

Sec 8. There is apparently a mistake here which might lead to serious Consequences. The section as drafted does not apply to those Cases where the improvement has not Caused but will only cause, in the course of a few years or even the next year, an increase in

in the ~~nett~~ net annual produce. This is holding out a premium to jammies, not to renew Kanoms or leases, ~~but~~ to ~~evict~~ evict tenants where there are trees (mainly Cocanut) planted by them which have not come into bearing. An increase in victions will accordingly be the result.

In so far as the bill fails to recognize the right of the labourer or tenant to the full value of the improvements, I ~~disagree with it~~ do not approve of the same. The decisions of the High Court are not uniform. and I consider those decisions sound, that recognize such claim. On this question which is dealt with in Sec (8) and the following Sections I shall send you my observations later.

But this difference of opinion notwithstanding, I consider that this bill will effect a great & desirable improvement on the existing system.

C. Sankaran Nair

Leg 330/99

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from A. THOMPSON, Esq., District Judge, North Malabar, to the Secretary to Government, Revenue Department, dated Tellicherry, 14th January 1899, No. 46 :—

I have the honour to submit the report called for in your Proceedings, dated 17th December 1898.

2. Legislation is certainly necessary in order to do away with the decisions of the High Court that the tenant is entitled, not to the *value* of his improvements but only to the cost of making them, but the "Statement of Objects and Reasons" shows that nothing need be now said on this point.

3. *Section* 3.—The so-called explanation to the definition of tenant is really a substantial change in the law. If a mortgagee under clause (*d*) of section 58 of the Transfer of Property Act be excluded from the definition of tenant, questions will be raised as to the now undisputed right of kanomdars. The explanation should be omitted.

4. The definition of "landlord" is quite insufficient. Many, if not most, suits for eviction or redemption are brought, not by the landlord but by the person to whom the landlord has granted a new demise. The tenant in such suits does not hold under the plaintiff so that it might be a question whether section 6 applied and the object of the Bill might be defeated.

In any case the word "immediately" should be omitted so as to provide for the case of sub-tenants.

5. The explanation to the definition of "improvement" should also be omitted; I have never heard of a case to which the explanation would be applicable, and it will be only a cause of unnecessary disputes.

6. The list of improvements contained in clause (2) might be omitted, the excellent definition contained in clause (1) making it quite superfluous.

7. Section (6) clause (2) is a very excellent change in the law of Civil Procedure. At present, if a landlord does not wish to pay the compensation fixed by the decree, he leaves the decree hanging unexecuted over the head of the tenant for the next 12 years, and the tenant is powerless although he may be anxious to quit the land on receiving his compensation. In order to give full effect to this change in the law, it will be necessary to add after the word tenant "as if the sum ordered to be paid to the tenant as compensation had been decreed against the landlord in a suit for money."

8. Clause 3 should be omitted; it can only cause disputes and afford a loophole for the landlord to evade section 16.

9. *Clause* (4).—The District Munsif, Taliparamba, suggests the insertion of the words "to the person by whom arrears are due" after the words "ordered to be paid" so as to meet the case of the value of the improvements being due to a sub-tenant.

10. Clause (6) should be omitted as utterly useless. I have never heard of a case in which recourse has been made to assessors under the present Act.

11. Clauses (*c*) and (*d*) of section 8 should certainly be omitted as being quite inconsistent with the object of the Bill, which is to secure to the tenant the *value* of his improvements and not their mere cost. Moreover, these clauses will impose upon the courts the work of calculating the compensation twice over; firstly, under section 8 and secondly, under section 10 in order to see if the sum ascertained under section 8 exceeds the sum ascertained under section 10. The clauses are an illogical combination

of two inconsistent ideas ; compensation according to market value is intelligible and so is compensation according to cost, but compensation calculated at three-fourths of the market value and one-fourth of the cost seems to be based on no rational principle.

12. *Section* 9.—Why should the tenant receive only three-fourths of the market value of trees and plants sown or planted by him or by a previous tenant ? Why again should the tenant receive half the market value of trees planted by the landlord or spontaneously grown, the cost of maintaining such trees being virtually *nil* ?

13. Clause 2 of this section is superfluous as, if the trees are immature, this will be considered in estimating their market value.

14. The proviso to section 10 should be omitted as it will only cause unnecessary disputes. The tenant is hardly ever overburdened with capital and it may be safely assumed that in 999 cases out of 1,000 he will carry out his improvements in the least expensive way and it is hardly necessary to legislate for the odd 1000th case.

15. *Section* 12.—Why should the court have to carry back its enquiry for ten years ? The market price at the time of valuation is sufficient.

16. Schedules II, III and IV should be omitted. I have heard of nothing like them in the way of legislation since the mediaeval days when the price of almost every article and the costume of all classes of the population were fixed by statute. It may be said that the figures given in these schedules are presumptive only and may be rebutted by evidence, but the practical result will be that the courts will require so much evidence to rebut them that they will be virtually treated as conclusive.

These schedules will merely re-introduce in a greatly aggravated form the evil which Madras Act I of 1887 was passed to remedy. That Act was passed in order to abolish the tables of rates by which the courts then calculated improvements. It is manifest that such tables can, at the utmost, be correct only for the time at which they were prepared.

17. Section 14 will be of hardly any practical value owing to the difficulty of obtaining an alteration of the rates once fixed by the legislature.

18. Section 15 should be omitted. The Malabar tenant is not destitute of sense, he plants trees in order to get as much profit as he can out of them during the term of his tenancy and he is much more likely to know how many trees his land will sustain with advantage than is the legislature. If a case of overplanting were to occur, it would carry its own remedy with it, as the overplanting, if real, would result in a diminution of the yield of the trees and this would be taken into account under section 8.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from M.R.Ry. C. SANKARAN NAIR, Madras, to the Secretary to Government, Revenue Department, dated Egmore, 17th January 1899 :—

I have the honour to forward, herewith, my remarks on the Malabar Compensation Bill with reference to G.O., Mis. No. 5021, dated 17th December

Section 3, *Clause* [illegible] taken with sections 5 and 6, [illegible] mortgagees by conditional sale wi[illegible] the holders under kanom and analagous [illegible] explanation will be, when gagees, the operation of the Act will be very much

(1) Men who obtain cowles from Government for the mortgagees and without recognizing any janmis' title; neither the Governme[illegible] and if claiming the janm right.

(2) A trespasser or mere squatter who cultivates waste land either in ignor[illegible] or in full knowledge of the owner's right but without recognizing any such right and having no title whatever to cultivate the land.

(3) Persons claiming under an invalid alienation (say under a karnavan) whether by way of mortgage or lease who have built houses on waste parambas.

(4) Any mortgagee, even those falling under C, D and E of section 58.

(5) In fact any holder of land not claiming janm right and who may not be included in this definition of "tenant."

These will not be entitled, under this Bill, to claim the value of improvements as they are apparently not included in the definition section (3) and sections 5 and 6 will not therefore apply to them.

Further if *A* in possession lets the land to *B* who makes improvements, then *B* is now entitled to their value from *C* who proves his title and obtains decree for possession against *A*. In this case *B* no doubt is a tenant according to the definition in the Bill, but he is only a tenant of *A*, and the Bill as drafted leaves it open to fair argument whether *C* is bound to pay *B* the value of improvements.

The right of the holders of land above referred to claim the value of their improvements has never been doubted—at least I can't remember any instance. Till now the term "tenant" has been understood by the janmis and tenants in Malabar to include any holder of land who is not a janmi and who does not claim janm.

I trust that the legislature will not throw any doubt on those rights which till now have been recognized unquestioned.

These provisions (sections 3, 5 and 6) seem therefore open to the grave objection that they will tend to exclude from the operation of the Bill, perhaps the majority of cases in which the courts have to award the value of improvements.

Section 8.—There is apparently a mistake here which might lead to serious consequences. The section as drafted does not apply to those cases where the improvement has not *caused* but will only cause, in the course of a few years or even the next year, an increase in the net annual produce. This is holding out a premium to janmis, *not*

[illegible] submit a note.

to renew kanoms or leases, but to evict tenants when there are trees (mainly cocoanu planted by them which have not come into bearing. An increase in evictions wi accordingly be the result.

In so far as the Bill fails to recognize the right of the labourer or tenant to t full value of the improvements, I do not approve of the same. The decisions of th High Court are not uniform and I consider those decisions sound that recognize such claim. On this question which is dealt with in section (8) and the following sections I shall send you my observations later.

406

But this difference of opinion notwithstanding, I consider that this Bill will effect a great and desirable improvement on the existing system.

(Signed) C. SANKARAN NAIR.

Received

Judicial (1899) Department.

~~1899~~

CURRENT No. ~~5021~~ 406

CHIEF SECRETARY
1 JAN 1899
GOVT OF MADRAS

From

The District Judge of Malabar
Calicut

Endorsement:- No 138, dy 16-1-99

Order

Dis. No. 35

Transferred to the Revenue Department.

A Ardaseer
Ag Under Secretary

Dated 9th January 1899.

Received 18 — — —

Registered 18 — — —

Enclosures —

Spare copies —

hkv
12-1-99

To

The Revenue Dept.

SUBJECT.

Submitting opinion on the Bill to secure to the tenants in the Malabar District compensation for improvements. (Bill No 6 of 1898)

~~To~~

To Us :

two copies of proof of the opinion of the Dt Judge of Malabar on the Malabar Compensation for tenants improvements Bill are submitted.

hkv
13-1-99
RS
18-1-99

Secy
27.1.99

A copy of the proof will be sent to HH (see separate copy) - when examine the paragraphs as usual & submit a note.

8/2 23/1/99

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CURRENT NO. 188

Dis. N° 35

Press

Please print 4 clean proof stamps

MWS 18/1/99

District Court of South Malabar,
Calicut. 9th January 1899.

From,

W. H. Welsh Esquire,
District Judge,
South Malabar.

To,

G. Stokes Esquire,
Chief Secretary to Government,
Judicial Department,
Madras.

Sir,

With reference to the order of Government — dated the 17th December 1898, Mis N°. 5021, Revenue communicated under Current N°. 5021, Judicial dated the 29th ultimo, I have the honor to submit the following remarks.

2. Section 3 (1). Explanation. The wording "Section 58" should be inserted between "(e)" and "of the Transfer of Property Act". This is a new provision. The reason for the exclusion of mortgagees under clauses (c), (d) and (e) of Section 58 of the Transfer of Property Act from the definition of "tenant" is not apparent nor is it explained in the Statement

of

of Objects and Reasons". As the law now stands a mortgagee for a term of years, viz Kandundar, Ottidar, Karipanayonkar &c is entitled to be compensated. The Subordinate Judge of Palghat and the District Munsif therefore suggest that a mortgagee under clauses (c), (d) and (e) of Section 58 of the Transfer of Property Act should be expressly included in the definition of "tenant." If the explanation become law it is not very unlikely that the shrewd gentry will embody in the document some clause creating some money right so as to defeat the tenant's right to compensation.

The wording of clauses 1 and 5 of Section 6 referring to the decree or order "for the redemption of the land" is also in favour of this view.

3. I had lately before me a suit [Appeal Suit No. 658 of 1898] in which one issue was whether mesne profits were payable to a mortgagor who had tendered the value of the mortgage but not the value of improvements.

4. The mortgagor had tendered the mortgage amount within the meaning of Sections 83 and 84 Transfer of Property Act, but had not tendered the value of improvements under Sections 4 and 5 of the Malabar Compensation for Tenants' Improvements Act and yet sued to redeem and for mesne profits. It is not laid down in the latter act that Sections 83 and 84, Transfer of Property Act, are to be read subject to these provisions.

5. Consequently tenants are in a difficulty whether to surrender as required by the Transfer of Property Act or to hold out as allowed by the local act. If they hold out they may be saddled with payment of mesne profits, and pleaders do not know how to advise clients.

6. Section 4 (1). Explanation. This is also a new provision. It will be disadvantageous to the tenant. If a large part of the property has been substantially improved and a small part has been damaged by the improvement it would be competent to the landlord to contend under the explanation that no compensation should be given for the improvement. It is evident that in such cases the tenant should be awarded

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the Value of the improvements minus the amount of the damage. One Subordinate Judge and one District Munsif therefore Consider it advisable to omit the explanation.

7. Section 6 (2). In the case of decrees for ejectment the tenant should not have the option of taking out execution of the decree. It would be sufficient to make the decree for surrender of the land Conditional on payment for the improvements. The wording may be slightly altered so as to make the order for such payment an independent part of the decree as well as a Condition precedent to the landlord's right to recover the land.

8. I have no Remarks on the other portions of the Bill. The tables seem to have been carefully prepared.

I have the honor to be,

Sir,

Your most obedient Servant,

W. H. Welsh

District Judge.

Pdt

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from W. H. WELSH, Esq., District Judge, South Malabar, to the Chief Secretary to Government, dated Calicut, 9th January 1899, Dis. No. 35 :—

With reference to the order of Government, Mis. No. 5021, Revenue, dated the 17th December 1898, communicated under Current No. 5021, Judicial, dated the 29th ultimo, I have the honour to submit the following remarks.

2. *Section* 3 (1)—*Explanation* —The wording "section 58" should be inserted between "(*e*)" and "of the Transfer of Property Act." This is a new provision. The reason for the exclusion of mortgagees under clauses (*c*), (*d*) and (*e*) of section 58 of the Transfer of Property Act from the definition of "tenant" is not apparent nor is it explained in "the Statement of Objects and Reasons." As the law now stands a mortgagee for a term of years, *viz.*, *Kanomdar*, *Ottidar*, *Karipanayomkar*, &c., is entitled to be compensated. The Subordinate Judge of Palghat and two District Munsifs therefore suggest that a mortgagee under clauses (*c*), (*d*) and (*e*) of section 58 of the Transfer of Property Act should be expressly included in the definition of "tenant." If the explanation become law it is not very unlikely that the shrewd jenmi will embody in the document some clause creating some money right so as to defeat the tenant's right to compensation.

The wording of clauses 1 and 5 of section 6 referring to the decree or order "for the redemption of the land" is also in favour of this view.

3. I had lately before me a suit (Appeal Suit No. 658 of 1898) in which one issue was whether mesne profits were payable to a mortgagor who had tendered the value of the mortgage but not the value of improvements.

4. The mortgagor had tendered the mortgage amount within the meaning of sections 83 and 84, Transfer of Property Act, but had not tendered the value of improvements under sections 4 and 5 of the Malabar Compensation for Tenants' Improvements Act and yet sued to redeem and for mesne profits. It is not laid down in the latter Act that sections 83 and 84, Transfer of Property Act, are to be read subject to these provisions.

5. Consequently tenants are in a difficulty whether to surrender as required by the Transfer of Property Act or to hold out as allowed by the Local Act. If they hold out they may be saddled with payment of mesne profits and pleaders do not know how to advise clients.

6. *Section* 4 (1)—*Explanation.*—This is also a new provision. It will be disadvantageous to the tenant. If a large part of the property has been substantially improved and a small part has been damaged by the improvement it would be competent to the landlord to contend under the explanation that no compensation should be given for the improvement. It is evident that in such cases the tenant should be awarded the value of the improvements *minus* the amount of the damage. One Subordinate Judge and one District Munsif therefore consider it advisable to omit the explanation.

7. *Section* 6 (2).—In the case of decrees for ejectment the tenant should not have the option of taking out execution of the decree. It would be sufficient to make the decree for surrender of the land *conditional* on payment for the improvements. The wording may be slightly altered so as to make the order for such payment an independent part of the decree as well as a condition precedent to the landlord's right to recover the land.

8. I have no remarks on the other portions of the Bill. The tables seem to have been carefully prepared.

No. 138.

Transferred to the Revenue Department.

(Signed) A. R. KNAPP,
Ag. Under Secretary.

16th January 1899.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from G. W. DANCE, Esq., Collector of Malabar, to the Secretary to Government, Revenue Department, dated Calicut, 25th January 1899, Ref. on C. No. 1653-B. and G. of 1898 :—

With reference to G.O., Mis. No. 5021, dated 17th ultimo, calling for remarks on the Bill "to secure to tenants in Malabar district compensation for improvements," I have the honour to submit, herewith, the opinions received from the officers and non-official gentlemen named in the margin.

1. Rao Bahadur P. I. Chinnaswami Pillai, Landholder, Chairman, Municipal Council, Palghat, and Member, District Board.
2. L. Vibert, Esq., I.C.S., Special Assistant Collector.
3. M.R.Ry. C. Gopalan Nair Avargal, Special Deputy Collector for Janmam Registration.
4. M.R.Ry. K. Govinda Menon Avargal, Tahsildar of Kottayam.
5. M.R.Ry. A. Chandu Nambiar Avargal, Tahsildar of Walavanad
6. M.R.Ry. S. Ananta Patter Avargal, Tahsildar of Palghat.
7. Diwan Bahadur E K. Krishnan, Retired Sub-Judge.
8. M.R.Ry. P. A. Krishna Menon Avargal, First-grade Pleader, Calicut.
9. M.R.Ry. The Parappanad Raja.

2. I have no remarks to offer. The subject is not one on which I am competent to offer an opinion.

3. I respectfully submit that the time allowed is too short to admit of the Bill being carefully criticised.

ENCLOSURES.

(1)

From Rao Bahadur P. I. CHINNASWAMI PILLAI, Landholder, Chairman of the Palghat Municipality and Member of the Malabar District Board, Palghat, to the Collector of Malabar, dated 5th January 1899.

I have the honour to acknowledge the receipt of your Ref. No. 1653-B. and G., dated the 26th ultimo, forwarding a copy of a draft Bill to secure to tenants in the Malabar district compensation for improvements, and in reply to submit the following remarks.

I have not had time to consider fully the details of the Bill, but I beg to express my opinion that the present Malabar Compensation for Tenants' Improvements Act I of 1887 is quite vague and defective, and requires to be replaced by fresh legislation. It is not necessary for me to notice the alterations, particularly as the Honourable Member in charge of the Bill—one of the greatest authorities on matters connected with Malabar—has fully and clearly treated the subject in his Statement of Objects and Reasons, and has dealt in an exhaustive manner with the principles to be followed in framing the new compensation Act. I think that the additions and modifications made in the proposed Act will prove beneficial both to landlords and tenants, and that the Bill may be passed into law.

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(2)

From L. VIBERT, Esq., I.C.S., Acting Special Assistant Collector, Malabar, to the Collector of Malabar, dated Camp, Calicut, 10th January 1899.

With reference to your Endorsement, Ref. No. 1653—B. and G., dated 26th December 1898, on Tenants' Improvements Bill, I have the honour to state that the only remarks I have to offer are as follows :—

I doubt whether the provision of section 5 is not in conflict with the provisions of the Transfer of Property Act but this is a point for officers versed in civil law to examine.

I note that though the word kanom occurs in section 6 (3) it is not defined and it is not clear whether the phrase "kanom or lease" means that the terms are to be considered as interchangeable, which is hardly the case. The kanomdar is both landlord and tenant—a fact which might be noted as an explanation perhaps.

As the court has power under section 15 to grant the full rate for trees in excess of the scale—a fact which is implied but not expressed—it does not seem necessary to add the extra classification of tracts favourable to cocoanuts. The limit number of trees that should be planted will always be a matter of evidence when it is over 60, because it will have to be proved that the land is specially favourable. There are tracts specially favourable to areca—lowlying parambas where they will grow hardly four feet apart. The scale allows them at eight feet apart and in every case of overplanting it will naturally be put in evidence that the land could bear the extra crop—so that if it is clear that the court has discretion to exceed the scale no additional classifications for favourable areas are called for.

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(3)

Note by M.R.Ry. C. GOPALAN NAIR, Special Deputy Collector, Walavanad, dated Vellurzhi, 6th January 1899.

Section 3, *Clause* 1.—The object of the Bill is to secure to tenants the full market value of their improvements; and it is therefore desirable that the word "tenant" should include all such persons as may be entitled by law or custom to claim compensation for any improvements made by them. The word is defined to mean "a person who holds land under another person and is, or but for a special contract or custom would be, liable to pay rent for that land to that person." This definition restricts the class of persons to whom this enactment is applicable, to those who hold lands with the consent of another person. It excludes persons who occupy lands, without consent being applied for and obtained. I would instance the large number of cowle-holders who never obtained the janmi's consent before cultivating lands. The cowle-holder acquires an absolute right if he holds the land for the statutory period, but if the proprietor establishes his title within that period and obtains a decree to eject the cowledar, the latter is entitled to the value of improvements but not being a tenant, the question arises as to how the value should be assessed since the Bill refers only to improvements by "tenant." Similarly, squatters entering upon waste lands in Malabar without obtaining the proprietor's title as also purchasers of the squatter's improvements, are entitled to the value of improvements. They are practically trespassers, but so long as they are liable to be ejected at the instance of another person having superior title, it seems to me that it should be distinctly expressed that they fall within the definition of "tenants," and that the value of improvements will be fixed in accordance with the provisions of the Bill. I note that section 17 provides that "nothing in this Act shall take away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act." The right of trespassers to compensation for their improvements probably fall within the purview of this section; but it seems to me that, since the Act is expressly framed for the purpose of securing the full market value of improvements, it will be better to include in the definition of the word "tenant" all classes of persons who are entitled to the value of improvements. This may be done by defining "tenant" as including a person who is liable to be ejected at the instance of another person having superior title and adding an explanation that a person who without title occupies land and is liable to be ejected at the instance of another person having superior title is a tenant within the meaning of this section.

2. *Section* 3, *Clause* 1, *Explanation*.—A mortgagee under clause (*c*), (*d*) and (*e*) of section 58 of the Transfer of Property Act, 1882, is not a 'tenant' within the provision of this Act." The object of this exclusion is not stated. These mortgagees were not excluded from the operation of Act I of 1887, and it appears to me that, though mortgagees under clause (*c*) and clause (*e*) may be excluded, mortgagees under clause (*d*) should not be so excluded. Clause (*c*) of section 58 deals with a conditional mortgagee, clause (*d*) with a usufructuary mortgagee, and clause (*e*) with an English mortgagee.

3. With reference to "mortgage by conditional sale," I find that it is the same as "Peruvartham" in Malabar (Commentaries on the Transfer of Property Act by Mr. Justice Sheppard, page 185) and "Peruvartham" is defined to be "a deed under which the janmi has received the full value of the property mortgaged and is not entitled to any, the smallest share of the pattam or even the smallest token of acknowledgment of proprietorship." (Malabar Manual, volume II, page CCXXVII). The janmi is entitled to the market value of the land at the time of redemption, so that there is no objection to excluding mortgage under clause (*c*) from the operation of this Act.

4. But with reference to usufructuary mortgagees, I consider that they should not be excluded. Otti and kanom are usufructuary mortgages (Commentaries on the Transfer of Property Act, page 190). It is inequitable that the very large class of kanom tenants in this

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district should not have the protection which it is intended should be conferred upon the Malabar tenants by this Act. They have not been excluded from the benefit of Act I of 1887, and I do not see good grounds for their exclusion from the operation of the proposed enactment. Section 17 is no adequate protection. The object of the proposed measure is to ensure that the full value of improvements is secured to the person who makes those improvements, and it is but reasonable to suppose that the kanomdars and mortgagees in possession should find a place among the "tenants" who are to be benefited by this measure.

5. With regard to English mortgage, I think this may be excluded since it does not prevail in this district.

6. I therefore suggest that clause (*d*) may be omitted from the explanation.

7. *Section* 4, *Clause* 1.—"The protection and maintenance of such trees and plants, the same having grown spontaneously or having been planted by the landlord or any previous tenant." The last portion "or having been planted by the landlord or any previous tenant" did not find a place in Act I of 1887, and for reasons which I shall state below I consider the amendment unnecessary.

The principle on which the Bill has been drafted is that an evicted tenant is entitled to the full market value of improvements effected by him. Clause (i) contemplates three classes of improvements. Protection or maintenance of trees and plants—

(1) grown spontaneously.

(2) planted by the landlord.

(3) planted by any previous tenant. There is nothing to be said about the class of improvements specified as No. (1), but I take objection to Nos. (2) and (3).

No. (2) *Protection or maintenance of trees planted by the landlord.*—*A*, a landlord, plants a cocoanut tree and after it has come into bearing demises the property with the tree to *B*. The rent payable is the share due to the landlord after incurring expenses incidental to protecting the tree. The protection of the tree is a duty imposed upon the tenant and is necessary for the safety of his own investment. If he neglects to protect the tree, it results in deterioration and consequent loss to himself. If the tree decays in consequence of the neglect of the tenant to protect the tree, the Courts will hold the tenant liable to pay damages, and I do not think that the landlord should be asked to pay to the tenant for performing a duty which is cast upon him by his acceptance of the demise and which he is bound to perform in his own interests.

No. (3) *Protection of trees and plants planted by any previous tenant.*—This again has to be divided into two classes—one is a case where a landlord after recovering the land from one tenant (*A*) demises it to another (*B*), and the other is a case where a tenant assigns his demise to another tenant. In the former case the landlord, when recovering possession, pays the value of the improvements made by *A* and demises the land to *B*, and if the landlord is again to pay to *B* for the protection and maintenance of trees for which he paid to *A*, he will have been paying twice for the same set of trees though for different periods. The trees, though not planted by the landlord, became the property of the landlord on his recovering possessions of the land from *A*, and as stated in the above paragraph it is the duty of the tenant—in the interests of the landlord as also in his own interests—to protect and maintain what has been demised to him. The protection and maintenance of trees belonging to the landlord cannot therefore be considered a separate charge, since in the absence of such protection and maintenance the tenant would not be able to enjoy the produce of the trees or secure the interest on the money advanced by him. The property mortgaged is the security for the money advanced, and that for keeping the property in good order in his own interests the tenant should be paid is hardly fair to the landlord. In the other case referred to, where a tenant assigns his right to another tenant the tenancy so far as the landlord is concerned is what was created by the original tenant, and provisions for the protection and maintenance of trees planted during the tenancy have already been made in clause (*h*). I think therefore that the amendment is unnecessary.

8. *Section* 6, *Clause* 1.—The portion referring to the redemption of the land comprised in the demise to the tenant is new. This amendment certainly refers to a kanom tenant and supports my argument in favour of including a usufructuary mortgagee in the definition of a tenant (*vide* paragraph 1 above). In clause (i) the expression "for the redemption of the land comprised in the demise to the tenant" might be made clearer. In a case where a landlord waiving his right over two out of ten items of lands demised to a tenant sues for the recovery of the remaining eight items, the question arises whether the Court should compel such landlord to pay the value of improvements on all the items or only on the eight that he seeks to recover. The value of all the improvements is ordinarily payable to the tenant, and the expression "Due to the tenant for improvements under this Act" might be interpreted to mean that the landlord is liable to pay for the value of all the improvements irrespective of the fact that the landlord has given up his right over two of the items.

9. *Clause* 3.—"When under an express agreement in writing, &c." With reference to this class, I have only to observe that a landlord is not likely at the time of the grant or renewal of a demise to enter into an "express agreement" so that the clause will practically be a dead letter.

10. *Section* 8.—I have had hardly time to carefully study the various aspects of the question involved in this section, but I am afraid that the object with which this amendment was proposed has not been sufficiently met. In the Statement of Objects and Reasons it has been observed that the "provisions of Act I of 1887 leave too much to the discretion of the Courts and the assessors appointed under the Act, while the absence of clear, uniform and definite principles to guide them in awarding compensation is a serious defect." So far as the question of assessors is concerned, I have not heard that any Court appointed assessors for the purpose of fixing the value of improvements. The next question is whether the discretion of the Courts has been in any degree restricted by the present Act. Reading illustration (1) I find that the age of the tree, the probable future fruitful life and the future average annual yield are questions that have still to be left to the discretion of the Court with the result that no two Courts in the district are likely to agree in determining these points. I may add that the same Court cannot be expected to arrive at the same result in consequence of the different modes of classification adopted by different individuals deputed for that purpose by the Court.

11. *Section* 9.—I would omit "planted by the landlord or a previous tenant" with reference to my remarks in paragraph 7 above.

12. *Section* 12.—In practice this can be worked only with the greatest difficulty. It casts upon the Courts an unnecessary amount of labour and holds out inducements to commit perjury in fixing the value "during the last ten years." I would therefore suggest the omission of this particular portion and leave it to the discretion of the Court to assess the market value with reference to schedule II of the Act.

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(4)

From M.R.Ry. K. GOVINDA MENON, Tahsildar, Kóttayam, to the Collector of Malabar, dated Tellicherry, 14th January 1899, No. 31-D—R.-99.

With reference to your Memorandum, Ref. 'on Cur. No. 1653—B. and G. of 1898 of the 26th December last, asking for my opinion and remarks on the "Bill to secure to Tenants in Malabar Compensation for Improvements," I beg to state as follows.

2. The general provisions of the Bill go, no doubt, to materially improve the present hard condition of the tenants in general. Such an improvement in the case of the Mappilla tenants of Ernad and Walavanad taluks is particularly desirable in the way of removing at least one of the two causes (agrarian discontent) of the Mappilla outbreaks, though the other more powerful cause (fanaticism) must yet remain unaffected—the only remedy for their religious wild notions being consistent with their general education in which respect that community as is well known—is now most backward indeed.

3. The proposed commutation rates of paddy and cocoanut, areca-nut and jack trees are fair and reasonable. The compensation rates also appear to be so and, as compared with the present state of things, are very favourable to the tenants and unfavourable to the janmis; yet I doubt whether the rates are so unfavourable to the latter's interests that one has any good reason to complain. A janmi choosing to recover his property on ejecting the tenant secures and can enjoy (*vide* the illustration under section 8) on the money given away as compensation, more than 7 per cent. interest in the shape of the net value of the annual produce. This is a good investment of money on landed property. The wealthy janmis can very well afford to do so and might not complain. But to such of them as are not in a position to afford to invest the money at so low a rate, it might be, I fear, difficult to recover their properties and the tenants concerned might also be tempted to take advantage of, and add to, their difficulties by wilfully withholding payment of the rent or by committing some acts to the prejudice of the janmis' title and their future interests. It seems to me that some provisions require to be made on the point defining the circumstances under which a janmi might reasonably eject the tenant and the latter is denied wholly or partially the benefits of the Bill.

4. The proposed costs of the original cultivation and the subsequent maintenance of some of the improvements dealt with in the Bill also, in my humble opinion, require modification or elimination. A charge of Rs. 2-10-0 for cultivating and bringing up a jack tree is obviously excessive. This tree is seldom looked after, after it has grown up sufficiently high to be free from being injured by cattle, and afterwards practically, no expenditure is incurred for its maintenance. It seems to me that the above charge might therefore be reduced to As. 8 or Re. 1 the utmost, and no cost requires to be provided for its maintenance while in bearing. As regards the cocoanut trees, these are particularly looked after (watered, manured and fenced) only so long as they remain in the "Kili" stage, and afterwards they are, as a rule, manured only once a year. The costs of bringing up a cocoanut tree and maintaining it

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afterwards might also be reduced in the formal case to Re. 1 where the ground is low and the soil light and Rs. 1-8-0 where the ground is high and the soil heavy, and, in the latter, to 6 pies in both the cases.

5. Having had no personal experience of any agricultural operations or of the management of tarwad affairs and so being not in a position to verify the provisions of the Bill by my own experience, I have had to make enquiries on doubtful points. Hence the delay in submitting this report which I hope to be kindly excused.

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(5)

From M.R.Ry. A. CHANDU NAMBIAR, Tahsildar of Walavanad, to the Collector of Malabar, dated Camp, Anamangad, 10th January 1899, Dis. No. 23-Rev. of 1898.

With reference to your Memorandum, dated 26th December 1898, No. 1653—B. and G., directing to submit opinion and remarks on the Bill to secure to tenants in the Malabar district compensation for improvements, I beg to submit the following :—

1. *Section* 3 (1) *Tenant.*—A mortgagee with a term of 12 or more years may make improvements for which he is entitled to compensation under the existing law. By the explanation given to section 3 (1) in the Bill in question, he is deprived of that right. Instead of therefore excluding him from the definition it would be well to include him also.

2. *Section* 4 (1) *Improvement.*—The explanation given here does not appear to be necessary. In the explanation the term *holding* occurs which is not defined. As generally understood the term holding includes all items of lands included in one document executed by a landlord to his tenant. Say in a document there are ten items. The work executed in respect of one of them may add to the value of the holding by Rs. 100 a year, but may diminish the value of another part by Rs. 75 a year. Would this be an improvement? The term holding requires definition.

3. *Section* 4 (2) (*d*).—This should include "conversion of one or two crop-land into three crop-land" also. As it is, three crop-land is not included in the definition. Conversion of dry or garden parambas into pallial or one crop-land is an improvement under the existing law. Is not such conversion an improvement under the proposed law? The definitions given in section 4 do not seem to be clear so as to include the same also. Is a flower garden intended to be excluded from the definition of improvement? If not, I think, it is necessary to define the term "improvement" so as to include the same also.

4. *Section* 6 (1).—Under a sale certificate granted under the Revenue Recovery Act a purchaser can be put in possession of the land by a civil court. Under the proposed law it would appear that the purchaser has to pay for improvements inasmuch as the civil court is bound to enquire into and determine the amount of compensation to be paid to the tenant before ejectment. Is it intended to be so done and, if so, who is to pay such compensation?

5. *Section* 6 (3).—This clause—a powerful instrument for landlord—in effect deprives his tenant of the value of his improvements. Ever since Act I of 1887 was introduced, some landlords—especially in North Malabar—used to make in renewal leases an agreement to the effect that the compensation is settled (when as a matter it is not really settled) or that so much money is paid in cash to the tenant in consideration of improvement to be made by him (tenant) (when as a matter of fact not a single cash is paid). Then there might be a question as to why the tenant yields to such a false agreement. The answer is simple. It is simply because he has no fixity of tenure. The agreement is evidently for the purpose of depriving the tenant of his improvements and is made simply because the law provides therefor. The tenant cannot but yield to the terms dictated by his landlord so long as the latter (landlord) can eject him (tenant) of his holding even by payment of heavy compensation if necessary. Before the introduction of Act I of 1887, it was the practice both in North and South Malabar to grant one demise in respect of all wet and dry lands to a tenant, that is to say, it was the practice to include *all lands*,—wet and dry—in one and the same document executed by a landlord to his tenant. Subsequent to the Act separate demises are granted exhibiting all wet lands for which no compensation can be claimed in one document, and dry and garden lands alone in which improvements are likely to be effected by tenant in another document. North Malabar tenants depend more on garden produce which is not the case in South Malabar, where wet lands yielding two or three crops a year are extensive. A tenant in South Malabar possessed of wet lands only which yield immense produce, if ejected, is entitled to get no compensation therefor. He cannot therefore lose such lands which it is his desire to retain at any cost. This—his weakness—is too well known by his landlord who can, if separate demises as aforesaid are granted, sue the tenant as it suits his purpose. If therefore after the expiry of the lease the tenant does not yield to the terms dictated by the landlord in respect of settlement regarding compensation for improvements effected by the tenant, then the landlord can sue under the demise granted for wet lands and evict the tenant who, if dispossessed of wet lands,

would not be able to support his large family. He must then necessarily yield to the landlords' wishes. Separate demises are therefore granted to drive the tenant to the necessity of yielding to his landlord. In respect of dry lands landlord does not want to evict his tenant simply because he has to be compensated for the improvements effected by him (tenant).

6. *Section* 6 (4).—Giving power to the tenant to execute a decree or order against his landlord appears to be hard. It may be given under exceptional circumstances. If the amount of compensation awarded is large, the landlord would not care to pay the same and eject the tenant. By giving the power to the tenant he may be able to proceed against the landlord's other property. It would certainly be imposing a penalty on the landlord merely because he let his land to the tenant. It is more so when the landlord happens to be an innocent Janmi. The case may, however, be different when the landlord's case is otherwise. I would therefore like to have a proviso added to it as follows : "The latter can only apply for execution if it is proved to the court that the suit was not due to any fault on his part."

7. *Section* 6 (5).—Who is to prove the substantial injury referred to in this section ? The section must be modified so as to enable the tenant to remove the improvements for which no compensation is awarded unless the landlord satisfies the court that such removal would cause injury to the holding.

8. *Section* 6 (6).—The object with which the law is enacted can be gained only by an impartial valuation of compensation. Such valuation will never be made by irresponsible Commissioners now existing in courts. If paid Commissioners or assessors are appointed, they are likely to realize the importance of their position and do justice to their work. In making rules it is therefore a point for consideration whether or not paid servants ought to be appointed.

9. *Section* 9 (1).—Are flower plants (not in pots) such plants as are mentioned in this section ? If so, how is the compensation therefor to be calculated ? They cannot be sold by public auction inasmuch as some of them cannot be *cut* and carried away.

10. *Section* 12.—The presumed price of cocoanuts, &c., is given in schedule II and it is laid down in this section that the court should ascertain the average price and determine the money value, &c. I think it would be well to frame the section in such a way as to make the court presume that the price of cocoanuts, &c., is that shown in schedule II, unless the party disputing the same proves to the contrary.

11. In conclusion I respectfully beg leave to state that any stringent provision in the Act would not deter Malabar Janmis from ousting their tenants unless and until some law which provides for fixity of tenure is enacted.

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(6)

From M.R.Ry. S. ANANTA PATTAR, Tahsildar, Palghat, to the Collector of Malabar, dated 7th January 1899, Ref. on C. No. 2510—C. and D. of 1898.

Adverting to your Memorandum, dated 26th December 1898, Ref. on C. No. 1653—B. and G., I beg to submit the following remarks regarding the provisions of the Malabar Compensation for Tenants Improvement Bill :—

1. The first change which the Bill proposes to introduce is the right of the tenant to execute the decree in a redemption suit against the janmi—*vide* section 6, clause 2. I think this right, though a novel one, is very necessary for many janmis when they find that they have to pay heavy compensation decline to execute the decree and thus place the tenants without any remedy. This defect will now be removed.

2. The provision contained in clause 5 is also a wholesome one.

3. The classification of improvements (*vide* sections 8, 9 and 10) are, no doubt, essential, but the rules laid down for capitalizing the value of improvements are too much in favour of the tenants, and if they are adopted finally, I do not think that any janmi in Palghat would dare attempt to evict a tenant from his holding. In this taluk the chief dispute between the janmi and the tenant in a redemption suit is as regards the vettu chamayam (improvement for converting dry into wet), and if it is to be capitalized according to the provisions of this Bill the janmi will be swamped. The same remarks apply to the improvements proposed to be given for fruit trees in the coast taluks. I think if the Bill is passed the necessity for Tenancy Bill for the district will be considerably lessened as janmis will not seek to redeem their lands on payment of such heavy compensation.

4. The figures in the several schedules appear to have been worked out as correctly as the circumstances of the case would admit. The effect of clause 16 under which a tenant can claim compensation contrary to the provisions of this Bill in spite of any contract to the contrary will be very disastrous to many janmis in this taluk. I have known several instances in which contracts have been entered into by janmis and tenants limiting the vettu chamayam to Rs. 8 for land sowing one para of seed. The contemplated provision to enable tenants to claim compensation according to the new Bill will render such contracts null and void and this will be very disastrous to the janmis as observed before.

Please see draft memo
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(7)

REMARKS by Dewan Bahadur E. K. KRISHNAN, Retired Sub-Judge, dated Tellicherry, 7th January 1899.

Section 6 (4).—This is in accordance with the Malabar usage. I think it may be made clearer by the provision that the right of the landlord to set off against the value of improvements any rent due to him must prevail against any alienation made by the tenant, as was decided in Eressa *v.* Shamu Pattar (I.L.R. 21, Mad., 138, dated 19th August 1897).

Section 8.—The mode of calculating the value of improvements herein laid down with the tables appended has simplicity to recommend it, but I think that, in very many cases, it will work a great hardship on the landlord—nay it will tend to *improve off* his janmam right altogether. I think that in no case should the compensation for a cocoanut tree planted by the tenant exceed Rs. 10. That should be the maximum limit, whereas Rs. 21-8-11 is put down as such in the schedule. What is proposed to be given as compensation is almost equal to full proprietary value of trees. The hard-and-fast rule laid down appears to me to ignore the janmi's share in the trees grown on his soil. A deduction should be made in his favour in consideration of his ownership in the soil. This right to a deduction was distinctly recognised in several taluks as shown in schedules of value of improvements appended to Mr. C. Ramachandra Aiyar's Manual of Malabar of Law. I think the better plan would be to ascertain the net annual value of the produce of the trees planted by the tenant and allow a compensation five to ten years' purchase of that value according to circumstances. I am of opinion that it will be iniquitous to give to the tenant more than ten years' value. I have no objection to the present value system being adopted provided the maximum be limited to Rs. 10. Supposing a janmi lets out an acre of pure *tarishu* land of first-class soil and the tenant plants it up with 60 cocoanut trees, let alone the other trees mentioned as capable of simultaneous cultivation in section 15 and these 60 cocoanut trees on attaining full-bearing age produce each 100 nuts a year and their estimated future fruitful life is 50 years, the janmi on eviction of the tenant have to pay according to schedule IV, table II, sixty times Rs. 21-8-11, viz., Rs. 1,293-7-0. I doubt if a paramba of that area, however well improved, will fetch Rs. 1,293-7-0 as *janmam* price. The unfortunate janmi cannot even elect to abandon the land to his tenant for compensation due to him, because under section 6 (2) the decree for ejectment conditional on payment to the tenant of the compensation determined under the Act, may be executed at the instance of the tenant and the janmi's other lands may be sold up to satisfy the tenant's claim for compensation in respect of the one acre land here suffered. In my opinion, the Bill as it now stands, if passed, will be disastrous to janmam interest in Malabar.

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(8)

NOTES on the Bill to amend the Malabar Compensation for Tenants' Improvements Act by P. A. KRISHNA MENON, First-grade Pleader.

Section 3.—The definition of tenant does not take in all classes of persons who are entitled to get compensation for improvements.

A cowlidar who enters upon land independent of the janmi and makes improvements but pays no rent to the landlord is entitled to get compensation for improvements and does get compensation now when evicted by the rightful owner.

Trespasser.—Even a trespasser is allowed compensation for improvements according to the custom of the country. (*See* Wigram's Manual, page 137, paragraph 1.)

For instance, a person believing himself to be the owner of a land enters upon it and effects improvements. The real owner establishes his right in a court of law and turns him out. Courts do allow him compensation for the improvements made by him. The word tenant ought to be so defined as to include such persons or an explanation added to include such persons.

Explanation to section 3.—It seems to me that this explanation will create serious difficulties and hardships which the framers of the Bill have never thought of.

A Kanom tenant who does not pay rent or purapad comes in under this explanation and such a tenant will not get compensation for improvements. *Ottidar, Veppudar* and *Palisa Matakku mortgagee* do not ordinarily pay rent. They are all usufructuary mortgagees under the Transfer of Property Act. Such mortgagees are ordinarily allowed compensation for improvements in courts. In fact their right is superior to that of a Kanom tenant. If the explanation is allowed to stand, they will be deprived of the right which they now possess.

Transfer of Property Act is an Indian Act applicable to the whole of British India; any reference to it in a purely local Act is unnecessary; Malabar tenures by specific names may be mentioned. It is the indiscriminate application of the term "Mortgage" as defined in the

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Transfer of Property Act to Malabar Kanom that resulted in the re-introduction of melcharth into the district because melcharth was considered a second mortgage which is lawful under Act IV of 1882.

Tenant should include sub-tenant also. Otherwise in a redumption suit a sub-tenant of the demisee who does not hold directly under the plaintiff and pay rent to him may not be able to claim compensation for improvements.

Rent.—This word should be made to include purapad or michavoram payable by a Kanom tenant.

Section 4, clause (i)—"*Having been planted by the landlord.*"—This phrase may work some hardship on the landlords. Trees belonging to the landlord are generally put in possession of the tenant on the latter agreeing to take care of them and to pay rent on account of them. In such cases the tenant is not entitled to claim anything for protecting such trees.

Section 6, clause 4.—It is nothing but fair to the landlord that he should have the right to set off all arrears of rent due by the tenant against the amount of compensation for improvements. But it is very hard to extend this privilege to the improvements made by the sub-tenants.

Example.—A demises land to B. B sublets it to C. C makes improvements. There is no privity of contract between A and C. C is not to pay any rent to A. A and B collude together to defeat C who owns large improvements. B, who is liable to pay rent to A, does not pay. A sues B and C for redemption and for arrears of rent; C's improvements are all under clause 4 of section 6 made liable for the rent due by B. Such instances are common.

I would therefore suggest that the right to set off arrears of rent should be given to the landlord only against the improvements of the tenant between whom and the landlord there is privity of contract and not against the improvements of the sub-tenant.

Section 8.—The scheme proposed is too complicated to be worked in ordinary cases. A simpler process is very desirable. The Commissioners appointed in the Munsiffs' courts are not likely to be able to work out the scheme correctly.

The result, however, is satisfactory. If the Bill be passed into law the tenant will get some justice which is now practically denied to him.

Section 14.—Paragraph 1 seems to be very desirable. It is very difficult to get an amendment passed by the legislature. The Government should have the power of amending the schedules.

Section 15—Jack trees.—Thirty is too small. Forty trees may safely be planted in an acre of land.

Schedule II.—As. 2-6 is too low a value for 100 areca nuts. The usual price is from 4 to 6 annas.

Schedule III.—Cost of cultivating a crop of paddy for an acre has been admitted to be more than Rs. 10 in the memorial submitted by the Mahajana Subha, whose members are mostly janmis, to the Settlement officer and to the Government.

The tenants who require protection at the hands of the Government are tenants of Walavanad, Ernad and Palghat taluks. In the coast taluks where there are large cocoanut gardens the tenants do not suffer much, and in such places even now landlords do not very easily resort to courts and wantonly turn out tenants. It is in the interior taluks where there is no scope to make much valuable improvements eviction is more freely resorted to. Jack trees and palmyra trees are the only trees that can be advantageously planted in those taluks.

I would very earnestly suggest that a table giving a liberal scale be prepared for jack trees and some reliable guidance be given for valuing palmyra trees. Palmyra trees have now become very valuable after the introduction of the Abkári Act and much revenue is collected by the Government and the owners of such trees also get a corresponding advantage. It is nothing but fair that the tenant who plants such trees ought to be fairly compensated. Within the last few years palmyra trees have become an important item of plantation in Walavanad and Palghat taluks.

On the whole, I welcome the amending Act in the interests of the labouring classes.

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(9)

MEMORANDUM by RAMA VARMA RAJA, Tampuran of Parapanad, dated Parapanagady, 1st January 1899.

It has long been found that the Madras Act I of 1887 has not been working satisfactorily. The present attempt to repeal that Act and to re-enact its provisions with required additions and modifications is indeed desirable. No one is in a better position to know the real wants of the tenants in Malabar than the Hon'ble Mr. Winterbotham a copy of whose Bill has been forwarded to me for remarks.

Section 4 (1).—Improvements should mean only kulikur vittu chamayam and such chamayam as is suitable to the holding and consistent with the purpose for which it was let. I doubt the justice of demising costly buildings unreasonably expended and unsuitable to the holding, as improvements under the proposed Act unless they were erected with the special permission of the landlords. On the one hand it is hard on the tenants to be left with a farm house and buildings in the centre of paddy fields and cocoanut plantations in which he has no interest. On the other hand it is hard on the landlord to be improved out of his own land. It is the duty of the courts to check caprecious conduct on the parts of either. (A.A. 156 and 161 of 1877, South Malabar.) I would add the words "suitable to the holding and consistent with the purpose for which the holding was let" after the word "buildings" in the third line of paragraph (*a*), clause 2, of this section.

Section 6 (6).—For various reasons I seriously doubt the necessity of this clause. Now the courts of Malabar depute a Commissioner to ascertain the value of improvements. "The courts on receiving the Commissioner's report hears the objection of the parties to the valuation and their evidence, if any, offered and records a finding." I think this is more simple and less costly way to determine the value of improvements.

Section 9 (1).—In the case of the trees and plants planted by the landlord or a previous tenant if they had to be protected and maintained by the tenant the compensation may be one-half but in the case of trees spontaneously grown it must be only one-fourth of the sum which the trees or plants might reasonably be expected to realize if sold by public auction to be cut and carried away.

Section 10.—In the eighth line the words "including supervision" may be omitted it being very difficult to estimate the value of supervision.

Schedule 11.—I would put Rs. 15 and 18 as prices of a thousand cocoanuts, respectively, in localities unfavourably and favourably situated.

These are my views. They are certainly from a jaumi's standpoint.

2 Aug t

Send me 3 [illegible]

proofs of the upstairs

& Male Camp Room

Shane Sat [illegible]

from the Dancers

with the Pantomime

[illegible] want the Mat

drawn. [illegible]

Forms

Please see draft [illegible]

NOTE FOR THE ~~UNDER~~ SECRETARY.

Proofs printed on one side not being ~~sent to the Pr~~ available requisition was sent to the Press last evening; a reminder was sent at 11 this morning and another at 12. The proofs are being inspected every minute

2. The notes have been completed & have been typed in part. The rest is being typed; the whole will be submitted at 3 o'clock

RS
4-2-99

Copies of the opinions which, if this has not already been done, be at once sent to Dep Sol for consult of the Sol. Comtee

The Comte undertook to consider whether the advice should be sent

FOR RS
please see draft submitted
4-2-99

Rev. Dept:
Circ. 336, 372, 406 & 705
of 1898
Encl- Mrs No 513 of 4th February 1899

Copies of the marginally noted papers will be communicated to the Legislative Dept for communication to the Select Committee on the Malabar Compensation for Tenants Improvements Bill.

4/2/99

...om the Dt Judge, N. Malabar,
... No. 46, reporting on the Malabar
...sation for Tenants Improvements

... from the Dt Judge, S. Malabar,
... 99 No. 35, reporting on the
... Bill.

... from Mr. C. Sankaran Nair
... 17. 1. 99 forwarding his
...arks on the above Bill.

... from the Coll. of Malabar,
... 1. 99, Ref on Circ 1653 B & C
898, submitting the opinions of
...lair gentlemen on the above
...ll.

To the Legislative Dept. with Copies of Opinions
— Despd
4. 2. 99.

Circ
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RS
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