

MALABAR COMPENSATION
FOR
TENANTS' IMPROVEMENTS.

ACT I OF 1900.

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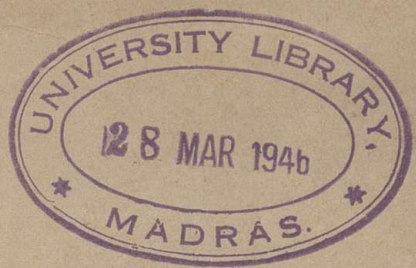
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THE
MALABAR COMPENSATION
FOR
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ACT I OF 1900.

WITH INTRODUCTION AND NOTES

BY

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High Court Vakil, Calicut.

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PREFATORY NOTE.

OF all the local enactments in force in this District, none perhaps is in so frequent use and of so constant application as the Malabar Tenants Improvements Act of 1900. Yet, the present publication is the *first* attempt at a systematic annotation of the Act. This fact, though probably the only merit of the book will, the Author trusts, cover the multitude of defects there must needs be, in a work of this kind.

The Author desires to acknowledge his indebtedness to Messrs. Higginbotham & Co., Law Publishers, for the neat get up of the book.

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LIST OF ABBREVIATIONS

App. Cas.	.. Appeal Cases (in the English Law Reports, 1875 to 1890).
Beav.	.. Beavan's Reports.
B. L. R.	.. Bengal Law Reports.
Bom. L. R.	.. Bombay Law Reporter.
Ch. D.	.. Chancery Division (English Law Reports, 1875 to 1890).
C. P. D.	.. Common Pleas Division.
C. W. N.	.. Calcutta Weekly Notes.
East.	.. East's Reports.
F. B.	.. Full Bench.
F. B. R.	.. Full Bench Reports.
G. O.	.. Government Order.
I. L. R. A.	.. Indian Law Reports, Allahabad Series.
I. L. R. B.	.. Indian Law Reports, Bombay Series.
I. L. R. C.	.. Indian Law Reports, Calcutta Series.
I. L. R. M.	.. Indian Law Reports, Madras Series.
L. J. C. P.	.. Law Journal, Common Pleas.
L. R. Ch.	.. Law Reports, Chancery Appeals.
L. R. Eq.	.. Law Reports, Equity.
L. R. H. L.	.. Law Reports, English and Irish Appeals to House of Lords.
M. & W.	.. Meeson and Welsby's Reports.
M. L. J.	.. Madras Law Journal.
M. L. T.	.. Madras Law Times.
Q. B. D.	.. Queen's Bench Division Reports.
Sch. & Lef.	.. Schoales and Lefroy's Reports.
Sel. Ch. Ca.	.. Selborne's Chancery Cases.
Sm. L. C.	.. Smith's Leading Cases.
Sup. Vol.	.. Supplemental Volume.
Ves. Jun.	.. Vesey Junior's Reports.
W. R.	.. Weekly Reporter.

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|--------------------------------------|---|
| Colebrooke | .. Digest of Hindu Law (1798). |
| Digby | .. History of the Law of Real Property (1897). |
| Goodeve | .. Modern Law of Real Property (1897). |
| Hamilton | .. Translation of the Hedaya. |
| Innes | .. Gazetteer of the Malabar and Anjengo Districts (1908). |
| Leake | .. Law of Uses and Profits of Land (1888). |
| Lightwood | .. Possession of Land. |
| Logan | .. Manual of the Malabar District (1891). |
| | .. The Malabar Land Tenures (Malabar Special Commission, 1883, Madras Govt. Press). |
| Malabar Land Tenures Committee, 1885 | Report (Madras Govt. Press, 1887). |
| Moore | .. Malabar Law and Custom (1905). |
| Sandars | .. Institutes of Justinian. |
| Shephard and Brown | .. Transfer of Property Act (1908). |
| Smith | .. Leading Cases in Common Law (10th Edn.). |
| Turner | .. Minute on the Draft Bill relating to Malabar Land Tenures (Madras, 1885). |
| Williams | .. Principles of the Law of Real Property (17th Edn.) |
| Woodfall | .. Law of Landlord and Tenant. |

7. 4

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THE

INTRODUCTION.

THAT one person should not be allowed to enjoy the fruit of another's labour without recompensing the latter for his trouble is, generally speaking, the principle underlying every law of improvements. The relationship of landlord and tenant implies amongst other obligations, the obligation on the landlord to pay for work executed on the holding by his tenant, when such work conduces to the improvement of the holding and has had his express or implied sanction (a).

2. Such obligation has been recognized even from the earliest times in almost all systems of civilized jurisprudence, and is a necessary corollary to another rule, equally universal, which imposes upon the tenant a duty not to do anything calculated to deteriorate the property in his charge.

3. According to the Civil Law (b) if a person building on the land of another, used his own materials not knowing that the land was not his own, or if he was in possession of the building, he could refuse to deliver it to the owner, unless he was indemnified for his expenses, at least so far as they had been incurred profitably to the owner of the soil.

4. Looking to the ancient Hindu Law (c) we find it laid down that he who dwells in a house which he built on the ground of another man and for which he pays

(a) *Ramsden v. Dyson* (1866) I.H.L. 129.

(b) See Justinian's Institutes, Sandars, Book II, para. 30.

(c) Narada, Colebrook's Digest, Book III, Chapter 2, para. 99. (Vol. II, p. 398, Ed. 1798).

rent, shall take with him when he leaves it, the thatch, the wood and the bricks, thereby implying that the property in the structure belongs to the dweller and presumably that he is entitled to get a fair compensation for his improvement.

5. So also we find in the Hedaya (*d*) that it is incumbent on the lessee to remove his trees and houses, unless the proprietor of the soil, agrees to pay him an equivalent.

6. These simple rules were recognized by the Courts in India as part of the common law of the land. The Bengal High Court laid it down as early as 1866, long before the Transfer of Property Act was passed that "according to the usage and customs of this country, building and other such improvements made on the land do not by the mere accident of their attachment to the soil become the property of the owner of the soil: and that as a general rule if he who makes the improvement is not a mere trespasser, but is in possession under any *bona fide* title or claim, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building, if it is allowed to remain for the benefit of the owner of the soil, the option of taking the building or allowing the removal of the material, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate which he may possess" (*e*).

7. This view of the law was but given statutory expression in section 51 of the Transfer of Property Act.

(*d*) Hamilton's Translation, Vol. III, page 325.

(*e*) *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* (1866), 6 W. R. 228.

8. But in those cases where the tenant makes improvements (*f*) on his land without the consent either express or implied, of his landlord there is no equity which requires him to be compensated for his gratuitous labour (*g*). On the other hand both under the Hindu and Mohammedan Law and what may be termed the common law of the land as laid down by the Bengal High Court a tenant who erects a building on land let to him, without the landlord's consent, can only remove the same and not claim compensation for it on eviction by the landlord (*h*). The maxim of the English Law, "Quicquid inaedificatur solo solo cedit" has no application to India, and the lessee may at any time during the continuance of the lease remove all things which he has attached to the earth, provided he leaves the property substantially in the state in which he received it (*i*).

9. The Malabar Law has departed from these last-mentioned rules, and has from a remote period in its history, recognized in the tenant a right to compensation for all improvements effected by him, whether with or without his landlord's consent. Indeed, the law encouraged cultivation to such an extent that even a trespasser was entitled to make improvements and claim compensation for them. And the same law also sanctioned another custom whereby the landlord (*jenmi*) was allowed to appropriate a third or a half of the value of the tenant's improvements, as his share, on eviction (*j*).

10. There was no fixed rule, however, and the tenant was entirely at the mercy of the landlord, as the latter

(*f*) Such improvements are termed "ameliorating waste" in English Law.

(*g*) *Wahedoollah v. Golam Akbar* (1875), 25 W.R., 205.

(*h*) *Shaik Husain v. Govardhandas*, I.L.R., 20 B., 1.

(*i*) See the Transfer of Property Act, sect. 108 (*h*), and also I.L.R., 24 M., 47, 2 B. (1900).

(*j*) This custom has not been legislatively recognized either by Act I of 1887 or Act I of 1900.

had the power to turn him out of his holding if he did not accept his terms which were often very unconscionable. In a great majority of cases, the tenantry had to give up all their claims to improvements, if they wished to remain undisturbed in their holdings. Again, the improvement rates for trees, shrubs and the like, were rates fixed by old custom, and varied enormously throughout the district. For the cocoanut alone there were 74 rates varying from 10 pies to Rs. 14; and in North Malabar and the Calicut Taluk the highest rate allowed for a cocconut in full bearing was 8 annas, or about half a year's rent for a good tree. For the areca palm there were 28 rates ranging from 1 pie to Rs. 4-8 and for the jack tree 45 rates varying between 1 pie and Rs. 40. The tender of the value of improvements by jenmies before filing a suit in ejectment was the merest farce, the sum offered being invariably grossly inadequate. The practice therefore was to depute Commissioners to assess the improvements at the rates of the locality, and the door was thus thrown open to the most monstrous injustice. The Commissioners were usually men with no special qualifications for the work entrusted to them; their sympathies were ordinarily rather with the jenmi, often a Nambudri of high reputation for sanctity and spiritual wealth, than with the tenant who was not seldom a Mopla; and their estimates were never checked except by another Commissioner with no better qualifications.

11. Rents, in course of time, came to be fixed by competition instead of by custom, and an unscrupulous class of jenmies gradually appreciated the significance of the power of the weapon which the inadequacy of the improvement rates and the faulty methods of assessing the value of improvements, placed in their hands (*k*).

12. As a result, evictions increased with alarming rapidity, especially between the years 1860 and 1880. The average annual number of suits for eviction had arisen from 2,039 in the five years ending in 1866 to 4,983 in the four years ending in 1880. The average annual number of eviction-suits had increased from 1891 to 8355 in the same period. A suit for eviction was a common device of raising rents, and the decree was often executed only if the tenant refused to come to terms. Not unfrequently a tenant was evicted just when the garden which he had planted up with the sweat of his brow and the outlay of all his capital was beginning to repay him for what he had spent on it; and after twelve or more years of hard labour, he found himself homeless with his capital exhausted, and the scanty sum allowed for improvements swallowed up in the cost of the inevitable suit (*l*).

13. Between the tenant and the landlord, moreover, in many cases, there stood a rapacious tyrant in the person of the *kariastan* or land-agent. The kariastans were, as a rule, poorly paid and beyond the reach of effective control. And the nature of their duties which were chiefly to collect rents and grant receipts placed immense power in their unscrupulous hands (*m*).

14. Naturally this system provoked the greatest discontent. Land was in the hands of a few jenmies, and the majority of the inhabitants were tenants, who were, as we have seen, entirely at the mercy of the landlords and their unprincipled land-agents. The landlord spent nothing on the land, and the rent was a payment to him for permission to cultivate the soil which the peasantry believed to belong to themselves, and the productive power of which was largely due to their labour. When men

(*l*) Ibid.

(*m*) Ibid.

whose minds are sharpened by hunger, begin to think, it is scarcely possible that they will not regard this position as wrong and unfair. Men willing to labour that they may eat, cannot see the justice of a system which forbids them either to labour or to eat, unless at the will of a small class who can keep them off the land at their caprice.

15. Malabar is essentially an agricultural country. Practically the whole population are thrown on the land for subsistence: and it was inevitable that, as time progressed, the most important questions touching the progress and condition of the people were certain to be connected with the land-laws. To make these laws most conducive to the welfare of the masses would, under the circumstances, have required careful and instructive statesmanship and very cautious legislation. But the Legislature did not unfortunately concern itself, till the mischief was done.

16. In the month of September 1880, a murder was committed by a Mopla in the Walwanad Amsom of the Malabar District, of which the ostensible cause was the defection from Mohammedanism of a young Cheruma boy, aged 16, who had embraced the Islamic faith when only nine years old (*n*). The boy was also the only victim, but it was the opinion of Mr. McWatters, then Acting Collector of Malabar, that the murder was primarily due not to religious fanaticism, but to agrarian discontent, and this view was accepted by the Government of Madras (*o*). In the next month, the Government received an anonymous petition purporting to come from certain Mussulmans, Nayars, Tiyyas and men of other castes inhabiting Malabar, which predicted that a terrible

(*n*) See Appendix, Report of the Malabar Land Tenure Committee, 1887.

(*o*) G.O. 2500, 19-10-1880.

outbreak was going to occur and ascribed it mainly to the existing bad relations of landlord and tenant in Malabar.

17. This petition was referred by Government to Mr. Wigram, then District and Sessions Judge, South Malabar, to Mr. Logan, the Collector of Malabar, and to Mr. McGregor, a former Collector of the District, for report (p); and these officers agreed in ascribing the occurrence of such outrages as that of September 1880, to agrarian discontent, which in their opinion, undoubtedly existed in many parts of the District. Meanwhile, apprehensions of another outrage in the same district of Walwanad had been entertained in December 1880; and in January 1881, the Government decided to appoint Mr. Logan as Special Commissioner, with a view to a thorough investigation of the grievances of the people of Malabar. Mr. Logan was specially asked to enquire into and report *inter alia* on the general question of the tenure of land and of tenant-right in Malabar, and the alleged insufficiency of compensation offered by the jenmies and awarded for land-improvements made by tenants; and was to further submit suggestions for the remedy of any grievances which he considered well founded.

18. Mr. Logan submitted the report of his commission in June 1882, and therein he formulated various proposals for the remedy of the evils which, in his opinion, existed.

19. Mr. Logan's report was afterwards circulated for the opinions of several officials and non-officials; and a special commission was appointed in January 1884 to consider the whole question and advise the Government as to the lines on which legislative action, if any, should

proceed. The result of its labours was four draft Acts, with two of which alone viz., The Malabar Stay of Execution Act and The Malabar Tenancy Act, we are now concerned. The former was essentially a temporary measure and was designed to maintain the existing relations of landlord and tenant, pending the amendment and revision of the law regulating those relations, by the legislature. The latter had for its object the granting of permanent occupancy-rights to the actual cultivators of the soil. The necessity for such legislation was thus stated by the commission "The political necessity for interference with the jenmi's rights, we believe to exist in the grave discontent prevailing among the agricultural classes regarding the growing insecurity of their tenures ; in the fact that among one class of the community, agrarian discontent, fanned by fanaticism, is ready to develop at any moment into agrarian outrage ; and in the existence of a system of tyrannies practised by some jennies and apprehended from others" (g).

20. The Tenancy Bill being referred to the High Court (r) for its opinion, the theories put forward by Mr. Logan and the Commission were subjected to a trenchant criticism by Sir Charles Turner, the Chief Justice, who recorded a long and ably-written dissenting minute (s). Thereupon, a Committee was appointed by Government to report on the best available form of legislation (t) for all were agreed that some sort of legislation was absolutely essential. After a consideration of the question of Malabar Tenancy in all its bearings, the committee recommended

(g) See Report with Appendices of the Malabar Land Tenure Committee appointed by G.O. 650, 17-9-1885 (1887).

(r) G.O. 504, 31-7-1884.

(s) See Sir Charles Turner's Dissenting Minute on the Draft Bill relating to the Land Tenures of Malabar, Chapters II and III.

(t) G.O. 650, 17-9-1885.

that no further legislation should be undertaken beyond a Bill for compensation for Tenants' Improvements. It is noteworthy that while there was considerable divergence of opinion upon several matters connected with Malabar Land Tenures, all were unanimous that the tenant's right to compensation for improvements made by him was very insufficiently and inadequately represented.

21. Accordingly in March 1886, a Bill was introduced into the Madras Legislative Council, to secure to tenants in the Malabar District the market value of their improvements. The Bill was introduced only as a compromise between two divergent views. A strong opinion had for some years prevailed that it was necessary to pass for Malabar a measure which would place a check on the insidious practice of rack-renting, by conferring occupancy rights on the actual cultivator. Those who feared to take so wide a step in the dark urged that the desired protection from rack-renting and eviction might be secured by an Act which would force the landlord to make to the evicted tenant, a liberal award of compensation for improvements.

22. Thus was passed Madras Act I of 1887, by which the Legislature intended that the evicted tenant should receive the full amount by which his improvements had added to the value of the holding. Then followed the rulings of the Courts, many of them inconsistent with each other, but tending to construe the Act as if it had intended that compensation should be awarded solely on the basis of outlay. Hence it became necessary to clearly explain the meaning which the Legislature had in view and to re-enact the provisions of Act I of 1887 in language less susceptible of misconstruction. The result was Act I of 1900.

23. After defining some of the most important terms used in it, viz., "Tenant," "Ejectment" and "Improvement," the Act proceeds to lay down what all works will be presumed to be improvements as therein defined, subject to proof to the contrary (sections 3 and 4). Section 5 enacts that a tenant shall on ejectment be entitled as of right to claim value of improvements, and shall be entitled also to remain in possession of his holding, on the original terms of his tenancy till he is actually evicted therefrom in due course of law. Then follow the rules (section 6) that should guide the Courts in drawing up a decree in ejectment and in executing the same. The Court is given the power in the execution department to revalue the improvements on proper cause shown (section 6 (3)). And it is also laid down (section 6 (4)) that every matter relating to such revaluation shall be deemed to be a question under sect. 47, C. P. C. Under section 7 the Court may order the removal of anything which it finds not to be an improvement. Section 8 gives the Local Government power to make rules for the appointment of assessors under the Act. Sections 9 to 13 contain the rules for valuing improvements, section 12 declaring in especial, that the mode of computation most favourable to the tenant should be adopted where an improvement could be valued in more ways than one. Sections 14 to 17 enable the Local Government to prepare tables etc. of prices of products. Section 18 prescribes the number of trees, of particular descriptions, that could be planted in an acre, power being given to the Courts either to refuse compensation for trees planted in excess of the scale, or to grant compensation at a lower rate. The tenant is by virtue of section 19, not allowed to contract himself out of the beneficent provisions of the Act, except in special cases. Finally, section 20 declares

that the Act shall not be construed as taking away any tenant's right to claim compensation for improvements not dealt with in the Act.

24. These briefly are the provisions of Madras Act I of 1900. How far they have fulfilled the purposes which the Legislature had in view, when the Act was passed, and how far they have placed "a powerful weapon of defence—not to say defiance in the hands of the tenants" (u), time alone must show (v).

(u) See the Settlement Officer's Report in G. O. 245/Rev., 15-3-'05.

(v) The full effect of the enactment can hardly yet be gauged, but it is significant that since 1892, the annual number of suits for eviction has considerably declined—as the following figures for South Malabar, indicate:—

Average number of	Five years ending 1896.	Five years ending 1901.	Five years ending 1904.
Suits for eviction ..	3,178	2,951	2,601
Decrees ..	2,352	2,175	1,707

Gazetteer of the Malabar and Anjengo Districts, Vol. I, p. 237 (Ed. 1906).

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS.

ACT No. 1 OF 1900

(As amended by Act XI of 1901).

PASSED BY THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

(Received the assent of His Excellency the Governor on the
4th December 1899, and that of His Excellency the
Viceroy and Governor-General on the 3rd
January 1900; the Governor-General's
assent was first published in the
Fort St. George Gazette of
the 9th January 1900.)

*An Act to secure to Tenants in the Malabar
District Compensation for Improvements. (w)*

WHEREAS it is expedient to amend the law relating Preamble.
to compensation for improvements made by tenants
in the Malabar District;

It is hereby enacted as follows:—

1. This Act may be called the Malabar Compensation for Tenants' Improvements Act, 1899, and it shall be applicable to the whole of the Malabar District. Short title and local extent.

(w) Act I of 1887 (Madras) was described as an Act to secure to tenants the market value of their improvements. As to the meaning and scope of this, see the judgment of Collins, C. J., and Parker, J., in *Shangunni v. Veerappan* (1895), I.L.R. 18 M. 407

Commentary.

Malabar District :— Malabar proper is made up of the nine taluks of Chirakkal, Kottayam, Kurumbranad, Calicut, Wynaad, Ernad, Walavanad, Ponnani, and Palghat. Cochin taluk, which is also a part of the district, includes the towns of British Cochin and seventeen *Pattams* or small isolated estates situated within the boundaries of Cochin State and Travancore. The Laccadive Islands off the Coast, though administered by the Collector of Malabar, are not part of the district. The two Coast Settlements of Tangasseri and Anjengo though they formerly belonged to the Malabar District, have on the 1st of July 1906, been detached from it—and been formed into a separate Collectorate (Anjengo) under the British Resident in Travancore and Cochin (x).

Repeal of Act
I of 1887.

2. *Madras Act I of 1887 is hereby repealed (a).*

Commentary.

Madras Act I of 1887 was also an Act to secure to tenants in the Malabar District, compensation for improvements. It was thought, however, that the Act had not been very skilfully or carefully drafted. The Courts found that some of its sections were very difficult of interpretation in a satisfactory manner. Hence the new legislation, the result of which is the present Act [see Statement of Objects and Reasons Appended to Bill No. 6 of 1898 (Madras Legislative Council). Fort St. George Gazette Supplement, dated 13-12-1898]. (b).

Interpretation
clause.

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

Tenant.

(1) “Tenant,” with its grammatical variations and cognate expressions, includes a person who

(x) Gazetteer of the Malabar and Anjengo Districts, 1908, Vol. I.

(a) This section has been repealed by Act XI of 1901.

(b) Appendix A.

as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land, is in possession thereof, or who with the *bona fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste land, but without the permission of such person, brings such land under cultivation and is in occupation thereof as cultivator.

(2) "Ejectment" includes redemption or Ejectment, recovery of possession of land mortgaged.

(3) "Improvement" means any work or Improvement, product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding was let, mortgaged or occupied.

Commentary.

General Change in the Section :—

(1) Act I of 1887 as also the original Bill which gave rise to the present Act defined the terms "Landlord" and "Rent" as well. 'Landlord' was defined to be a person immediately under whom a tenant held (c) : and 'Rent' was defined as whatever was lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant (d).

(2) Act I of 1887 did not define the term "Ejectment."

(c) Bill 6/1898. Mad. Leg. Council, sect. 3 (2).

(d) *Ibid*, section 3 (3) and cf., section 3 (11) Mad. Act. of 1908.

TENANT.

Change in the Law. The corresponding definition of "Tenant" in Act I of 1887, section 2 (1) was this :—

"Tenant" means 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 had been adapted from the Bengal Tenancy Act VIII of 1885 (e) and was meant to include simple tenants as to whose right to compensation a doubt had been raised in certain quarters (f). As the right even of a trespasser to be compensated for his improvements had been upheld by the Courts, and as the class of simple tenants or tenants from year to year being the poorest, was the class which was most in need of protection, it had been considered desirable that the right of such tenants to compensation should be declared. But it was found that even this definition, broad as it was, did not take within its ambit all persons who could equitably be considered to be entitled to claim value of improvements.

In the definition adopted in the present Act, the object has been to include within it (1) all mortgagees, (2) all sub-lessees and sub-mortgagees, (3) all tenants, who owing to disputes as to the right of succession to the office of karnavan (manager) of a Tarwad, or to the office of Uralan (manager) of temple property, and the like, happen in good faith to have accepted a demise from a person who subsequently turns out to be not the legal

(e) Section 3 (3) of Bengal Act VIII of 1885 ran as follows :—

"Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person."

(f) *Vide* Sir Charles Turner's Minute, Malabar Land Commission, Chapter 6, section 8.

landlord, and (4) the squatters who by the custom of the country are entitled on ejection to compensation for improvements (g).

The definition is important and has to be carefully noticed. When a person can prove that he is a tenant within the meaning of this definition, he becomes entitled under section 5 to claim compensation for improvements effected by him or his predecessor-in-interest, for which he has not already been paid. An analysis of the definition shows that a "tenant" may be any one of the following persons:—

- (I) a tenant, in the strictly legal sense of the term, *i.e.*
- (II) a lessee,
- (III) a sub-lessee,
- (IV) a mortgagee,
- (V) a sub-mortgagee,
- (VI) one who in *good faith* (h) believes himself to be a lessee and is in possession of property under that belief,
- (VII) one who in *good faith* (h) believes himself to be a sub-lessee and is in possession of property under that belief,
- (VIII) one who in *good faith* (h) believes himself to be a mortgagee and is in possession of property under that belief,
- (IX) one who in *good faith* (h) believes himself to be a sub-mortgagee and is in possession of property under that belief,

(g) Report of the Select Committee, para 2.

(h) See the General Clauses Act X of 1897 as amended by Act I of 1903, section 3 (20):—"a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not."

- (X) one who with the *bona fide intention* of paying the customary rent to the real owner of property, enters on such property without his permission and is in occupation of the property.

We shall consider each one of these in their order :—

(i) *Tenant under the English Law.*

The legal relation of “landlord” and “tenant” is created by the former allowing the latter to enjoy the former’s house or land for a consideration termed rent : This is what the English lawyers understand by the term “tenancy.” The interest remaining in the landlord is termed “Reversion” and the landlord is sometimes termed the “reversioner.” The contract of tenancy may be :—

- (a) for years ; or
- (b) from year to year ; or
- (c) at will ; or
- (d) by sufferance.

A man is a tenant for years when the landlord lets the land or tenements to him for a term of *certain* years, agreed upon between them, and the tenant enters by force of the lease.

A tenant from year to year is one who, by a contract of tenancy implied from entry and the payment of rent with reference to a yearly tenancy, is entitled to half a year’s notice to quit, expiring at that period of the year at which his tenancy commenced (cf. Transfer of Property Act IV of 1882, section 106).

A tenancy at will is where the letting is for no certain term, but is to continue for the joint will of both parties, but no longer.

A tenancy by sufferance takes place when one who comes in by right holds over without right (*i*).

- (ii) *Lessee*.—Any contract of tenancy is a lease, and the person in possession under a contract of tenancy is a lessee; but the word “lessee” is commonly restricted, in English Law, to a tenant holding under a contract of tenancy for years or lives by deed. The Transfer of Property Act thus defines a lessee :

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferee is called the lessee (*j*).

As to improvements made by a lessee see the Transfer of Property Act, section 108, clauses (*h*) and (*p*).

- (iii) *Sub-lessee*.—A lessee under another lessee is a sub-lessee. See *supra* “lessee.”

- (iv) *Mortgagee*.—Section 58 of the Transfer of Property Act defines a mortgage as

“the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engage-

(i) Woodfall's Landlord and Tenant, p. LXI, and Agricultural Holdings Act, 1883, section 61.

(j) Act IV of 1852, section 105.

ment which may give rise to a pecuniary liability." The transferor is called a mortgagor, the transferee a mortgagee.

As to the right of a mortgagee, under the general law to make improvements see sections 63 & 76 (b), Transfer of Property Act, and also the cases shown below.* *

(v) *Sub-mortgagee*.—A mortgagee under a person who is himself a mortgagee is a sub-mortgagee. See *supra* "mortgagee."

(vi)	{	As to how far, good faith and <i>bona fides</i> would extend, see <i>infra</i> .
(vii)		
(viii)		
(ix)		
(x)		

It will thus be seen that the Act comprises within its definition of "tenancy," relations which are strictly no tenancies at all. This has been rendered necessary by the avowed policy of the Act which is to secure to persons *bona fide* in possession of other men's property, whether under a legal right or not, compensation for improvements effected by them.

The general law on the subject of improvements is laid down in section 51 of the Transfer of Property Act.

"Where the transferee of immoveable property makes any improvement upon the property believing in *good faith* that he is absolutely entitled thereto and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee or to sell his interest in the property to the trans-

* * *Henderson v. Astwood*, [1894] App. Cas. 130; *Sandon v. Hooper*, 14 L. J. (Ch.) 120; *Arunachella v. Sithayi* (1896) I. L. R. 19 M. 327; *Rungazya v. Parthasarathi* (1896) I. L. R. 20 M. 120; *Krishna v. Srinivasa* (1896) I. L. R. 20 M. 124; *Shepard v. Jones*, 21 Ch. D. 469.

• feree at the then market-value thereof irrespective of the value of such improvement." (k).

The present Act, it will be noticed, is very much more comprehensive than section 51 of the Transfer of Property Act. Under the former, a *bona fide* belief that the person is in possession as a lessee, sub-lessee, mortgagee or sub-mortgagee is sufficient. The belief may be a mistaken one, but if it is *bona fide*, he is a "tenant" under section 3 and can claim the benefit of the provisions of the Act. Even a *bona fide* intention of attorning and paying rent to the rightful owner makes one a "tenant" entitled to claim compensation for improvements. It is not necessary that the party when he first entered into possession had permission from the owner.

Likewise, the Act goes very much farther than the Tenants Compensation Acts in England (l). In England, under the Agricultural Holdings Act of 1883 (m) only tenants as therein defined are entitled to be compensated for improvements. Section 61 of the Act defines a tenant as a holder of land under a landlord for a term of years or for lives or for lives and years or from year to year.

It is not necessary in India as it is in England, that at the time of the stranger making the improvements, the real owner must have knowledge that the land belongs to himself and not to the stranger.

The maxim of the English Law "*Quicquid inaedificatur solo solo cedit*" has no general application in India (n)

(k) Section 51. Act IV of 1882.

(l) 46 and 47 Vict. c. 61 (Agricultural Holdings). 58 and 59 Vict. c. 27 (Market Gardeners' Compensation). 53 and 54 Vict. c. 26 (Agricultural Holdings).

(m) 46 and 47 Vict. c. 61.

(n) In the matter of the petition of Thakoor Chunder Paramanick, B.L.R. Sup. vol. F.B.R. 595, at p. 597.

and even in cases to which the English Law as such was applicable the Indian Legislature has by Act XI of 1855 (o) departed from the above maxim in the cases specified in section 2 of the Act, corresponding to section 51 of Act IV of 1882 (p).

good faith
This Act makes, as does the Transfer of Property Act, *bona fides*, an essential, in the matter of grant of compensation for improvements. The statement so often made that even a squatter is entitled to claim value of improvements must be understood with this reservation.

Having thus seen that *bona fides* is a necessary ingredient in a tenancy, as defined by the Act, let us next examine, how far such *bona fides* is allowed to work. The following cases, though not decided under the Act will, it is believed, throw some light on the question.

A party acting under a mistake of law may yet be one acting in good faith (and as such may well claim to be a "tenant" under section 3). The question whether the person in possession believes that he is absolutely entitled thereto is a question of fact (q).

Where a conveyance is set aside for fraud, the purchaser cannot be said to have purchased in good faith, since he must be taken to have known the wrongful nature of his own possession (r). Where however, a transferee from an auction-purchaser of a house, under the mistaken belief that he had a good title thereto, went into possession and made additions to the house he had bought,

(o) Mesne Profits and Improvements Act, now repealed by Act IV of 1882, in places wherein the latter is in force.

(p) *Ismail Kani Rowthan v. Nazarali Sahib*, (1904) I.L.R., 27 M. 211, 14 M., L. J. 25.

(q) *Durgoji Row v. Fakeer Sahib* (1906), I. L. R., 30, M. 197, 27 M. L. J. 9, 1 M. L. T., 433.

(r) *Sadashiv Baskar Joshi v. Dhakubai* (1880), I. L. R., 5 B., 450 at p. 450.

and the plaintiff knowing this allowed him to do so, it was held that the defendant was *bona fide* in possession and therefore could claim to be compensated by the plaintiff for his outlay (s).

But where the tenant was not ignorant of his own rights, and knew very well what his rights were on the premises he was in possession, mere silence on the part of the landlord would not make him any the more a person *bona fide* in possession and entitled as such to claim compensation for his improvements (t).

And similarly, where a purchaser knows or must be presumed to know that the vendor could sell only under certain circumstances, and he either knows that such circumstances do not exist or wilfully abstains from making any enquiries on the subject, the mere fact that he purchased for consideration will not suffice to shew good faith and he will not be entitled to claim compensation for improvements effected by him (u).

In a Bombay case, a tenant who built upon land held by him in the *bona fide* mistaken belief that he had a much longer period of tenure than he actually had, was held not to come within the provisions of sect. 51, Transfer of Property Act (v). But in Malabar under the present enactment, such a person would clearly come within the definition of "tenant" *supra*, and the principle of the Bombay decision will obviously have no application here.

(s) *Sukhdeo Prasad v. Jamna* (1900), 1 L. R., 23 A., 60, at p. 66.

(t) *Nannihal Bhagat v. Rameshar Bhagat* (1894) 1 L. R., 16 A., 328 at p. 332 & cf. *Dattatraya Rayaji Pai v. Shridhar Narayanan Pai* (1892), 1 L. R., 17 B., 736.

(u) *Nanjappa Gounden v. Peruma Gounden* (1909), 1 L. R., 32 M., 530.

(v) *Jugmohan Das v. Pallonjee* (1891), 1 L. R., 22 B., 1 at p. 16, and cf. *Ismail Khan Mahomed v. Kali Krishna Mondol*, 6 C. W. N. 134 and *Ismail Khan Mahomed v. Jaigun Bibi* (1900), 1 L. R., 27 C., 570.

EJECTMENT.

This was the technical name given to a particular kind of "mixed action" whereby land was recoverable, under the old English Law. Actions were either *in rem* or *in personam* or *mixed*, under the old English Law (*w*). Ejectment (*ejectio firmæ*) was accounted a mixed action because by it both possession of land and damages were recovered. The details of this action were formerly very cumbrous, and were based upon a legal fiction of a demise to a fancied person, John Doe; this was abolished by the Common Law Procedure Act 1852, more than fifty-five years ago, but the name "ejectment" and a certain distinction between it and other actions, the most conspicuous of which was the absence of pleadings, were maintained until the Judicature Acts (*x*) came into force in 1875 (*y*). Under those Acts, the name has disappeared and is replaced by the term "Action for the Recovery of Land" (*z*).

The term "ejectment" as used in the present Act clearly embraces all actions for the recovery of land.

IMPROVEMENT (*a*).

With the definition cf. section 3 (4) of the Madras Estates Land Act I of 1908, section 76 (1) of the Bengal

(*w*) See on this subject the remarks of Lord Macnaghten, in *Peruvian Guano Co. v. Dreyfus Brothers & Co.* (1892), App. Cas. 176; and also 4 Law Quarterly Review, 394.

(*x*) 36 & 37 Vict., C. 66

(*y*) Woodfall's Landlord and Tenant, pp. 859 *et seq.*

(*z*) See Lightwood on Possession of Land, Ch. VI & Digby's History of the Law of Real Property, 4th Edn., pp. 175, *et seq.*

(*a*) In 1872, the Sub Judge of Tellicherry thus described the tenant's right to improvements: "The Malabar Law secures to the tenant the right of being paid for all kinds of improvements, irrespective of the period during which he remains in possession of the land into which he has introduced such improvements. Under this law, there are three kinds of improvements for which a tenant is entitled to compensation. The first is *Kuzhikur* which includes all fruit bearing trees, shrubs and vines, the second, *Chamayam* which comprises all sorts of buildings such as houses, cow-stalls, tanks, wells, granaries, walls, etc., and the third, *Vettuchamayam* which includes every act which is calculated to improve the soil of the land such as clearing of waste, manuring, etc. The law

Tenancy Act VIII of 1885, section 2 (4). The Central Provinces Tenancy Act XI of 1898, section 4 (19), Punjab Tenancy Act XVI of 1887 and section 4 (12) of the N.-W. Provinces Tenancy Act II of 1901.

Section 3 (4) of Act I of 1908 runs thus:—

“Improvement” means with reference to a ryot’s holding any work which materially adds to the value of the holding, which is suitable to the holding and consistent with the character thereof, and which if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it.

And section 76 (1) of the Bengal Tenancy Act is in these terms:—

For the purposes of this Act, the term “Improvement” shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let and which if not executed on the holding is either executed directly for its benefit or is after execution, made directly beneficial to it.

Change in the definition:—

Section 3 (1) of the old Act defined the term “Improvement” as any work which added to the value of the holding, was suitable to the holding and consistent with the purpose for which it was let. This definition has now been amended by inserting after the words “any work” the words “or product of a work,” the object being to make it plain that where the tenant has raised fruit trees, the

encourages cultivation to such an extent as to entitle even a trespasser to the value of improvements subjecting him only to a deduction of one-tenth of the value of improvements.” A.S. 327 of 1872, Sub-Court, Tellicherry.

The three classes of improvements above enumerated correspond approximately to the three-fold division of *Plantations, Fixtures and Tillages* known to the English Law.

Moore’s Malabar Law, pp. 273, 274.

trees themselves are the improvement for which compensation is to be awarded in the manner provided in the Act. And the words " mortgaged or occupied " have been inserted in order to make the definition consistent with the new definition of " tenant. "

In section 4 (1) of the original Bill there was an explanation to the effect that no work executed by a tenant shall be deemed to be an improvement if it substantially diminished the value of any other part of the landlord's property in the tenant's holding. This explanation has on full consideration been omitted. If an improvement substantially diminishes the value of any other part of the landlord's property whether within or outside the tenant's holding, the landlord has his remedy by way of civil suit brought within the period allowed by the law of limitation. In a vast number of cases the improvements were effected, without objection by the landlord, one or more generations ago, and in the opinion of the select committee, it was thought inexpedient to permit the plea that such improvements to a holding were injurious to other portions of the landlord's property (b).

Before a work or product of a work can be called an "Improvement" under the present Act, it must satisfy three conditions :—

- (1) It must add to the value of the holding.
- (2) It must be suitable to the holding.
- (3) It must be consistent with the purpose for which the holding was let, mortgaged or occupied.

(b) See Report of the Select Committee, paras 5, 6 & 7.

• *Condition 1.*—"Must add to the value."

• If the work does not add to the value of the holding or if it detracts from the value of the holding the work is technically termed Waste (Voluntary) as to which see *infra* pp. 39 *et seq.*

Conditions 2 & 3.—Suitability and Consistency.

These may be considered together. Where a simple tenant raised a hut, a granary and a cow-stall, and the Subordinate Judge of Calicut awarded him compensation on the ground that such a tenant required a hut to live in, to watch his crops, a granary to store his grains and a cattleshed to protect his cattle, the Madras High Court upheld the decision (*c*).

But where certain lands were demised to the respondents who were members of a German Mission and the latter erected a church and other buildings on it, compensation was refused for such buildings on the ground that the buildings were not suitable to the holding and were inconsistent with the purpose for which it was let (*d*). On the question of compensation the High Court (Muthuswami Ayyar and Brandt, JJ.) observed:—"As to the valuation of improvements, the appellant complains that it is excessive. But we cannot consider that it is reasonable and in accordance with the principles laid down in Second Appeal No. 762 of 1884. It is no doubt true, as contended for the respondents that several of the improvements made by them are excluded from those for which compensation is considered to be due. But we cannot say that those improvements are suitable to the purpose for which the paramba was originally let to Bap-

(*c*) *Chekkutti v. Mappil Nambidi* (1887). Second Appeal No. 1349 of 1886.

(*d*) *Ravi Varma v. Mathissen* (1885), 1. L. R., 12 M., 320, Note, p. 323; Second Appeal 296 of 1884.

pen Chinnen, or within the terms of the Exhibit E. We do not consider that it is competent to us to enhance the compensation either on the ground that subsequently to 1855 there was a doubt about the appellant's jenm title, or that the appellant stood by when the buildings were raised. According to the finding the respondents got into possession as assignees of Bappen Chinnen, who was the appellant's tenant, and it was not open to him or to them to question the landlord's title. Moreover there was an express contract E as to the value of the improvements to be made, and there is no evidence to show that the appellant since did anything which could have reasonably led the respondents to believe that he would go beyond his agreement and compensate them for other improvements. We are aware of no authority for holding that upon principles of general equity a tenant or his assignee is entitled to compensation or relief for expenditure incurred by him under the observation of the landlord, unless he can show that it was incurred with reference to some agreement. On the other hand, *Pilling v. Armitage* (e) is an authority to the contrary. And the learned Judges who, in *Ramsden v. Dyson* (f) were not unanimous in respect of the findings of the facts, were agreed as to the general rule that when money is laid out by a tenant 'in the hope or expectation of an extended term or an allowance for expenditure, the tenant has no claim which a Court of law or equity can enforce, if such hope or expectation has not been created or encouraged by the landlord'. But the present case does not fall either within that proposition or within the proposition in respect of an omission, whereby one person has intentionally caused or permitted another to believe a thing not true and to act upon such belief. It was not

(e) 12 Ves. Jun., 78.

(f) L. R. I. H. L., 129.

indeed contended in express terms that the appellant is estopped by reason of his conduct, and we cannot hold by reason of the improvements in this case having been made within a short distance of the residence of the landlord, and on land belonging to him which he must have frequently passed, any other or further relief can be afforded to the respondents than they are entitled to under the terms of the agreement under which they held the land and by the custom of the country.

“And at the same time, we cannot refrain from saying that this appears to be a very hard case, and we consider ourselves justified in the peculiar circumstances, in directing that the decree do provide that the respondents be at liberty to remove within six months, all the improvements made by them, for which no compensation has been allowed.”

Similarly where a tenant raised buildings out of all proportion to the holding, their removal was ordered by the High Court on the ground that a landlord should not be improved out of his property (g). Under the present Act, it may be doubted whether this decision could stand. The test would be whether the buildings were inconsistent with the purpose for which the holding was let. If they were, no compensation could be awarded.

Where a tenant had converted a wet land into a coconut plantation in spite of the remonstrances of the landlord, it was held that the tenant's action amounted to waste and that he was liable to pay damages for restoring the land to the condition in which it was demised to him (h).

(g) *Appu Patter v. Kombi Achan* (1856), Second Appeal, 689/1886. South Malabar.

(h) *Hydross Kutti v. Parameswaran Nambudri* (1887), Second Appeal 515/1887, South Malabar.

But in a case (i) decided under Act I of 1887 (j) land demised for wet cultivation had been changed by the demisee making various improvements which were found to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by, while the character of the holding was being changed, and had thereby caused a belief that the change had his approval, it was held that the demisee was entitled to compensation for improvements on redemption. The High Court (Muthuswami Ayyar and Parker, JJ.) observed as follows :—

“ It is found by the Judge that the appellant converted a large portion of the wet land into paramba, planting jack, coconut and arecanut trees. There was, however, evidence to show that the respondent lived within three miles, that he had means of obtaining knowledge of the conversion of the land into a paramba, and that he raised no objection. There is no doubt upon the facts found that the appellant's claim to compensation is not referable either to the kanom document or to any subsequent express arrangement made with the respondent or to any overt act on his part which is inconsistent with his present condition. Nor is there any ground for doubting the correctness of the finding that the so-called improvement is unsuited to the nature of the holding and inconsistent with the purpose for which the land was demised. In this state of facts, the Judge held that the appellant was entitled to no compensation ; but that, on the other hand, he was liable to pay the respondent the cost of restoring the land to its former condition. It is urged that the passive acquiescence of the landlord was sufficient to sustain the appellant's claim to compensation and reliance is placed on the authority of *Shibdas Bandapadhya*

(i) *Kunhamad v. Narayanan Moosad* (1889), I. L. R., 12 M., 320.

(j) Malabar Tenant's Compensation Act, see section 2 *supra*.

v. *Bamandas Mukhapdahya* (k). On the other hand, the respondent's pleader draws our attention to the decision of this Court in *Ravivarma v. Mathisen* (l) and to the cases cited therein, *Pilling v. Armitage* (m) and *Ramsden v. Dyson* (n). There is really no conflict in the principle on which the cases cited were decided. The general rule was laid down in *Ramsden v. Dyson* in these terms: "When money is laid out by a tenant in the hope or expectation of an extended term or an allowance for expenditure, the tenant has no claim which a Court of law or equity can enforce if such hope or expectation has not been created or encouraged by the landlord." Our decision must then depend not so much on the suitability of the improvements to the nature of the holding as on the fact of the landlord having by conduct or otherwise raised an expectation that the outlay had his approval, and that the tenant would be reimbursed when he was called on to vacate possession, and the special equity raised by such conduct. Again, in *Debussche v. Alt* (o), it was observed that "if bare acquiescence is a valid defence, it must be an acquiescence while the act acquiesced in is in progress and not after it has been completed." The Lord Justice said "If a person having a right and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might have otherwise abstained from it, to believe that he assents to its being committed he cannot afterwards be heard to complain of the act. Mere submission to an act when it is once completed without any knowledge or assent upon the part of the person whose right is infringed upon is only a submission to an injury, and it

(k) 8 B. L. R., 237.

(l) Second Appeal, No. 296 of 1884.

(m) 12 Ves. Jun., 78

(n) L. R. I. H. L., 129.

(o) L. R., 8 Ch. D., 286.

“cannot take away the right infringed upon when such
“submission is for any time short of the period of limit-
“ation.” In the case before us the Judge appears to have
decided against the tenant mainly on the ground that
the improvements made were unsuited to the holding.
But it is also necessary to ascertain before we dispose of
this appeal whether the landlord did not stand by when
the land was being converted into a garden and thereby
cause a belief that such conversion had his approval.”

Under the provisions of the present Act it would appear
that if land is demised on kanom for agricultural purposes
and the demisee converts a paddy land into a paramba
cultivated with coconut and arecanut trees, if the effect of
the alteration be to increase the annual net produce of
the holding, the demisee is entitled to compensation
calculated according to the amount of such increase as
laid down in section 9, but if he has not by the alteration
increased the value of the net produce, he is not en-
titled to any compensation for it (p).

So, also in a Bombay case, where the landlord had
stood by in silence and thus indirectly sanctioned by
his conduct the spending of money by the tenant
in the construction of a building and a well in the premises,
it was held that he had no right to eject the tenant until
he paid him (the latter) a reasonable return for the expend-
iture incurred (q).

This leads us to a consideration of a rule of equity
which is termed by the English lawyers as the *Doctrine*
of Acquiescence. The leading case on the subject is that
of *Ramsden v. Dyson* (r) where the principle is thus dis-
cussed: “But it will be observed that to raise such an

(p) Moore's Malabar Law and Custom, III Edn., pp. 281 *et seq.*

(q) *Dattatraya Rayaji Pai v. Shridhar Narayan Pai* (1892) I.L.R., 17
B., 736. See also *Dattaji Sakharam Rajadiksh v. Kalba Yese Parabhu*,
(1896) I.L.R., 21 B., 749.

(r) (1866) L. R. I. H. L., 129.

equity two things are necessary : first that the person spending the money supposes himself to be building on his own land, and secondly, that the real owner at the time of the expenditure knows that the land belongs to him, and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there would be no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal right.

. . . It follows as a corollary from these rules, or perhaps it would be more accurate to say it forms part of them, that if my tenant builds on land which he holds under me, he does not thereby, in the absence of special circumstances, acquire any right to prevent me from taking possession of the land and building when the tenancy has determined. He knew the extent of his interest, and it was his folly to expend money upon a title which would or might soon come to an end. . . . If a stranger begins to build on my land supposing it to be his own, and I perceiving his mistake abstain from setting him right, and leave him to persevere in his errors, a Court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that when I saw the mistake into which he had fallen it was my duty to be active and to state my adverse title and it would be dishonest in me to remain wilfully passive on such an occasion in order afterwards to profit by the mistake which I might have prevented."

And in a later case (s) the law was thus laid down :—

(s) *Debusche v. Alt* (1877) L.R., 8 Ch. D. 2286. See also section 115, Indian Evidence Act. This equity differs essentially from the doctrine in sect. 115

If a person having a right, and seeing another person commit or in the course of committing an act infringing upon that right, stands by in such manner as really to induce the person committing the act, and who might otherwise have abstained from the act, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. Pure submission to an act when it is once completed without any knowledge or assent on the part of the person whose right is infringed upon, is only a submission to an injury and it cannot take away the right infringed upon when such submission is for any time short of the period of limitation.

What are
resumed to
be improve-
ments.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act:—

(a) the erection of dwelling-houses, buildings appurtenant thereto, and farm buildings;

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;

(c) the preparation of land for irrigation;

(d) the conversion of one-crop into two-crop land;

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

which is not a rule of equity but is a rule of evidence that was formulated and applied in Courts of law. *Municipal Corporation of Bombay v. Secretary of State* (1905), 1. L. R., 29 Bom., 580 and 7 Bom. L. R., 27.

(f) the reclamations, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(g) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ;

(h) the planting or protection and maintenance of fruit trees, timber trees, and other useful trees and plants.

Commentary.

With this section, cf. section 4 (2) of the Land Improvement Loans Act XIX of 1883 and section 76 (2) and (3) of the Bengal Tenancy Act. See also section 3 (4), Madras Estates Land Act 1908.

Under the Land Improvement Loans Act (t) improvement means any work which adds to the letting value of the land and includes the following, viz. :—

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

(b) the preparation of land for irrigation.

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

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

(t) As amended by Act XII of 1891 and Act XVIII of 1899.

- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and
- (f) such other works as the Local Government, with the previous sanction of the Governor-General in Council, may from time to time, by notification in the local official Gazette declare to be improvements for the purposes of this Act (u).

Section 62 (2) of the Bengal Tenancy Act enacts that until the contrary is shown, the following shall be presumed to be improvements within the meaning of the Act :—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;
- (b) the preparation of land for irrigation ;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land, which is cultivable ;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto ; and
- (f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(u) Section 4 (2), Act XIX of 1883.

But no work executed by the raiyat of a holding shall be deemed to be an improvement if it substantially diminishes the value of his landlord's property.

The Madras Estates Land Act lays down that "Improvement" includes—

- (a) the construction of tanks, wells, water-channels, and other works for the storage, supply or distribution of water for agricultural purposes ;
- (b) the construction of works for the drainage of land or for the protection of land from floods, or from erosion or from other damage by water ;
- (c) the reclaiming, clearing, enclosing, levelling, or tenancing of land and the preparation of land for irrigation ;
- (d) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village-site, required for the convenient or profitable use or occupation of the holding ; and the erection of dwelling houses for the ryot and his family and servants ; and
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ; and
- (f) the planting of fruit trees and fruit gardens ; but does not include, unless made with the written consent of the land-holder, any work which prejudicially affects any other land of the land-holder.

There are similar provisions in the Improvements Acts in England (*v*).

Clause 4 (*h*) declares the protection and maintenance of any useful trees and plants to be an improvement, no matter by whom they were planted or whether they came into being spontaneously either before or during the tenancy. The method and measure of compensation will however differ according as to whether the trees were or were not in existence when the tenancy began. Sections 9 to 13 of the Act must be referred to for the different ways in which according to circumstances the compensation is to be calculated.

The general effect of the section is, that if a tenant is able to prove (*w*) that his work falls under one or another of the descriptions given in it, the burden of proving that it is not an improvement for which compensation has to be paid is on the landlord. The landlord may however show that the work need not to be paid for by proving any one of the following facts:—

(1) that the work does not in the particular circumstances, add to the value of the holding (section 3),

(2) that the work is not suitable to the holding (section 3),

(3) that the work is not consistent with the purpose for which the holding was let (section 3),

(4) that by an agreement in writing registered, made *after* the improvements have been effected, the tenant has contracted himself out of his right to receive compensation therefor (section 19).

(*v*) E.g. section 13, Settled Land Act 1890 (53 and 54 Vict. c. 69); section 25, Settled Land Act 1882 (45 and 46 Vict. c. 38). Improvement of Land Act, 1864 (27 and 28 Vict. c. 114).

(*w*) Observe the words "shall be presumed" in the section and see section 4 of the Indian Evidence Act I of 1872 under the heading "shall presume."

WASTE.

Anything which is not an improvement is technically termed *Waste*. According to the custom prevailing in Malabar, wilful and extensive waste committed by a kanomdar is a sufficient ground for the forfeiture of the kanom (x).

In *Venkayya v. Ramaswami* (y) it has been held that an occupancy-ryot planting coconut trees on his land which had originally been cultivated with paddy, raggi, etc., was not guilty of waste. In upholding the decision of the lower Courts dismissing the suit, Moore, J., observed:—

“ It is now urged in appeal that the tenants have, by growing coconut trees on paddy land, altered the character of the holding and that the landlord is accordingly entitled, if not to eject them, at all events to get a decree directing the removal of the coconut plants and the re-conversion of the land into ordinary wet land. It is urged that if this is not done, the amount of rent to be paid to the landlord may be diminished, that it may therefore become impossible to identify the land, and that it may also be rendered difficult for him if the land is cultivated with coconut trees to realize the arrears due to him by attachment and sale of the crops growing thereon under the provisions of the Act VIII of 1865. It does not appear to me that there is much force in these contentions. Whatever crops the tenants may grow they must, it is clear, pay the rent agreed in the patta and no alteration in the nature of the crops can, it is admitted, give them any right to claim any deduction from that sum. . . .

(x) *Mallarkandi Imbichetti v. Narayana Menon* (1899), 9 M. L. J. 306, at p. 308, see also Moore's *Malabar Law and Custom*, III Edn., pp. 230, *et seq.*
 (y) (1898) I. L. R., 22 M., 39.

“ It is further urged that when the tenants planted coconut trees on the wet land they altered the character of the holding and thereby committed an act of waste and that such being the case the landlord is entitled to a decree as prayed for.

“ The only cases of importance that have been quoted at the hearing are *Ramanathan v. Zamindar of Ramanad* (z) and *Lakshmanan v. Appa Rau* (a). What was held in the former of these cases was that a Zamindar was entitled to compel a tenant to demolish a dwelling house which he had erected for purposes not connected with agriculture on agricultural land held by him, and in the latter that a Zamindar is justified in inserting a clause in a patta preventing a tenant from erecting buildings on his holding which are not compatible with the agricultural character of the holding. These decisions, it is clear, treat of cases of a completely different nature to that at present under consideration. Turning to the latest edition (16th Edn., p. 648) of Woodfall on the Law of Landlord and Tenant, I find that the tenor of the decisions as to waste by changing the nature of the property is briefly as follows:—“ If the tenant convert arable land into wood, or *e converso*, or meadow into arable, it is waste; and this would appear to be the case even where the act is done according to the custom of the country for the purpose of amelioration. If a tenant pull down a malt-mill and build a corn-mill it is waste, also if he convert a corn-mill into a fulling-mill it is waste, though the conversion be to the lessor's advantage.” Applying the principle of these decisions to the present case it appears to me that the defendants cannot be held to have committed waste. They have not converted the holding

(z) (1893) I.L.R., 16 M., 407.

(a) (1893) I.L.R., 17 M., 73.

into one of a completely different character. They have, it must, in my opinion, be held, merely chosen to grow one description of crop, coconuts, in lieu of another, paddy or raggi. They cannot be said to have converted "arable land into wood" inasmuch as a coconut garden is, it must be admitted, something very different from a wood. In many parts of Malabar one may see in a stretch of wet land fields grown with coconut trees intermingled with plots of paddy land. Both are irrigated in much the same way and both may, it appears to me, be held to be cultivated with wet crops. As I cannot hold that the tenants have committed waste, I would dismiss this second appeal with costs" (b).

And Subramania Ayyar, J., in the course of his concurring judgment, said :—

"The appellant will not be entitled to any relief unless the respondent has, by planting the trees, contravened some agreement or understanding between him and the appellant as to the crops to be raised on the land : or unless the land has, by being so planted, been put to an unhusbandlike use (assuming that the obligation to use in a husbandlike manner implied in certain circumstances, is to be taken as an incident of the respondent's holding, a point as to which I shall add a few words later on), or unless the act of the respondent amounts to waste.

"First, has the respondent by the act in question, violated any agreement or understanding between him and the appellant as to the crops to be raised ? In support of the contention that he has, the only circumstance relied on, is that, as stated before, paddy or raggi alone has hitherto been grown on the land. But clearly that by itself is not

sufficient to establish the existence of an agreement or understanding that the respondent was not to use the land for the cultivation of any other suitable crop or produce. In *Westropp v. Elligott (c)*, Lord Watson, dealing with an argument similar to that urged here, said :—

“Though the tenant were to use the land mainly for pasture” (that was the purpose for which the land had admittedly been used for a considerable period) “it would not in my opinion, necessarily follow that the holding had been ‘let to be used,’ for that purpose. I think it would be necessary in addition to the mere fact of use, to prove some facts in relation to the character and capabilities of the holding from which it might be inferred that the tenant could not reasonably have contemplated any other use.” Next has the respondent acted in an unhusbandlike manner? This question, of course, implies that the obligation imposed by law on an ordinary tenant that, in the absence of a contract to the contrary, he should manage the land in a husbandlike manner, is applicable to a raiyat such as the respondent. Having regard, however, to the fact that such raiyats possess in their lands a heritable and alienable interest of a permanent character, it would seem to be improper and mischievous to hold that the implied obligation just referred to, is an incident of their holding, inasmuch as, on the one hand it is not at all to the raiyat’s interest to depart from the usual and regular course of good husbandry ; and on the other such a ruling might be utilized by landholders for improper ends and might lead to vexatious litigation on their parts against raiyats whom they dislike. But it is not necessary to decide that point now.

(c) L. R., 9 App. cas. 815, at p. 832.

For, assuming that an obligation as aforesaid is an incident of the respondent's holding, there is not a tittle of evidence to prove that in planting the trees, the respondent acted in a manner unwarranted by good husbandry. It would be quite unreasonable to hold that a tenant, who has been in the habit of raising one kind of crop for many years, by simply changing the crop, does an unhusbandlike act. If authority were necessary for so plain a proposition I would refer to Lord Chancellor Selborne's conclusion in the case already cited, to the effect that the mere fact of use in a particular manner for a considerable period of time is not enough to show that any other use would be contrary to the covenant "to manage, till, and use the lands in a good, husband-like manner, and in due and regular course of good husbandry, so that the same might not be in any way injured or deteriorated" (*Westropp v. Elligott (d)*). It may not be superfluous to add that, even if I were unaware of the fact that, in many parts of the country, notably in parts of Coimbatore, valuable topes of coconut and arecanut trees have been and are being grown on irrigated lands paying revenue to Government, I should decline to say that the planting of such trees on similar lands, held by raiyats in Zamindari and inam villages, is prima facie opposed to good husbandry, which is a relative term since, in the words of Lord Ellenborough in *Legh v. Hewitt (e)* "what shall be considered in farming, as good and husbandlike manner must vary exceedingly according to soil, climate and situation."

"Lastly, does the respondent's act complained of amount to waste? It cannot be waste unless it has caused lasting or permanent injury to the appellant's

(d) L. R. 9 App. Cas. 815, at p. 820.

(e) 4 East, 154 at p. 159.

right. The right to rent, which is the only tangible one that he now possesses, is obviously not affected in any way. On the contrary as the trees grow and the value of the land increases, the security for the rent would become better and better. It is quite true that if no trees had been planted, but paddy or raggi continued to be grown, the appellant would have been in a position to distrain crops of that description for any rent remaining unpaid when such crops are on the land; whereas, in the present altered condition of the land, there would be no crop on it to proceed against until the trees come to bearing. But suppose the respondent, instead of planting the trees, had merely allowed the land to remain uncultivated. In that case also the appellant would have found nothing on the land to distrain, and such an omission would have given him no legal ground for complaint. How then is he entitled to say that the absence of distrainable crops, in the case suggested on his behalf, is an injury to him? The only other argument put forward with reference to the present point, is even more unsubstantial than the one just dealt with. It may be that, if the respondent relinquishes the land at some future time and the appellant is then disposed to remove the trees, if any, then standing on the land, in order to grow paddy, etc., thereon, he would be put to a slight expense. But the contingency of any relinquishment of the land and of the removal of any of the trees is so very unlikely and the cost of the removal would be so trifling that, in my opinion, Courts would not be justified in accepting such circumstance to constitute, in point of law, any injury to the appellant and much less a lasting or permanent injury. I have consequently no hesitation in holding that the planting of the trees does not amount to waste. It is therefore, unnecessary to consider the contention that, even if

there was waste, relief should be refused to the appellant on the ground that the waste was, as it is called, ameliorating or improving waste" (f).

In the absence of local custom, tenants are not entitled to convert land under wet cultivation into a mangrove, they not being entitled to change the usual course of husbandry without the consent of the landlord (g).

An agricultural tenant (for paddy cultivation) is not entitled to dig up shells out of his holding, in the absence of a local custom authorizing such digging. The property in such shells is in the landlord and not in the tenant (h). See section 108 (o), Transfer of Property Act.

But a kanom tenant is entitled to remove and appropriate to himself any trees which he has himself planted, provided he leaves the property substantially in the state in which he received it (i). Cf. section 108 (h) Transfer of Property Act which says that the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property in the state in which he received it.

English Law.

While on the subject of waste, it may not be inappropriate and out of place here, to refer briefly to the English Law on the subject. If by act or neglect, a tenant injure or diminish the value of his holding, the injury or diminution is called *waste*.

(f) I. L. R., 22 M., 39, at pp. 43, 44, 45.

(g) *Lakshmana v. Ramachandra* (1887), I. L. R., 10 M., 351.

(h) *Chaladom Tholan v. Kunhambu* (1902), I. L. R., 25 M., 669, 12 K. L. J., 406. See also *Tucker v. Linger*, L. R. 8, App. Cas. 508 and *Elwes v. Briggs Gas Co.*, 33 Ch. D., 562.

(i) *Vasudevan Nambudripad v. Valia Chathu Achan* (1900), I. L. R., 24 M. 47; 10 M. L. J. 321, F. B. Bitt see *contra Janaki v. Sheoqadhor* (1901) I. L. R., 23 A., 211.

Waste is of three kinds :—

- (a) *Voluntary* Waste.
- (b) *Permissive* Waste.
- (c) *Equitable* Waste.

(a) Voluntary waste consists in such positive acts as are destructive of, or injurious to, or alter the character of the property, for instance pulling down buildings, cutting down timber, ploughing up of ancient meadow-land, opening mines or digging for gravel, brick, earth or stone. Even the making of new buildings, walls, fences etc., or structural alterations may be waste. Such waste is termed *ameliorating waste*. (j).

Mines, however, already opened, may be worked, and clay, gravel etc., may be dug out of the pits already open (k).

In *Phillipps v. Smith* (l), Alderson B., said :—

“The principle upon which waste depends is well stated in the case of *Lord Darcy v. Askwith* (Hobart 234), thus :—

“It is generally true that the lessee hath no power to change the nature of the thing demised ; he cannot turn meadow into arable, nor stub a wood to make it pasture, nor dry up an ancient pool or piscary, nor suffer ground to be surrounded, nor destroy the pale of park, for then it ceaseth to be park ; nor he may not destroy the stock or breed of anything, because it disherits and takes away the perpetuity of succession as villains, fish, deer, young spring of woods or the like.” Thus the destruction of germins, or young plants destined to become trees, which destroys the future timber is waste, the cutting of apple

(j) *Jones v. Chappell*, L. R. 20, Eq. 539 ; *Doherty v. Allman*, 3 App. Cas. 709 ; *Meux v. Cobley* (1892), 2 Ch. 253 ; Leake's Law of Uses & Profits of Land (1888), 95.

(k) *Viner v. Vaughan*, 2 Beav. 466. Goodeve's Modern Law of Real Property, pp. 41 *et seq.*

(l) 14 M. & W., 589.

tree in a garden or orchard, or the cutting down a hedge of thorns, which changes the nature of the thing demised, or the eradicating or unreasonable cutting of white-thorns which destroys the future growth, are all acts of waste. On the other hand, those acts are not waste which as *Richardson, C. J., in Barrett v. Barrett* (Hesley, 35) says, are not prejudicial to the inheritance; as in that case, the cutting of willows, maples, beeches and thorns there alleged to be of the age of thirty-three years, but which were not timber either by general law or by particular local custom. So, likewise, cutting even of oaks or ashes where they are of seasonable wood, i. e., where they are cut usually as underwood, and in due course are to grow up again from the stumps, is not waste."

(b) Permissive Waste consists in passive conduct which permits decay; as for example, suffering buildings to fall into ruin (m).

(c) There is again a third kind of waste, known as Equitable waste. If a tenant for life is by the express terms of the instrument creating his tenancy, made disinclined for waste, he has a legal right to cut down timber and open mines. But a Court of Equity will not permit an unconscientious use to be made of a legal right and would therefore restrain him from pulling down or defacing the family mansion, cutting down timber planted or left standing for ornament or shelter or doing other acts of spoliation; which are therefore called Equitable Waste (n).

5. (1) Every tenant shall on ejection be entitled to compensation for improvements which have been

Tenant
entitled to
compensation
on ejection.

(m) *Woodhouse v. Walker*, 5 Q. B. D., 404.

(n) *Baker v. Sebright*, 13 Ch. D. 183, where the whole doctrine is exhaustively considered by Jessel, M. R. See also *Lowndes v. Norton*, 6 Ch. D., 139.

made by him, his predecessor in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money (if any), be entitled to remain in possession until ejectment in execution of a decree or order of Court.

(2) A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

Commentary.

With this section cf. section 82 (1) of the Bengal Tenancy Act.

This section corresponds with some modifications and additions to section 4 of Act I of 1887 (o). Under the general law a tenant who does not surrender in accordance with the terms of his lease becomes a *trespasser* who may be held accountable for mesne profits.

Sub-section (1). The second part of the first paragraph of the section makes it clear that a tenant is entitled as of right to remain in possession of his holding till he is actually ejected by a decree or order of Court. According to the course of decisions in this country, it is established that, notwithstanding the passing of a decree for redemption, the relation of mortgagor and mortgagee fully subsists, if the decree be not executed, and therefore the

(o) Every tenant who is ejected from his holding shall, notwithstanding any custom to be contrary, be entitled to be compensated for improvements made by him or his predecessors in interest for which compensation has not already been paid.

right to redeem can be again asserted and enforced, provided it has not been lost by lapse of time or otherwise (p).

Whether the right to remain in *possession* includes the right to make improvements is a question that sometimes is beset with difficulty. If the tenant's right to remain in possession is legally recognized, it follows that he is also legally entitled to improve the property. As to the further question whether or not his work is an improvement, its solution must depend upon the circumstances of the case and section 3 (3). It is submitted, however, that a tenant cannot during the pendency of a suit in ejectment be prevented by injunction from making improvements upon his property (q). When the suit itself is one to restrain waste, it cannot be laid down as a general rule that a tenant cannot be restrained by injunction, pending the action, from committing further acts of waste. But the Courts, it is believed, would be very slow in granting the plaintiff such a remedy especially in view of this section and section 7.

The granting of Perpetual Injunctions is governed by section 54 of the Specific Relief Act I of 1877 and the granting of Temporary Injunctions is regulated by Order XXXIX of the Civil Procedure Code (Act V of 1908).

Generally, the Court will not issue an injunction to restrain waste except upon unquestioned evidence of plaintiff's title (r). Where the injury complained of is susceptible of perfect pecuniary compensation and one for which satisfaction in damages can be had or where

(p). See *Krishna Pattar v. Srinivasa Pattar* (1896), I. L. R., 20 M., 124 at p. 126.

(q) See in this connexion section 77 of the Bengal Tenancy Act whereby neither the tenant nor the landlord shall as such be entitled to prevent the other from making an improvement in respect of the holding except on the ground that he is willing to make it himself. See also section 13, Madras Estates Land Act I of 1908.

(r) Tagore Law Lectures, 347.

adequate relief may be had otherwise than by an injunction, the injunction in both such cases will be withheld (s).

If the defendant has been encouraged by the acquiescence of the plaintiff to expend money upon the property, upon the faith and understanding that no obstacle will be afterwards thrown in the way of his enjoyment, no injunction should be issued in such a case (t).

Where land has been let out for agricultural purposes generally, the erection of an indigo factory on any part of the land would render it unfit for the purpose of the tenancy, and the landlord would be entitled to a permanent injunction restraining the tenant from erecting such a factory (u).

Sub-section (2) only enunciates a well-known principle in the law of landlord and tenant. A tenant who holds over after the expiry of his lease without the consent of his landlord, is not by that circumstance alone, a trespasser (v), and he cannot be ejected without sufficient and reasonable notice. A landowner, who after the expiration of a lease, continues to receive rent for a fresh period cannot treat him as a trespasser without giving him a reasonable notice to quit (w).

The defendant who remains in actual occupation, notwithstanding execution, must be regarded as a trespasser who commits a fresh act of dispossession (x).

(s) Act I of 1877, section 54 and section 56, Cl. (1).

(t) *Noyna Misser v. Rulpikun* (1882), 1 J. R., 9 C., 609; followed in *Nundo Kumar Nasker v. Banomali Gayan* (1902), 1 L. R., 29 C., 871.

(u) *Surendra Narain Singh v. Harimehan Misser* (1903), 1 L. R., 31 C., 174.

(v) *Gobordhone Shah v. Karuna Bewa* (1897), 1 L. R., 25 C., 75.

(w) *Ram Khelawun Singh v. Mussamut Soonara* (1867), 7 W. R., 152.

(x) *Hassan Raja*, 8 C.W.N., 50; following *Shama Charan Chatteerji v. Madhub Chundra Mookerji* (1884), 1 L. R., 11 C., 98.

Customary Law of Malabar. It has not been considered desirable to legalize the custom which is said to exist in some parts of Malabar, of deducting one-half or one-third of the compensation as the jenmi's share. This custom is obviously not in accordance with the principle on which the Act is based and its antiquity and certainty are not well established. It is moreover inconsistent with the custom prevailing in the greater part of the District, and it has not been thought expedient that it should be recognized.

ENGLISH LAW OF IMPROVEMENTS.

A brief resumé of the English Law on the subject of improvements may be useful for comparison. Before the year 1876, the tenant of an agricultural holding had no right to exact compensation from his landlord for any improvements which he might have made during his tenancy, except under an express agreement with the landlord or by virtue of the custom of the country where the holding lay (y). An Act of 1875 (z) made provision for the compensation of tenants of agricultural holdings for improvements made by them. But the operation of that Act might be excluded by agreement between landlord and tenant; and in practice, this was usually done. The Act was repealed by the Agricultural Holdings Act 1883 (a) which came into force on the 1st of January 1884. Under the Act of 1883 where the tenant of a holding to which the Act applies, has made thereon after the commencement of the Act, any improvement of the kind, specified in the Act, he is entitled on quitting his holding at the determination of his tenancy to obtain from the landlord as compen-

(y) *Hutton v. Warren*, 1 M. & W., 466; *Notes to Wigglesworth v. Dallison*, 1 *Smith's leading Cases: Woodfall on Landlord & Tenant*, c. xx, Sections 4, 5; *Bradburn v. Foley*, 3 C. P. D., 129, 134.

(z) 38 & 39 Vict. C. 92 amended by 39 & 40 Vict. C. 74.

(a) 46 & 47 Vict. C. 61 amended by 53 & 54 Vict. C. 26.

sation under this Act for such improvement (b) such sum as fairly represents the value of the improvement to an incoming tenant. Compensation is not payable under this Act for the erection of buildings and other permanent improvements specified in the Act, unless with the consent in writing of the landlord or his agent previously obtained, or for drainage, unless the tenant has complied with the conditions of the Act in giving to the landlord or his agent due notice of intention of executing such an improvement. But compensation may be obtained for the improvement of the land by the application of purchased manure and in other ways described in the Act, although the consent of the landlord should not have been obtained. For improvements of the kind last mentioned, fair and reasonable compensation payable under an agreement in writing may be substituted for compensation under the Act (c). But any agreement made by a tenant by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement described therein (d) (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act) is void both at law and in equity, so far as it deprives him of such right (e).

Decree in ejectment to be conditional on payment of amount of compensation ascertained under this Act or the difference between it and the amount, if any, adjudged to the plaintiff from the defendant.

6. (1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the Court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that on

(b) Cf., sect. 5.

(c) Cf., sect. 19.

(d) Cf. sect. 19.

(e) Williams' Principles of the Law of Real Property, XVII Edn., pp. 485, *et seq.*

payment by the plaintiff into Court of the amount so found due and also the mortgage-money (if any) the defendant shall put the plaintiff into possession of the land with the improvements thereon. (f)

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the Court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to the defendant after such set-off.

Compensation for subsequent improvements and re-valuation, if necessary, of improvements at the time of ejectment.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvement has been adjudged in the decree and the re-valuation of an improvement for which compensation has been so adjudged when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejectment as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (c) of section 244 of the Code of Civil Procedure.

(f) Cf. sect. 82 (2), Bengal Tenancy Act.

Commentary.

This section corresponds in effect to section 5 (1) of Act I of 1887, which has been greatly amplified and enlarged upon ; and is intended to prescribe the form of decree in an ejectment suit.

Sub-section (1) is intended to give legislative sanction to the decision of a Full Bench of the Madras High Court in *Nellayi Variyath Sulapani v. Vadakapat Manakkal Ashtamurthi Nambudri* (g). Formerly it was usual to reserve the valuation of improvements to the time when the decree was being executed, the reason for so doing being that, when once the improvements had been assessed, the tenants had in some instances destroyed them to the injury of the landlords. The High Court, however, found it necessary to insist on the value of improvements being ascertained before a final decree is passed, observing as follows in the case above mentioned (g) which came before a Full Bench :—

“The Subordinate Judge has, with improper disregard of the repeated orders of the High Court reserved the inquiry into improvements to the execution of the decree. There can be no *complete* decree until these matters are ascertained, and neither with nor without the consent of parties can they be so reserved for execution (h).

Under this sub-section, the Court is bound to ascertain the value of improvements awarded to the tenant, before decree ; the alleged reason for the old practice, which the High Court condemned, having no force by virtue of sub-section (3), as the executing Court is competent, under proper circumstances, to order a re-valuation.

Sub-section 2.—Sub-section (2) of this section in the original Bill (i) gave the tenant judgment-debtor the

(g) (1880) I. L. R., 3 M., 382.

(h) I. L. R., 3 M., 382, at p. 384.

(i) Bill 6 of 1898, Mad. Leg. Council.

right to enforce execution of the decree, as a money decree for the amount of compensation payable on ejectment. The object of conferring the right was to prevent the decree-holder from keeping the decree hanging for years over the head of the tenant, on the chance of obtaining a re-valuation of improvements more favourable to the decree-holder. The proposal to give the tenant this right to enforce execution was strongly objected to as inequitable, if the landlord was willing to continue the tenancy. The Select Committee thereupon took great pains to work out a scheme of procedure under which the landlord (decree-holder) should be enabled to escape the consequences of the decree by renewing the lease for a substantial term of years. This idea was given up as impracticable owing to the difficulties arising from the complicated tenures and sub-tenures in Malabar. And as the balance of the advantage appeared to weigh against giving the tenant the right to enforce execution, the provision was omitted.

This sub-section is new. Under the customary law of Malabar, the kanom and value of improvements in the case of a kanom demise, and the value of improvements, in other cases, is looked upon as security for the rent due to the jenmi. This section recognizes such a custom in clause (2) and allows the jenmi to set off against whatever is due to the tenant by way of improvements (with or without any kanom amount), arrears of rent due by the latter to him. Act I of 1887 did not in terms give legislative sanction to the custom referred to above, though the trend of the decided cases was in favour of it (j). The matter however was not altogether beyond the pale of

(j) See *Eressa Menon v. Shamu Patter* (1897), I. L. R., 21 M., 138.

doubt. For in an unreported case (*k*) the High Court held that an ordinary lessor had no lien on the improvements made by the lessee, for arrears of rent due by the latter, unless there was a special contract to that effect. If such a contract existed either expressly or impliedly the lessor could set off the arrears of rent against the value of improvements. But in the absence of such a contract, the lessor's right was not recognized. When the tenure is a kanom tenure there can be no doubt that the landlord is by virtue of the special provisions of the Transfer of Property Act entitled, in accounting, to set off against the kanom and improvements all rent due to him by the kanomdar, irrespective of the Statute of Limitations (*l*).

Under the rule of law contained in this sub-section it is clear that the jenmi can in any case (whether in a kanom tenure or verumpattom tenure), claim such a set-off. The word "due" in the sub-section is significant and is used advisedly, in contradistinction to "legally recoverable" in O. VIII R. 6 (1) of the Code of Civil Procedure (*m*), relating to set-off. If it was the intention of the legislature to give the benefit of such a set-off only to mortgagor-jenmies, nothing could have been easier than to have expressly said so. The fact that it has not chosen to do so, is, it is submitted, a strong argument, if argument were needed, in favour of the view here stated.

Difficult questions may arise where a kanomdar before relinquishing the land transfers his right to compensation from the jenmi for improvements to a third party. In *Achuta v. Kali* (*n*) where this occurred, the High

(*k*) *Avokar Koya v. Achrathoppil Kalani* (1888), S. A. 312 of 1887, South Malabar.

(*l*) Sect. 76, Transfer of Property Act.

(*m*) Act V of 1908: see also the corresponding sect. 111 in Act XIV of 1882.

(*n*) (1884) I. L. R., 7 M., 545.

Court (Hutchins and Brandt, JJ.) held that a pledge of his rights to a third party by the kanomdar will not prejudice the rights of the jenmi to set off his claim for arrears of rent against the sum found due to the kanom holder for improvements.

The Judges observed :—

“The jenmi has obtained the usual decree for eviction of the kanomdars on payment of the kanom amount and compensation for improvements less three years’ rent due, in arrears. It is admitted that a jenmi can set off arrears of rent against the kanom amount, but it is contended that he has no right to set off his rent against the improvements where such improvements have been hypothecated to a creditor of the kanomdar.

“It seems to us that the creditor can only go against the net amount found due by the jenmi. The appellant claims under kanomdars whose tenure is liable to periodical adjustments, and who could not create any right not subject to the same adjustments. At each adjustment, the kanomdar has a right either to a renewal or to be paid his kanom amount and compensation for improvements less the rent, if any, which may be due by him, in arrears. We see no difference in this respect between the kanom amount and the improvements. Indeed it was admitted, and is well known, that the value of improvements is often included at a renewal in the new kanom amount, and if this were done, it is conceded that the jenmi would have the right of set-off.

“A kanomdar can pledge all his rights, or he can pledge the net sum which may become payable to him at adjustment; but he cannot, it seems to us, say that the compensation is ever payable to him apart from a general settlement, nor can he give a separate title to it as

against his landlord. Regarded as a debt, the claim to compensation is a mere inchoate right which only becomes perfected at the eviction and subject to its customary incidents, and if we regard the appellant as a mortgagee of the actual trees or buildings constituting the improvements, his position is no better. The jenmi has a right to these upon payment of any sum which may be found due at the adjustment. The appellant cannot be in a better position as a mere creditor than he would be after foreclosure, and if he had foreclosed, he would himself have become the kanomdar. The right of the set-off as against the kanomdar is not disputed" (o).

The principle laid down in this decision has been followed in *Eressa Menon v. Shamu Patter* (p), where the person entitled to compensation was a *verum pattam* tenant.

The High Court (Subramania Ayyar and Davies, JJ.) observed as follows :—

"So far as the right to the value of improvements goes, there is no distinction between a tenant under "kanom" and under "verumpattam." As pointed out in *Achuta v. Kali* (q) the right to receive such compensation becomes perfected only at the time of eviction, and subject to the customary incidents attending to the tenure.

Consequently the right of the landlord to set off against the value of the improvements any rent due to him under the lease must prevail against any alienation made by the tenant of his right to compensation when it is in an inchoate state" (r).

To the same effect is the ruling reported in I. L. R., 23 Madras, 86 (s) where the tenant's right to compensa-

(o) I. L. R., 7 M., 545, at p. 546.

(q) (1884) I. L. R., 7 M., 545.

(s) (1899) *Vasudeva Shenoi v. Damodaran*, at p. 88.

(p) (1897) I. L. R., 21 M., 138.

(r) I. L. R., 21 M., 138, at p. 139.

tion was compared to the right to a chose-in-action, the Judges (Subramania Ayyar and Moore, JJ.) observing :—

“ The right of a tenant to compensation in Malabar is, as pointed out in *Achuta v. Kali* (q) of a somewhat peculiar character. It is dependent on the state of the account between the tenant and the landlord as to the claims the latter has against the former at the time the question of compensation cannot be settled, on account of rent or other dues payable under the demise by which the tenancy was created. The right to such compensation cannot properly be compared to a tenant's right to fixtures which formed the subject of consideration in *London and Westminster Loan and Discount Company, Limited, v. Drake* (t) cited for the appellant. The right in question, it seems to us, may be treated as possessing more analogy to the right to a chose-in-action, and a transfer of such a right by a tenant to a third party cannot possibly affect the landlord unless he has notice of the transfer when he accepts the surrender of the property demised and settles the account with the tenant in reference to arrears of rent, etc., on the one hand, and the amount of compensation on the other, and enters into an adjustment of the respective claims.”

It must however be remarked in connexion with the latter observations made by the learned Judges that it did not become necessary to consider whether, if the landlord has had notice, that would have affected his right to set off the arrears of rent due to him against the amount payable as compensation. And it is submitted that even if the landlord had notice of the transfer, that fact *alone* would not be sufficient to deprive him of his right to set off. It must further be proved that

(t) 28 L. J. C. P., 297.

there was a settlement of accounts between him and his tenant, which recognized the transfer.

Improvements due to under-tenants.

Lastly, the question arose (u) as to whether the value of improvements due to under-tenants was liable to be set off against arrears of rent due to the landlord. Though eventually it did not become necessary to decide this question the High Court (Benson and Boddam, JJ.) observed that to hold that such value was not liable would be *prima facie* opposed to the principle of the cases decided in *Achuta v. Kali (v)* and *Eressa Menon v. Shamu Patter (w)*. Where any of the persons entitled to compensation are sub-tenants under the kanomdar or assignees of any of his rights, it would be necessary for the jenmi to join them as defendants in the suit, if he wished to set off against compensation to be paid to them rent due by the kanomdar (x).

Sub-section (3).

As we have seen, (y) enquiries as to the value of improvements must be held before decree and cannot legally be reserved with or without the consent of parties for determination at the time of the execution of the decree (z). But it sometimes happens that by the intentional act or omission on the part of the tenant in possession, improvements are either destroyed or suffer deterioration, before the landlord takes possession of his property in execution of his decree. It is therefore only equitable under such circumstances that the Court should order a re-valuation of the improvements, compensation wherefor

(u) *Vedapuratti v. Avara* (1902), I. L. R., 25 M., 568. (v) I. L. R., 7 M., 545.

(w) I. L. R., 21 M., 138.

(x) Moore's Malabar Law and Custom, III Edn., p. 285. (y) See *supra*, p. 54

(z) *Nellayi Variyath Sulapani v. Ashtamurthi Nambudripad* (1880) I. L. R., 3 M., 382.

has already been settled by the decree. Similarly, if the value of the improvements has increased between the date of the decree and the date of execution, the tenant is entitled to be paid the value of such increase. Accordingly, this sub-section has been enacted to give the Court, power, if necessary, to order a re-valuation of the improvements, in the execution department. This power of the Court, though expressly given to it by the new Act, had even before its enactment been recognized and affirmed (a). In *Krishna Patter v. Srinivasa Patter* (b) the High Court observed thus:—

“Suppose a mortgagor, having obtained a decree for redemption, does not execute it, but allows the property to remain in the hands of the mortgagee for a considerable time and the latter during that time makes more improvements. Surely his right to the value of those cannot be denied, whether the question arose in execution proceedings or in a separate suit; nay, according to *Ramunni v. Shanku* (c) even in respect of improvements referred to in a decree which the mortgagor does execute, the mortgagee can, in such execution proceedings, claim a re-valuation if he can show that, since the passing of the decree, the value of the improvements has increased. How then can the mortgagor with any justice, be held to be disentitled to obtain a reduction of the amount mentioned in the decree if he can prove that any part of the improvements assessed therein, has since ceased to exist? That the final adjustment of the amount of compensation must be made with reference to the state of things at the time of the actual redemption, is also shown by the practice followed by the Courts prior to

(a) See *Ramunni v. Shanku* (1884), I. L. R., 10 M., 367, and *Krishna Patter v. Srinivasa Patter* (1896), I. L. R., 20 M., 124.

(b) (1896) I. L. R., 20 M., 124.

(c) I. L. R., 10 M., 367.

July 1880 according to which the question used to be reserved for execution. The present system of holding an enquiry into the matter before decree, no doubt, originated with this Court's circular order, dated 14th July 1880 (Weir's Rules of Practice, p. 197) . . . Accordingly, if, during execution, improvements as ascertained and awarded by a decree, be not found on the land or were destroyed by the tenant, the Courts have, in acting under section 244, Civil Procedure Code (d), been in the habit of ascertaining the amount of the loss and deducting it from the sum originally fixed" (e).

A mortgagee in possession (e.g., a *kanom* tenant) is liable for waste, and if waste is proved, the mortgagor is entitled to have an account taken and the value of the damage deducted from the mortgage debt (f).

In *Ramunni v. Shanku* (g) the Court passed a decree on redemption on payment of principal and interest, together with a sum fixed as the value of improvements made by the mortgagee. The value of the improvements increased between the passing and the execution of the decree. When the mortgagee filed a petition in the execution proceedings for a re-valuation of the improvements, his petition was rejected by both the Lower Courts. On appeal to the High Court (Turner, C. J., and Brandt, J.) set aside the orders of the Courts below with the following observations :—

"The circumstance that the rights of the parties have been ascertained by a decree does not deprive the mortgagor of his equity if the waste is committed subsequently to the decree. Inasmuch as the mortgagee

(d) Act XIV of 1882, now replaced by section 47 of Act V of 1908.

(e) I.L.R. 20 M. at p. 126.

(f) *Weatherington v. Bankes*, Sel. Ch. Cas. 31.

(g) I. L. R., 10. M., 367 (1884).

may be entitled to a deduction which he could ordinarily establish by separate suit, the provisions of section 244 of the Civil Procedure Code (*h*) appear to us to enable him to require the Court executing the decree to take account of the altered circumstances when application is made for the execution of the decree. This appears to give effect to the policy of the law which is adverse to the institution of a fresh suit" (*i*).

Who is liable for diminution in value of improvements?

Even where the diminution is attributable to act of God and other causes beyond the control of the person in possession, it has been held that the mortgagee must bear the loss; and not the mortgagor. In *Krishna Patter v. Srinivasa Patter* (*j*) a decree for redemption of a *kanom* was passed in December 1894, when there were on the land improvements in the form of trees, etc., to the value of Rs. 1,429. The decree prescribed 6 months for redemption. Within this period the mortgagor applied for execution and it appeared that the value of improvements had diminished by the loss of trees to the value of Rs. 157. The loss was not attributable to neglect on the part of the mortgagee. In holding that the loss should fall on the mortgagee, the High Court (Subramania Ayyar and Boddam, JJ.) said:—

"The pleader for the respondent next urged that a loss like that under discussion, if it is not due to any act or default of the mortgagee should fall on the mortgagor, as the property in the improvements was at the time of the loss, in him. This assumption about the property being in the mortgagor even before compensation is paid by him, is not only not supported by any authority but is

(*h*) Now replaced with slight modifications by section 47, Civil Procedure Code (Act V of 1908).

(*i*) L. L. R., 10 M., 367 at p. 368.

(*j*) (1896) I. L. R., 20 M., 124

directly contradicted by the Fifth Report where it is stated "The buildings and plantations are in fact the property of the tenant; and he can mortgage or sell them, in the same manner as the jenmkar mortgages or sells his own property in the land" (Higginbotham's Edition, Vol. II, p. 82). Moreover if the above contention were well founded, a person, who mortgages by way of kanom, would be liable for every improvement once effected, though it had disappeared before the decree. But no one has as yet ventured to put forward such a manifestly unreasonable claim. In support of the above contention on behalf of the respondent, it was urged that the holder of a kanom is, by the usage of the district, prohibited from cutting without the mortgagor's consent, trees on the land, though they had been planted and grown by the mortgagee himself (*k*); and *Chāngaran v. Chirutha* (*l*) was relied on. Without entering into the question whether the actual decision there is sound or not, which we are not called upon to consider, we may say that it is quite clear that the case cannot be treated as establishing the proposition for which it was cited. In the present case, no evidence was adduced as to the alleged custom prohibiting a kanom tenant from removing trees which had been planted by him. We cannot, therefore, express any opinion as to whether such a custom exists or not. But, assuming for argument's sake that a usage of the kind does prevail, that does not necessarily prove that the property in improvements, not yet paid for, vests in the mortgagor. For the alleged usage would be perfectly consistent with the view that in such a case

(*k*) But now under the ruling in I. L. R., 24 M., 47 (F.B.) a kanomdar can cut and remove trees planted by himself provided he leaves the property substantially in the state in which he received it.

(*l*) Civil Revision Petition No. 445 of 1895, unreported.

the property is in the mortgagee until the payment of compensation ; the restriction on his power to remove such improvements as trees being explained as imposed on grounds of policy, similar to that which underlies the provision in section 63 of the Transfer of Property Act relating to an accession, made at the expense of the mortgagee to preserve the property from destruction, etc., but which accession is not capable of being separately possessed or enjoyed by the mortgagee. Considering that the mortgagor in cases like the present is bound to pay compensation for improvements even when the contract between the parties is silent on the point, the above view as to the relative rights of the parties would seem to be a more reasonable interpretation of the alleged local usage than that suggested on behalf of the respondent.

“ The conclusion, therefore, to be arrived at appears clearly to be that the appellant is bound to pay only for such improvements as at the time of the redemption, are on the land in a reasonably good condition (cf. *Gubbins v. Creed (m)*), and therefore he is not liable for the amount in dispute. To hold otherwise would certainly tend to incline mortgagees to neglect between the date of the decree and that of its execution, the duty of properly looking after the improvements, compensation for which has been assessed, and in some cases even to destroy them to the injury of the mortgagors ” (n).

Where, in execution, it is found that a re-valuation is necessary, and such re-valuation has been ordered, the Court has to vary the decree in accordance with such order.

(m) 2. Sch. & Lef., 225.

(n) I. L. R., 20 M., 124, pp. 127, *et seq.*

Sub-section (4).

As every matter arising under sub-section (3) is deemed to be a question relating to the execution of a decree within the meaning of section 244 (now section 47) of the Code of Civil Procedure, it follows that there is an appeal against every proceeding of a Court, ordering re-valuation of improvements, such proceeding being a decree within the meaning of the code.

Tenant may remove buildings, works or trees not deemed improvements, within a time to be fixed.

7. Whenever a Court passes a decree or order for ejection against a tenant and such tenant has erected any building, constructed any work or planted any tree which the Court finds is not an improvement for which compensation can be claimed, but which the Court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the Court in its decree or order.

Commentary.

The section provides for cases where the tenant makes any addition to his holding, which is not an improvement as defined by the Act, and which can be removed without substantial injury to the holding. The section requires that a time should be fixed within which the so-called improvement is to be removed. If it is not removed within that time, the landlord decree-holder may apply to have it removed at his own cost, which of course can be recovered from the tenant.

The order for removal is in the nature of a mandatory injunction as to which see The Specific Relief Act (o) section 55.

(o) Act I of 1877 amended by Acts II of 1882, IV of 1882, XII of 1891 and X of 1899.

If the alleged improvement cannot be removed without substantial injury to the holding, the landlord will only be entitled to damages as if for waste. As to waste, see *supra*.

The section has to be read subject to the doctrine of acquiescence enunciated in *Ramsden v. Dyson*, the leading case on the subject, see *supra*, pp. 32 *et seq.*

If the landlord stands by, when the tenant goes on with his additions to the holding, without entering any protest, he would be held as impliedly having consented to the construction of the work by the tenant; and he will not afterwards be allowed to claim the benefit of the provisions of this section.

It will be observed that the section refers only to what is termed *Ameliorating Waste* (p).

With this section, compare section 108 (h) of the Transfer of Property Act:—

“The lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth, provided he leaves the property in the state in which he received it;” and section 108 (p) of the same Act:—

“The lessee must not, without the lessor’s consent, erect on the property any permanent structure, except for agricultural purposes.”

8. The Local Government may, from time to time, by notification in the Fort St. George and Malabar District Gazettes, make rules requiring the Court to associate with itself, for the purpose of

Power to make rules for appointment of assessors, etc.

(p) See *supra* p. 46.

estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the Local Government thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in case of a difference of opinion between the Judge and one or more of such assessors, (q).

Commentary.

This section replaces the corresponding section 5 (2) of Act I of 1887.

The rules and orders issued under the Malabar Compensation for Tenants' Improvements Act, 1887, are kept in force by section 18 of the Madras General Clauses Act, 1891.

The following rules have been framed by the Local Government under section 5 (2) of Act I of 1887 (r).

RULE 1. In suits tried under this Act, the following persons between the ages of 21 and 60 shall be liable to serve as assessors for the purpose of estimating the compensation to be awarded, provided they reside within the limits of the jurisdiction of the Court in which the suit is tried, and not more than 20 miles by land or water, or 50 miles by rail *plus* 10 miles by land or water, from the court-house :—

- (a) Retired public servants in receipt of a pension of not less than Rs. 20 per mensem.
- (b) All other persons paying annually to Government not less than Rs. 50 as land revenue

(q) With this section, cf. section 82 (5) of the Bengal Tenancy Act.

(r) G. O. No. 183, Judicial, 16th April 1888, published in the Fort St. George Gazette, 1888, Part I, p. 298.

or Rs. 20 as income-tax, or believed to have an annual income of Rs. 1,000 or upwards.

Provided that vakils, village officials and persons in the service of Government or of a Railway Company, shall be ineligible to serve as assessors.

RULE 2. As soon as practicable after the publication of these rules, each District Munsif, in communication with the Tahsildar, shall draw up a list of persons eligible to serve in his Court as assessors. The list shall contain the names, places of abode and business, if any, of such persons, and shall be annually revised in, or as near as may be to, the second week of January.

RULE 3. Copies of such list, or revised list, as the case may be, shall forthwith be annexed in some conspicuous place in the Courts of the District Judge and District Munsif, and in the office of the Tahsildar, with a notice attached to each stating that objections to the list shall be heard and determined by the District Munsif at a time to be mentioned in the notice. The decision of the District Munsif as to the retention or removal of the name of any person from the list shall be final.

RULE 4. When the District Munsif's lists have been finally settled, each District Judge shall cause a similar list to be compiled therefrom for his own Court and that of every Subordinate Judge sitting at the same station, and every outlying Subordinate Judge shall compile one for his own Court.

RULE 5. Assessors shall only be appointed in cases in which the amount of compensation tendered or claimed exceeds Rs. 250, and upon the application made by some party to the suit at or before the first hearing, or by special leave of the Court at some later stage of the suit.

RULE 6. In such cases the Court shall select by lot from the list two assessors for the purpose of aiding the Court in determining the amount of compensation, and notice of such selection shall be served by the Court on the parties to the suit or their agents or their vakils three clear days before the day of hearing.

RULE 7. Either party may object to the assessors so chosen or to either of them. The decision of the Judge upon the objections shall be recorded by him and shall be final.

RULE 8. Every summons to an assessor shall be in writing and shall require his attendance at a time and place to be therein specified.

RULE 9. On the day fixed for the attendance of the assessors, the Judge and the assessors shall proceed to hear the parties or their pleaders and the evidence tendered and to determine the amount of compensation.

RULE 10. The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

RULE 11. In case of a difference of opinion between the Judge and the assessors or either of them, the decision of the majority shall prevail.

RULE 12. Every assessor appointed under these rules shall receive a fee of Rs. 5 for each day that he may be away from his house in the discharge of his duty as assessor.

RULE 13. Whenever the Judge thinks that the assessors should view the improvements for which compensation is claimed, he shall make an order to that effect, and such order may provide that the assessors shall be conducted to the site of the improvements by an officer of the Court.

RULE 14. If, before the amount of compensation is determined, any assessor dies or becomes incapable to act, the Judge shall proceed to select another assessor from the list by lot. The inquiry shall be then re-commenced, unless the parties agree that that course is unnecessary, in which case the agreement shall be recorded by the Judge, the evidence already recorded shall be read to the new assessor or assessors, and the trial shall proceed as if such assessor or assessors had been originally appointed.

The above rules are practically very seldom worked in this District, probably because their adoption, it is thought, would unnecessarily add to the costs of litigation. The practice is to appoint a commissioner to assess the value of improvements. For the rules and procedure in the case of such an appointment see Civil Procedure Code, section 75, and Order XXVI. (Rules 9, 10 & 15 to 18.)

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the Court shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent. of an annuity equal to such money value for such number of years, and also the cost of making the improvement determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

(3) If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.— The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

Commentary.

In cases where the annuity value of an improvement exceeds the cost of making the improvement, the original Bill (section 8 (c)) provided that the surplus shall be divided between the landlord and the tenant in the proportion of one to three. In the present Act, the landlord's share has been raised to one-half. The division must needs be arbitrary and the rule is doubtless open to the objection that it takes no account of the varying degrees in which fertility of soil, or the natural advantage of the ground, may have contributed to the increased value; but under the conditions prevailing in Malabar, the division of the surplus between the landlord and the tenant cannot be left to the discretion of the commissioners appointed by the Court, to value improvements, and an apportionment of half and half, though but a rough sort of compromise will, it is believed, generally be accepted as not inequitable.

This, and sections 10 to 13 lay down the principles on which compensation for improvements is to be estimated (s). The rules embodied in these sections had not

(s) Previous to the present enactment, the Madras High Court had, in some cases which came before it, to explain the methods adopted in the valuation of improvements. See for instance, *Valia Tamburatti v. Parvati* (1890) I.L.R. 13 M. 454; *Shangumni v. Veerappan* (1895) I.L.R. 18 M. 407; and *Kunhi Chanda Nambiar v. Kunkan Nambiar* (1895) I.L.R. 19 M. 384.

(2) Suppose a tenant converts an acre of dry land into wet at a proper cost of Rs. 50 and thereby increases the probable average value of the annual net produce by Rs. 15.

The present value of an annuity of Rs. 15 for ever,
at 6% = Rs. 250.

The compensation to be awarded = Rs. 50 +
 $\frac{1}{2}$ (Rs. 250—Rs. 50)
= Rs. 50 + Rs. 100
= Rs. 150.

Improvement
consisting of
trees or plants
spontaneously
grown during
tenancy or
sown or
planted by
tenants.

10. When the improvement is not an improvement to which section 9 applies but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths 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.

Commentary.

The original bill contained a proviso to this effect :—

“ Provided that when such trees or plants are immature the compensation to be awarded may be the cost of making the improvement, instead of the compensation mentioned in this section ” (t).

Under the present Act, section 11 will cover such a case : hence it was not thought necessary to keep the proviso.

The compensation to be awarded for a fruit tree which though mature, does not by reason of old age or other cause, bear fruit, is to be determined under this section.

(t) Bill 6/1898, section 9 (2) (Madras Legislative Council).

In an old case (*u*), Turner, C. J., and Hutchins, J., observed that they were not aware that the law of Malabar recognized in a kanomdar any right to compensation for trees of spontaneous growth. This is now no longer the law.

In *Vasudevan Nambudripad v. Valia Chathu Achan* (*v*) where the question for decision was whether a kanomdar during the period of his occupation was entitled to remove and appropriate to himself any trees that he had himself planted, reference was made to this section, and the argument was advanced that the Act recognized the jenmi's interest in trees grown by a tenant to the extent of one-fourth of their value. The High Court (Davies, Benson and Boddam, JJ.) thus disposed of the contention:—

“We think the deduction is made rather on account of the compulsory nature of the law which obliges the landlord to pay for the improvement whether he wants it or not. This seems clear from the fact that section 7 of the same Act provides that, when a tenant is ejected who has erected any building or planted any tree which the Court finds is not an improvement for which he can claim compensation (owing for instance, to its being unsuitable to the holding), but which can be removed without substantial damage to the holding, he may remove the tree or building within a time to be fixed by the Court. If then, a tenant is allowed, even after the expiry of his tenancy, to remove a tree or building which is not an improvement, it would seem to be unreasonable to forbid him to remove it during his tenancy. The law treats such tree or building as the property of the tenant, and it is not the less his property because it is of

q *Narayana v Narayana* (1884), I. L. R., 8 M., 284.
(v), (1900) I. L. R., 24 M., 47, 10 M. L. J., 321.

such a kind that he can require the landlord to pay him compensation for it, if it be left for the landlord's benefit. It may well happen that a tree planted by a tenant may arrive at maturity and be fit for the market before the expiry of the kanom tenancy. In such a case, it would surely be unreasonable to hold that the tenant should be forbidden to utilize his tree, but should be obliged to allow it to deteriorate until the end of his tenancy and then claim compensation for it from the landlord."

Other kinds
of improve-
ments.

11. When the improvement is not an improvement to which section 9 or 10 applies the compensation to be awarded shall be the cost of the labour including supervision thereof, and of the materials together with other expenditure, if any, which would at the time of the valuation be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

Commentary.

The cost of labour and of materials and the other expenditure, if any, does not ordinarily include interest on the wages of labour, the price of materials and the other expenditure, if any. The tenant's enjoyment of the improvement is ordinarily an equivalent for such interest. But the Court may allow such interest at the current local rate, if it considers for proper reasons that such enjoyment has not been such equivalent.

Value of
improvement
to be
ascertained in

12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascer-

tained in the way prescribed by any of the said sections which is most favourable to the tenant.

the way most favourable to the tenant.

Illustrations.

(a) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100.

In each case, the Court shall award the higher amount.

Commentary.

This section is quite in keeping with the general policy of the Act which is to place the tenant in the most advantageous position with reference to his landlord, to prove fair rates of compensation to be awarded to him, and generally to check the growing practice of eviction.

The illustrations to the section show the equity of its provision.

13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

Improvement consisting in the protection and maintenance of trees and plants not sown or planted by tenants and of trees and plants spontaneously grown prior to tenancy.

Commentary.

When the improvement consists merely in the protection and maintenance of fruit and timber trees which

were already in being when the tenant entered on the land, it is obviously unfair that the value of the improvements should be computed in the manner provided in section 9. Hence, it is provided by this section that in such case the measure of compensation shall be the proper cost of protection and maintenance.

Power to frame tables of maximum and minimum rates of compensation.

14. The Local Government may prepare for the whole or any part of the Malabar district tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9, 10, 11 and 12 shall not, except where the Court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

Commentary.

The object of this section is to furnish a means of checking the working of sections 9, 10, 11 and 12 of the Act by providing generally certain limits within which the compensation awarded must fall.

No tables have been prepared by the Local Government under this section.

Power to prepare tables of prices of products, the cost of cultivating paddy, planting, protecting and maintaining trees and plants.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Local Government may prepare tables for the whole or any part of the Malabar District showing all or any of the following matters :—

- (a) The price of coconuts, arecanuts, pepper and paddy.

(b) The cost of—

- (i) cultivating and harvesting a crop of paddy ;
- (ii) planting, protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine until the tree or vine is in bearing ;
- (iii) protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved ; provided that in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

Such tables to be presumptive evidence that the prices and costs therein mentioned are correct.

Commentary.

For the tables prepared under this section by the Local Government see Appendix C (Fort St. George Gazette, Part I (1910), pp. 270, 271, 272).

16. In respect of any product for which no table showing the price has been published and whenever the presumption under section 15 as to price is sought to be rebutted the Court shall adopt as the money value for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is

Value to be ascertained where no table has been prepared or the correctness of the price mentioned in the table is disputed.

situated, for a period of ten years immediately preceding the institution of the suit.

Tables to be published.

17. The tables prepared under this Act shall be published in English and Malayalam in the Fort St. George and Malabar District Gazettes, and shall be kept publicly posted in the courts having jurisdiction over the area to which the tables apply.

The Local Government may by like publication cancel or vary from time to time the tables so published.

Commentary.

Annuity tables useful for calculation under section 9, were published by G.O. No. 30, Judicial, dated 15th January 1900, in the Fort St. George Gazette, 1900, Part I, p. 88. For these tables, see Appendix D.

Compensation may be refused where trees have been over-planted.

18. When trees are planted in excess of the following scale, the Court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may notwithstanding anything hereinbefore contained either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature :—

Coconut trees	...	...	120 per acre,
Arecanut trees	...	...	720 „
Jack trees	...	...	60 „

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

Commentary.

This section and the principle underlying it are both new. The section has been enacted to protect landlords against over-plantation by tenants. A wide discretion is vested in the Court whose duty it is to decide whether or not, in the circumstances of each case, there is an over-plantation. If the Court is satisfied that there is over-plantation, it may either refuse to grant any compensation, or grant compensation at a lower rate, again in its discretion, for the trees in excess of the scale prescribed.

Section 15 of the original Bill gave the following scales :—

Coconut trees ordinarily	...	...	60	per acre.
Do. in sandy tract near the seashore or backwaters or on the banks of rivers when specially suitable for close planting	...	...	80	„
Arecanut trees	...	...	720	„
Jack trees	...	...	30	„
Pepper vine (standards of)	...	...	600	„

On this, the Select Committee said as follows :—

“In section 18 of the amended Bill we have, not without considerable doubt, retained with some modifications the provisions of section 15 of the original Bill against over-planting. We have omitted pepper because our information as to the proper number of vines or standards, to the acre is very defective. We have raised the number of coconut trees per acre to 120, which is by general repute the usual number for a fully planted garden. We have raised the number of jack trees from 30 to 60. Even this larger figure gives an area of over

80 square yards per tree, an area which only the finest trees would occupy" (w).

Contracts affecting tenant's right to make improvements and claim compensation under the Act invalid.

19. Nothing in any contract made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.

Proviso.

Provided that nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

Commentary.

With this section compare section 178 (1) (d) of the Bengal Tenancy Act 1885. Section 7 of Act I of 1887 to which this section (without its proviso) corresponds, ran as follows :—

“Nothing in any contract between a landlord and a tenant made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and claim compensation for them in accordance with the provisions of this Act.”

Under the proviso to this section, which is new it appears that the parties can by a registered instrument settle the amount to be paid as compensation for improvements made prior to the agreement and also, it is submitted, agree that no compensation is to be paid on account of such improvements.

(w) Select Committee's Report, dated 15th June, 1899, p. 4.

“Contract made after the 1st day of January 1886.”

Act I of 1887 was passed into law on the 7th January 1887: and with reference to section 7 of that Act, to which as pointed out above, the present section corresponds, it was held in a case (x) that it could not be construed retrospectively so as to invalidate agreements made with respect to improvements *prior to the passing of the Act* (7th January 1887), the Judges (Shephard and Boddam, JJ.) observing:—

“So far as the section relates to *making* improvements, it must refer to improvements to be made *subsequently*, and this being so, it is difficult to construe the rest of the section as referring to improvements *effected prior to the date of the Act*. Section 4 does not refer to contracts” (y). In this case, which was one in redemption, some of the tenants had been let into possession under an agreement before the passing of the Act. It was therefore held necessary to ascertain the value of the improvements made by them before the 7th January 1887—the date of the passing of Act I of 1887—calculated according to the scales specified in the respective contracts, and also the value of improvements effected subsequently, calculated under the provisions of the Act.

The effect of this decision was that even although there was a contract between landlord and tenant, made before the first of January 1886, to receive compensation for improvements, at specified rates, such contract only settled the rates of the improvements made prior to the 7th January 1887, the date of the coming into operation of Act I of 1887, and that with reference to improvements effected after the 7th January, the contract was of absolutely no use.

(x) *Firu Mammad v. Krishnan* (1898), I. L. R., 21 M., 149.

(y) *Ibid.*, at p. 150.

This decision appeared to be inconsistent with the observation of the Full Bench in *Kerala Varma Valia Rajah v. Ramunni* (z), to be noticed later on. And therefore in a recent case (a) a division Bench of the High Court (Sir Arnold White, C. J., and Miller, J.) referred the following question to a Full Bench :—

“In the case of a contract made prior to the 1st of January 1886, is the rate of compensation which a tenant is entitled to receive governed by the terms of the contract or by the provisions of The Malabar Compensation for Tenants’ Improvements Acts of 1887 and 1900?”

And the following opinion was expressed by the Full Bench (b) :—

“We are of opinion that section 7 of the Act of 1887, which is reproduced as section 19 of the Act of 1900, precludes parties from contracting themselves out of the Act by any contract made after 1st January 1886, but that it does not affect the validity of the contract made prior to 1st January 1886, whether the improvements were made before or after the coming into operation of the Act of 1887. As regards *Viru Mammad v. Krishnan* (c), a reference to the printed papers shows that the contracts of the defendants other than the sixth defendant were, in fact made after 1st January 1886. We are unable to agree with the decision in *Malikan v. Shankunni* (d).

“Our answer to the question which has been referred to us is that in the case of a contract made prior to

(z) (1892) 3 M. L. J., 51.

(a) *Randupurayil Kunhisore v. Neroth Kunhi Kanner* (1908), 1. L. R., 32 M., 1.

(b) Sir Arnold White, C. J., Wallis and Sankaran Nair, JJ.

(c) (1898) 1. L. R., 21 M., 149. (d) (1890) 1 L. R., 13 M., 502.

1st January 1886, the rate of compensation is governed by terms of the contract" (e).

It is therefore now settled, that a contract *made* before the 1st January 1886, will be respected whether the improvements were made before or after the coming into operation of Act I of 1887.

"*Right of a tenant to make improvements and to claim compensation for them.*" These words have reference not only to improvements to be made subsequent to the contract of the tenant, but also to improvements effected by the same tenant, and under a previous lease before the contract" (f).

A tenant executed to his landlord a document in the year 1890, whereby in consideration of a certain reduction in the annual rent, the former agreed not to claim compensation for improvements made by way of reclamation, after Madras Act I of 1887 came into force. The Lower Courts directed the plaintiff (landlord) to deposit the value of these improvements also, notwithstanding the provision to the contrary in the lease deed. In second appeal, it was contended for the landlord that the words "to make improvements and to claim compensation for them" refer only to improvements to be made in the future and to compensation which might become due in respect thereof and that a contract relating to compensation for improvements already effected did not fall within the section, and the clause in question which referred to such past improvements was therefore valid. In disposing of this contention, Subramania Ayyar, J., observed:—

"Looking to the reason of the section in question,

(e) (1908) 1. L. R., 32 M., 1, at pp. 2 & 3.

(f) *Uthunganakath Avuthala v. Thazhatharayil Kunhali* (1897), 1. L. R., 20 M., 435, 7 M. L. J., 293.

there can be little doubt that the Legislature intended to prohibit contracts relating not only to future but to past improvements also. This view is confirmed by the provisions of section 4 of the Act (*g*). The effect of the section is that a tenant shall not, at the time of eviction, be prejudiced by any custom which will deprive him of his right to compensation for whatever improvements made during the tenancy, whether by himself or by his predecessors in interest. While thus the Legislature true to its object has excluded the operation of custom with regard to improvements made since the creation of the tenancy till the time of eviction, would it be reasonable to hold that a tenant may, by a contract prejudice himself in the matter of the improvements made in the course of the tenancy but prior to the contract? To so limit the scope of section 7 would be anomalous and would defeat the clear object of the Legislature. The provision in the lease-deed on which the appellant relies must therefore be held to be invalid and in no way to affect the right to compensation for the improvements in dispute" (*h*).

To the same effect were the observations of Davies, J. :—

"With reference to section 7 of the Malabar Compensation for Tenants' Improvements Act, 1887, it was argued that that section applies to improvements to be made after the date of the contract; but I think it is clearly intended to refer to any improvements made after the 1st day of January 1886, whether the contract be made prior to, or subsequent to the making of such improve-

(*g*) Corresponding to the first portion of sect. 5 (1) of the present Act. Section 4 ran thus :—"Every tenant who is ejected from his holding shall, notwithstanding any custom to the contrary, be entitled to be compensated for improvements made by him or his predecessors in interest and for which compensation has not already been paid."

(*h*) 7 M. L. J., 293, at p. 295.

ments. The contract in the case was made in 1890, but it related to improvements admittedly made after the 1st of January 1886. I therefore hold that it was void under section 7 of the Act and was therefore not binding on the tenant" (i).

A kanom document of the year 1846 provided *inter alia* as follows:—

"When the fruit trees begin to bear fruit we shall receive their kuzhikanom which you will cause to be paid at the ordinary rate and surrender the paramba."

To a Full Bench (j) was referred the question "whether in the case of a lease such as was found in the present one, the tenant was entitled to compensation in accordance with the provisions of Act I of 1887."

The Full Bench answered the reference as follows:—

"There is no special contract such as is contemplated by section 7 (Madras Act I of 1887) which would exempt the agreement from the operation of the Act. The stipulation is apparently for the benefit of the landlord. The landlord is therefore bound to pay compensation at the ordinary rate, and the only question is whether the rate is to be the rate prevailing at the time compensation has to be paid or that prevailing at some former date. We have no doubt that the landlord is bound to pay the rate prevailing at the time compensation is paid. The rate is now governed by Madras Act I of 1887 and we answer the question referred to the Full Bench in the affirmative. The compensation must of course be limited to improvements recognized as such by section 3 of the Act" (k).

(i) *Ibid.*, p. 298.

(j) *Kerala Varma Valia Rajah v. Ondan Ramunni* (892), 3 M.L.J., 51.

(k) 3 M. L. J., at p. 53.

Saving
clause.

20. Nothing in this Act shall be construed as taking 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.

Commentary.

Customs in favour of the tenant are recognized: but not customs in favour of the landlord. For instance, the custom which is said to exist in some parts of Malabar, of deducting one-half or one-third of the value of the tenants improvements, as the jenmi's share does not come within the saving clause, and therefore cannot be recognized. See notes to section 6, *supra*.

Appendix A.

STATEMENT OF OBJECTS AND REASONS.

Madras Act I of 1887 which was intended to secure to tenants in the Malabar district, who have been ejected from their holdings, the market value of their improvements, has failed to secure its purpose fully. This result is due mainly to the want of precision in the language of the Act, especially in the use and application of the term "improvement" and to the indefiniteness of the rules laid down in section 6 for the guidance of the Courts in determining the compensation payable. In consequence, the Act has been the subject of numerous conflicting decisions of the Courts. The Madras High Court held, in supersession of a previous ruling of 1888, that there was "no provision in the Act for capitalizing either the annual rent or the annual increment due to the improvement," and determined the compensation on the basis solely of the capital and labour actually expended in effecting the improvement. In another case decided in 189 in which the holding had been improved by the planting of trees, the High Court decided that the compensation payable was not the market value of the trees, and that the improvement to be paid for was the 'work' of planting, protecting and maintaining the tree and not the tree itself which was the result of that 'work' nor its future produce. These decisions in effect deprive the tenant of the full market value of his improvements, that is to say, of the measure of compensation which it was the object of the Act of 1887 to secure to him. It has also been found that the provisions of the Act 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.

2. It is accordingly proposed to repeal the Act and to re-enact its provisions with such additions and modifications as the experience of its working during the past ten years and the further attention which the subject has received have shown to be desirable and practicable. The principal changes which the Bill embodies are the following:—

(a) Provisions (clauses 8, 9 and 10 of the Bill) have been introduced classifying improvements into three distinct classes with a separate standard of compensation for each.

(b) The rate of interest to be adopted for capitalizing the value of improvements has been fixed at 6 per cent. (clause 11).

(c) Tables have been carefully prepared, based on the average price of fruit and produce, and the average cost of cultivating, planting and rearing. The data are embodied in schedules II, III and IV appended to the Bill. These tables the Courts are to use as presumptively correct in calculating compensation. Power is reserved by clause 14 (1) to the Governor-in-Council to modify the schedules from time to time.

(d) By clause 6 (5) a tenant is enabled to remove from the holding from which he is ejected buildings, works and trees that are not "improvements" for which compensation can be claimed provided they can be removed without substantial injury to the property; while by clause 15 and the proviso to clause 10, protection is afforded to landlords against over-planting and wasteful expenditure in carrying out certain kinds of improvements.

(Signed) H. M. WINTERBOTHAM.

Appendix B.

Proceedings of a Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George, at 12 o'clock noon, on Tuesday, the 14th day of November 1899.

PRESENT :

His Excellency the GOVERNOR OF MADRAS, G.C.M.G., G.C.I.E.,
presiding.

The Hon'ble Mr. A. T. ARUNDEL, C.S.I.

The Hon'ble Mr. H. M. WINTERBOTHAM.

The Hon'ble GHULAM MUHAMMAD SAHIB BAHADUR.

The Hon'ble Mr. H. P. HODGSON.

The Hon'ble Mr. J. STURROCK.

The Hon'ble the RAJA OF BOBBILI, K.C.I.E.

The Hon'ble Mr. G. STOKES.

The Hon'ble Lieut.-Colonel Sir GEORGE MOORE, Kt., C.I.E.

The Hon'ble Mr. J. THOMSON.

The Hon'ble Mr. D. DUNCAN.

The Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR Avargal,
Dewan Bahadur.

The Hon'ble Mr. C. E. P. VANS AGNEW.

The Hon'ble Mr. F. A. NICHOLSON, C.I.E.

The Hon'ble M.R.Ry. C. VIJAYARAGHAVACHARIAR Avargal.

The Hon'ble M.R.Ry. C. JAMBULINGAM MUDALIYAR Avargal,
Rao Bahadur.

The Hon'ble M.R.Ry. P. RATNASABHAPATI PILLAI Avargal.

The Hon'ble M.R.Ry. G. VENKATARATNAM PANTULU Garu.

The Hon'ble M.R.Ry. V. BHASHYAM AIYANGAR Avargal,
C.I.E., Dewan Bahadur (Officiating Advocate-General).

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THE MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS BILL.

The Hon'ble Mr. H. M. Winterbotham, in presenting the report of the Select Committee on the above Bill and moving that the report and the amended Bill be taken into consideration, said :—

At a meeting of this Council held on 24th January last a Select Committee was appointed to consider the provisions of a Bill to amend the law relating to compensation for improvements made by tenants in the Malabar district. I have now the honour to present to the Council the Select Committee's report and to move under Rule 47 of the rules for the conduct of business, that the Bill and report be taken into consideration at once with a view to the Bill being passed into law. Whatever may be thought of the Bill in its amended shape I may at least claim for the Select Committee that we spared no pains over our task. The Committee held no less than 21 meetings at which the subject was discussed in every detail. It was considered in some quarters that a Bill to amend Act I of 1887, so as to make it answer its original design and purpose, would not be a contentious measure. Taking that design and purpose to be that the evicted tenant should get the full market value of his improvements, it would probably be nearer the mark to say that there is hardly a section or provision of the Bill regarding which unanimity of opinion can be secured. However, by following the principle of give-and-take, the Bill has been at last licked into a shape which every member of the Select Committee, except the Hon'ble Mr. Shankara Subbayyar, has been able to accept if not to approve. Unfortunately the one dissentient member was able to attend only five meetings of the Committee, and it is permissible to surmise that had the Honourable gentleman been present throughout the Committee's discussion of the subject his assent to the Bill might possibly have been gained. The Bill and the Committee's report were published in July last for the information of the public, and it was fondly hoped that during the ample interval which has since elapsed much

useful criticism on the amended Bill would be evoked from the many Malabar experts who favoured us with their opinions on the Bill in its original form. The sole communication which has been received is the memorial from certain landlords in North Malabar, dated October 20th, which has been laid upon the table. It abounds with incorrect assertions and obvious misapprehensions of the Bill. There has indeed been a remarkable absence of criticism—a circumstance from which Honourable Members will draw such conclusions as may seem to them warranted. Certain it is that the extensive modifications and alterations which the Bill has undergone have been in large measure founded on the useful suggestions offered on the original Bill by numerous residents of Malabar of all shades of opinion and by the Malabar and other newspapers. We received and considered opinions and memorials from officers, both Judicial and Revenue, from Rajas, from vakils, from associations of landlords and representatives of tenants; and when we find that the publication of our amended Bill has not led to a further influx of comment from the same quarter, I for my part am inclined to suppose that the Bill as amended is regarded in Malabar as no longer open to serious objection. I can't myself profess any very ardent admiration of the Bill in its new dress; but I do think we may venture to hope that it will prove a not altogether unsuccessful compromise between the opinion which prevailed when Act I of 1887 was passed, viz., that an evicted tenant was entitled to the full market value of his improvements, and the revolt against that opinion which would calculate compensation on the sole basis of outlay. During the discussion of the numerous amendments of which notice has been given those Honourable Members who have not had occasion to study the subject will be introduced to the provisions of the Bill in detail, and it does not seem desirable to occupy valuable time in recapitulating what will be found more fully set forth in the report. I will briefly remark that the Bill will, we hope, be found to remedy many defects and uncertainties in the existing law. A definition of "tenant" has been elaborated which will, we believe, cover every person who, according to

the custom of Malabar, is entitled when evicted to compensation for improvements. The definition of "improvement" has been amended so as to make it clear that what the evicted tenant is entitled to be compensated for is not merely his work, but the result or product of his work. We have made it clear that a tenant to whom compensation is due is entitled to remain in occupation as tenant until the compensation is paid. While preventing a landlord from evading payment of compensation by pleading bogus and unconscionable contracts, we propose to strengthen the landlord's hands by upholding agreements in writing registered, when the object of the agreement is to settle the amount of compensation due in respect of improvements already made. Other important provisions of the Bill will immediately come under notice and discussion when the amendments of which notice has been given are moved. Before sitting down it is perhaps as well that I should remind the Council that Act I of 1887 was passed merely as a compromise. A strong opinion had for some years prevailed that it was absolutely necessary to pass for Malabar a wide measure conferring occupancy rights on the actual cultivator, and placing a check upon rack-rents. Those who feared to take so wide a step in the dark urged that the desired protection from rack-renting and eviction might be secured by an Act which would force the Courts to make to the evicted tenant a liberal award of compensation for his improvements. Thus was passed Act I of 1887 by which the legislature intended that the evicted tenant should receive the full amount by which his improvements had added to the value of the property. Then followed the rulings of the Courts, many of them inconsistent with each other, but tending to construe the Act as if it had intended that compensation should be awarded on the sole basis of outlay. Our Bill is again a compromise which secures to the landlord a share in the amount by which the tenants' improvements add to the value of the property. Now what appears surprising to me is that the very same opinion, which is opposed to any indirect check being placed upon eviction and rack-renting by providing for the award of liberal compensation for improvements, advocates the far more drastic direct

check of conferring upon the tenants the right of occupancy at a fixed rent. Thus the Hon'ble Mr. Shankara Subbayyar in his speech opposing the principle of the Bill expressed the opinion that the occupancy right or fixity of tenure should be secured in a definite way and on a legal basis, and that if this were done all unrest will cease and the compensation scheme will fall back to its proper level and will not wear the gloomy and unwelcome look it now seems to present to the jenmis as a body. And again in his minute of dissent appended to the report he says: "It would be far better to let him (the tenant) continue in possession of the produce he has raised than make the jenmi pay compensation." The answer to this, of course, is that the jenmi is not *made* to pay compensation unless he evicts. No tenant can claim compensation under our Bill unless and until he is evicted; and the jenmi can refrain from eviction. I wish to draw the attention of those Honourable Members who dislike the policy of the Bill, and of my many old friends and acquaintances among the jenmis of Malabar, to this, viz., that the alternative proposed by the Hon'ble Mr. Shankara Subbayyar to accepting such indirect check on eviction as this Act may afford is to confer occupancy rights on the tenantry. If the Malabar landlords wish that this sleeping and tremendously difficult alternative should be allowed to slumber for a further indefinite term, they should be prepared to accept, if not to welcome, the very moderate measure of protection to the tenant which this Bill will afford when it becomes law. I beg now to move that the Bill and the Report be taken into consideration at once.

The Hon'ble M. R. Ry. V. Bhashyam Aiyangar Avargal seconded the motion.

The motion was put to the Council and agreed to.

His Excellency the President:—The Hon'ble Mr. Vijayaraghavachariar will now move the amendment which stands in his name.

Section 3.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
I beg to move that after sub-section (3), the following be added:—

“*Explanation.*—No work executed by a tenant shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.”

This amendment I take partly from the old Bill which was committed to the Select Committee for consideration, but in a slightly altered form. The entire explanation is taken from the Bengal Act on the same subject. The reason given by the Select Committee for its omission is “If an improvement substantially diminishes the value of any other part of the landlord's property, whether within or outside the tenant's holding, the landlord has his remedy by way of civil suit brought within the period allowed by the law of limitation. In a vast number of cases the improvements were effected, without objection by the landlord, one or more generations ago, and it would, in the opinion of the Committee, be inexpedient to permit the plea that such improvements to a holding were injurious to other portions of the landlord's property.” I see that the necessity and even the equity is admitted. It says that the landlord has his remedy by going to the Civil Court. I do not first of all see why when the whole question is before the Court, the question of the injury, if any, to his property should not be considered by the same Court, instead of leaving the landlord to institute a separate suit. The policy of the law has been not to multiply suits but to avoid litigation as much as possible. But in this particular case if this is not provided for in the Bill, separate suits may and must arise, as damage may accrue to the landlord's property not infrequently; and I am not sure that the landlord will be able to restrain by injunction the injurious act of the tenant or recover any damages for any injury the tenant may have done to the landlord's other property if the law is enacted in the present form of the Bill. In any case I respectfully submit that it is undesirable to split this portion of the dispute between the

landlord and the tenant and refer the landlord to a separate suit. Whether a separate suit would lie or not need not be considered. How far the landlord himself was responsible for the injury, and whether by his negligence the injury had been brought about, and whether he objected in time, all these things will be taken notice of by the Court in awarding compensation. The retention of such a provision as the one I move would be of the highest educational value. We give the tenant unrestrained power to improve the property. No consent of the landlord is necessary, not even a notice. Under these circumstances a provision of this kind restraining him from effecting improvements calculated to injure the landlord's property will be of the most healthy kind. For these reasons I beg to move the amendment.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal:— I beg to second the amendment, and, in doing so, I beg to observe that the definition of the word "improvement," as it stands at present, necessarily admits the principle now contended for by the mover. It is better that the matter be put beyond the possibility of a doubt and the clause suggested be added to the definition of the word "improvement."

The Hon'ble Mr. H. M. Winterbotham:— I should just like to explain to the Council how this amendment would act, if it were accepted. The Select Committee has already explained in paragraph 7 of its report (and, I venture to think, very clearly) why the proposed explanation cannot be accepted. Suppose for instance that a tenant who squatted half a century ago in the forest at the foot of the western ghauts has diverted a jungle stream belonging to his landlord, and thus supplied with irrigation some paddy fields which the tenant has formed by reclaiming the jungle. If and when the landlord proceeds to evict him in order to obtain possession of his improvements we cannot allow the landlord to plead, in abetment of the compensation which he ought to pay, that the tenant felled a number of valuable trees 50 years ago which would now be worth ever so much per cubic foot, and that the diversion of the stream has deprived other lands of the possibility of irriga-

tion, and that therefore the tenant's work has substantially diminished the value of the landlord's property. The proposed proviso would, in effect, enable the landlord to rake up old matters long barred by the law of limitation and which could not now be made a cause of action. We have given very clear and convincing reasons in paragraph 7 of the Select Committee's report as to why this amendment should be rejected. The Government cannot accept this amendment.

The Hon'ble M. R. Ry. V. Bhashyam Aiyangar Avargal:— I fear the Hon'ble Mr. Vijayaraghavachariar is under a misapprehension. My Honourable friend assumes that this Bill, as it now stands, without the amendment, drives the landlord to bring a separate suit if he wants to claim damages. I do not know on what provision of the Bill that assertion is founded. Suits are not instituted under the provisions of this Act. But suits are instituted under the general law. This Bill simply lays down certain rules as to how the value of improvements made by the tenant is to be ascertained, and what the improvements are for which the tenant is entitled to compensation. A landlord, in bringing suits, may combine 50 causes of action under the Civil Procedure Code so far as the general law permits him to do so. The amendment proposed is that no work executed by a tenant shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property. Simply because some other portion of the property of the landlord is injured by the tenant, that is no reason for depriving him of the right to claim compensation for an improvement which he has made, if it is an improvement. Landlords will of course have the right to claim damages for the injury which the tenant as lessee or mortgagee may have caused to the property of the landlord; and therefore my Honourable friend's statement that the matter should be decided in the same suit is one in which I entirely concur. There is nothing whatever in this Bill which would preclude a mortgagor or a lessor when he brings a suit to evict a tenant to combine in that suit claims for damages. I have only to refer my Honourable friend to sections 44 and 45 of the Civil

Procedure Code. According to the Bill, as amended by the Select Committee, the tenant, if the work he has done is an improvement within the definition of the word "improvement," will have compensation declared for that improvement. But in effecting that improvement if he violated any term of the contract and caused any damage to the property of the landlord, the landlord has his claim for damages, and the two would be settled in the same suit. I wish to draw my Honourable friend's attention to section 6 of the Bill. The Bill does not say that suits for compensation are to be instituted before the Revenue Court or any particular Court; but simply declares the right to be paid compensation on eviction. The Bill does not affect the jurisdiction of Civil Courts, nor does it lay down that a suit is to be framed in a particular way, nor does this Bill enable a tenant, if he is not otherwise entitled, to bring a suit as plaintiff claiming compensation. These are matters to be decided by general principles of law. Section 6 says: "(1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the Court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due, and ordering that on payment by the plaintiff into Court of the amount so found due and also the mortgage money (if any) the defendant shall put the plaintiff into possession of the land with the improvements thereon." The word "ejectment," the Honourable Member will observe, includes redemption or recovery of possession of lands mortgaged. It may be a suit by the lessor against a simple lessee to eject him, or it may be a suit by the mortgagor to redeem the property mortgaged. So far as this law is concerned it does not at all bear upon the question of the institution of the suit. It entitles the tenant to set up a claim for compensation on eviction. There is nothing whatever to prevent the landlord from claiming damages for various breaches of contract committed by the mortgagee or the tenant and combining them in one suit. My learned friend was under the impression that this is a suit to be instituted in a Revenue

Court as if the claim which the landlord may have for damages is one which he will have to prosecute in a Civil Court. All these are matters which will be regulated by sections 44 and 45 of the Civil Procedure Code. If the Court before which the suits are instituted should consider that the two claims should be split up for trial then it may be done.

The Hon'ble M. R. Ry. C. Vijayaraghavachariar Avargal.— I beg to state that I did not believe that I was under a misapprehension when I moved the amendment, but I fear I am now. Reading paragraph 7 of the Select Committee's report, I do not know whether to an untutored mind it would occur that a claim for damages could be brought forward in the same suit as for ejectment. Now the learned Advocate-General has explained it. But one would scarcely believe that the Courts will take the same view. I thought that the matter was not plain and a vast number of Judges could not understand it and it is in that view the amendment suggested itself to me. Even now I adhere to my amendment for reasons not answered by the Honourable Mover and the Seconder of the Bill. What about the law of limitation? It is all right to say that in the same suit the two may be considered. But you have not stated so in the Select Committee's report. Although this report is not admitted in evidence, yet we all know that the Courts do read the proceedings of the Council and the Select Committee's report and are greatly influenced by what we say. It is but fair and equitable to allow a landlord to set off against the demand of the tenant for his improvements any sum the landlord would be found entitled to by way of damages arising from the conduct of the tenant in making his improvement, although a separate suit for such damages might have become barred by the law of limitation. If in accounting for payments from debtors to creditors, the latter appropriate money for barred debt, they are right. That is the law. You are entitled to have moneys from debtors in discharging barred debts, unless you are restrained from doing so, although you are prevented from bringing suits for the recovery of such debts. It is therefore fair and equitable that a landlord should not be restrained

by the law of limitation. That is *not* what paragraph 7 says and that is exactly the answer given to me by the Hon'ble Mr. Winterbotham. I take paragraph 7 and the reply of the Hon'ble Mr. Winterbotham in order to see whether my amendment is necessary and healthy. At any rate from the answer given by the Honourable the Advocate-General there seems to be no dispute between us about the principle. There is a consensus of opinion that the landlord is entitled to take this fact in considering the amount of compensation—whether he ought to bring a separate suit, or whether the same suit will do, is the question. Then why not allow the amendment? As I have stated before this is taken from the Bengal Act, and no answer has been given why this provision which has worked in Bengal should not be adopted here. If, as was stated, there is no contention about the principle I submit that the Council should accept my amendment. I wish to read the quotation from the Bengal law. Section 76 sets forth “no work executed by a ryot on a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.”

The Hon'ble Mr. J. Sturrock :—The definition of the word “improvement” is not the same, I suppose.

The amendment was put to the Council and lost.

Section 4.

The Hon'ble M.R.Ry. C. Vijayaraghavacharira Avargal :—The next amendment also stands in my name. I move that in clause (h) *be omitted* the words “or protection and maintenance” occurring between the words “planting” and “of,” and after the word “plants” *be added* the words “and the protection and maintenance of trees and plants so planted.” Section 4 says that “until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act.” Clause (h) of this section says “the planting or protection and maintenance of fruit trees, timber trees, and other useful trees and plants.” I am not going to make very many observations on this, be-

cause no amendment is likely to succeed unless it is accepted. So I shall be very short in my observations. I respectfully submit where such trees as those mentioned in clause (h) are planted by the tenant and protected and maintained by him he is entitled on the principle of the Bill being accepted to some form of compensation. But where the trees already exist, in which case protection and maintenance mean nothing more than that he may not chop them off or allow cattle to graze them, it is not equitable that the tenant should be entitled to any compensation for any such negative assistance. Having regard to the natural conditions of Malabar, the protection and maintenance is next to nothing. I need say nothing further with regard to my amendment.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal:-- In support of the amendment I may say that existing plantations may be leased and the maintenance of such existing plantations is a necessary incident of the tenancy. Such maintenance cannot therefore be treated as an improvement. It is inequitable to say that the landlord should pay for such maintenance and protection as the tenant gives in his own interests. If he protects and maintains them, he reaps the profits.

The Hon'ble Mr. H. M. Winterbotham:--If we were discussing for the first time what the law should be, I am prepared to admit that there is a good deal to be said in favour of the Honourable Member's amendment. But section 4, clause (h), of the Bill merely re-enacts what is already the law, and has been so for the last twelve years, without having given rise to any complaint or remonstrance from any quarter. Section (2) (h) of Act I of 1887 declares that the planting, protection or maintenance of fruit trees, timber trees and other useful trees and plants shall be presumed to be improvements until the contrary is shown. All leases granted during the last twelve years have been drawn up with a knowledge that such was the law, and to change the law when no one has

asked for the change, and when it is not proved to have worked inequitably, might lead to consequences that we are none of us in a position to foresee. The object of the proposed amendment is to restrict the grant of compensation for protection and maintenance to trees which the tenant himself has planted; but it is easy to show that this would be utterly unjust. Suppose that at the commencement of a lease there is on the ground a number of coconut plants and immature trees in various stages of growth belonging to the landlord. Before any of these come into bearing many years may pass, during which the young trees must be sedulously protected from goats and cattle and require watering, manuring and constant attention. I cannot believe that even the Honourable Mover of the amendment will contend that the landlord should be left at liberty to evict the tenant as soon as the trees begin to yield, without making him any compensation for the long years of care which he has bestowed on the trees without obtaining any return from them. Obviously protection and maintenance of the landlord's trees until they arrive at maturity is a work for which the tenant may be properly compensated if he is evicted. The difficulty is, I admit, greater when the trees are already in bearing at the commencement of the lease; but here I would point out that protection and maintenance is only presumed to be an improvement until the contrary is shown; and the truth is that the Courts do not award compensation for the protection and maintenance of bearing trees belonging to the landlord when the Courts find that protection and maintenance were essential to enjoyment of the usufruct. In any case the measure of compensation as declared by section 13 of our Bill is on the sole basis of outlay, and we all know what the line of argument followed by the landlord's advocate is when estimating the money value of the tenant's work. A little water poured on the roots of the trees costs nothing; ashes and rubbish must be cast forth somewhere, and to place them at the roots of the trees costs nothing; the labour is only bestowed in leisure intervals and costs nothing; and the fencing of the garden is maintained for other purposes, hence the outlay is nothing. We may rest well

assured that by maintaining a provision of law which has been in force for the last twelve years, and which has not been shown to work unfairly in practice, we shall do no injustice to the landlord, while I have shown that the Honourable Mover's amendment would be inequitable. I trust that the Council will reject it without hesitation.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal :— I beg to support this amendment of my Honourable friend, specially because this amendment was a matter for consideration in the Select Committee. From what transpired I almost believed that it was a point which was conceded, but the phraseology as it now stands in clause (h) is likely to lead to hardship. After hearing the Honourable Mover's statement, I understand that the principal reason which is urged for retaining the provision as it is in the revised Bill, is that this provision had been in existence ever since 1887, and that its retention during these twelve years has not caused any hardship and has not brought forth any complaint from people, and therefore the provision should not be touched. In the absence of further reasons for retaining this provision I submit that the reasons against the retention of the words "protection and maintenance" in the form they are in far outweigh the simple reason that the provision has been in existence for twelve years. If that should be a ground for retaining and continuing the provision, viz., that it has been in existence for twelve years, then I say that very many other provisions which have been in existence for twelve years should continue and there is no reason why they should be removed. But still we find that very many of the provisions of 1887 have been omitted because we found they have been faulty, and when we revise a Bill it is our business to see that the provisions in the Bill which are not reasonable and cannot stand the test of commonsense ought to be expunged. The argument that it has been in existence since 1887 is absolutely no argument at all. It is said that there has been no complaint since 1887, and I agree. If there has been no complaint, the reason is not far to seek, namely, that the Courts have not worked that section in

the strict and literal sense in which it should be worked. No doubt Courts could not go the length of working it in such a way as to cause hardship. The question is whether any Court of justice has delivered judgment in strict accordance with the provisions of clause (h) of section 4, namely, whether it has granted compensation in the cases of existing fruit trees and gardens, leased out to tenants who enjoy the usufruct and make a profit thereby, for protection and maintenance of such trees and gardens. Let us take an illustration. Suppose a fruit garden or other property of that kind is let out to a tenant for an annual rent. It is presumed that he pays such rent as would leave a margin of profit satisfactory to himself. Suppose the lease is to run for ten or twelve years. During all this time he pays the rent to the landlord and enjoys the surplus as profit. That the garden ought to be maintained and protected is a condition precedent to his tenancy for his enjoyment of the property and reaping the profit therefrom. If the protection and maintenance is not a condition precedent to the tenancy, there is absolutely no meaning in saying that he reaps the profit and pays the rent. Suppose the lease is to run for twelve years and at the end of twelve years he claims compensation for protection and maintenance. It may be Rs. 100 or Rs. 200 per year for watering, manuring and protecting the garden and the amount for twelve years would be either Rs. 1,200 or Rs. 2,400, while all this time he has been reaping the profit. The proposition has only to be put in this form and I am quite sure the Honourable Members will see its intrinsic and logical absurdity. Such a construction the Court would not put, it may be said. I am right in saying that it has not hitherto put such a construction, but if it should put such a construction and enforce the decree, I should consider it strictly legal, but the position of affairs becomes very serious and dangerous. It is true that the Courts have not put that construction, but the retention of such a provision as this will give room for such a construction. If Courts of justice should care to interpret the section according to the strict letter of the law and thus give compensation in the manner described, it would be a source of great danger; and the

retention of such an absurd clause on the statute book would not do credit to those who are considering it. I think it is absolutely necessary to expunge these words "protection and maintenance" in the place they are in and modify the clause as suggested by my Honourable friend. I should note one other objection which has been put forward strongly by the Honourable Mover of the Bill. He takes the case of a garden in which there are different trees not in a productive stage, but which might be in various stages of growth. If the tenant must look after the younger ones till they come to the productive stage, that labour, it is said, does require compensation. In principle that statement is perfectly accurate, but at the same time I should answer by saying that if a garden which contains productive trees and also other trees which are not yet productive but which in course of time might become productive is leased out, seeing the various provisions of the Bill about compensation, it is not at all unlikely that in the contract into which the parties enter they would enter a clause or a statement to the effect that so many trees are productive for which the rent is so much and the remaining trees which are in different stages of growth or plants or trees hereafter to be planted should be taken into account in every calculation for compensation. I respectfully submit that the arguments urged by the Honourable Mover of the Bill are not satisfactory for retaining this provision. Unless we expunge this provision it shows itself to be a patent absurdity on the face of it. For these reasons I support the amendment moved by my Honourable friend.

The Hon'ble M. R. Ry. C. Vijayaraghavaachariar Avargal:— I have nothing more to add than what has been put forward by my Honourable friend Mr. C. Jambulingam Mudaliyar. As regards the absence of complaints, I would only say that the Act has not been sufficiently long under trial. It has been worked for only a very few years before some sort of complaint has been lodged. I respectfully submit that all that has been heard is from one side and that all the officers had predetermined notions. It is not quite right to say that there has been

no complaint as to the working of this particular clause. It is exceedingly difficult for the Honourable Members to find what parts of the Act have worked well, and what parts ill. There is no such evidence before us. I respectfully submit that the amendment is one to which no serious objection has been taken by Mr. Winterbotham and I hope the Council will accept the amendment.

The amendment was put to the Council and lost.

Section 5.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal :—
The next amendment to section 5 stands in my name. I propose that after the words "is so due" be added the words "but is not tendered". The object of my amendment is to provide for cases in which reasonable compensation might be tendered by the landlord to the tenant and the tenant chooses to refuse the compensation so tendered. Even in such a case the tenant might contend, as the section stands, that the compensation is still due to him, and on that ground he may insist upon continuing in possession till he is evicted by Court's decree or order. I did not think that such is the intention of the Select Committee which drafted this portion. I think it is better to make the meaning clear. If a reasonable compensation is offered by the landlord to the tenant and if the tenant chooses to refuse it, he does so at his peril. When the matter comes up before the Court, if the Court finds that a reasonable and adequate compensation has been offered and has been declined and the tenant is continuing in possession, then his so doing will be held unjustifiable and he will be mulcted in costs.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal :—
I may state that this point was very anxiously and carefully considered in the Select Committee and if it were feasible to practically give effect to the suggestion made by the Hon'ble Mr. Ratnasabhapatil Pillai it would have been done. But the

ascertaining of the amount of compensation under the provisions of this Bill is so intricate that it is impossible for either party to ascertain it, but both the landlord and the tenant may mutually agree as to the amount, which case is provided for by the proviso to section 19. It is impossible for the landlord to know what amount to tender and it is still more impossible for the tenant to know whether the amount tendered by the landlord is the amount that he is entitled to on eviction. Section 19 says :—

“ Nothing in any contract made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.

“ Provided that nothing herein contained shall affect any agreement in writing registered, made after the effecting of the improvements, settling the amount of compensation due therefor at the date of such agreement.”

If the two parties agree in a rough manner as to the amount of compensation and that agreement is reduced to writing and registered, then no difficulty arises and the landlord is not driven to the necessity of bringing a suit. But so long as the two parties do not agree as to the amount, the insertion of the words proposed in section 5 will be one which would give rise to great complication and the result will be that the tenant might lose the value of the improvements effected by him since the date of the tender. The tenant might have *bona fide* considered that the amount tendered was insufficient, but it may turn out that when the improvements are valued the amount tendered was correct or was more than the amount found on calculation. In that case though the tenant might have continued in possession under the *bona fide* belief that the amount tendered was quite inadequate, yet he will be deprived of the value of the improvements made since the tender and he will be also deprived of the value of the growth of the improvements already made. Therefore I submit that while my Honourable friend's suggestion is sound in principle and in

theory, yet having regard to the peculiar nature of this Act and the peculiar custom of Malabar and the difficulty of ascertaining the amount of compensation due when the parties do not amicably settle it, the insertion of any such words as those proposed in this section will, to a great extent, defeat the object of this Bill. Of course, if the provisions of the Bill were such that the landlord and the tenant could reasonably ascertain, without going to Court, the amount of compensation due, there may be much to be said in favour of the amendment proposed. But if the Honourable Members of the Council turn to the section which lays down rules for ascertaining the amount of compensation, namely, sections 9, 10, 11 and 13, they will be satisfied that it will be practically impossible to give effect to the intention of my Honourable friend.

The Hon'ble M.R. Ry. C. Jambulingam Mudaliyar Avargal :— While following the Hon'ble the Advocate-General's arguments fully and realizing the difficulty we have in giving effect to the principle enunciated by the Hon'ble Mr. Ratnasabhapatil Pillai, I just wish to ask a question whether it would not be advisable to introduce the provision in the section so as to restrict the extent of the tender to the amount agreed under the proviso to section 19. There should be no difficulty about that. The amount is agreed under proviso to section 19, and if that agreed amount is tendered, then I suppose there should be no difficulty. If to that extent this section is restricted and appropriate words put in, then it would be carrying out the principle.

The Hon'ble M.R. Ry. V. Bhashyam Aiyangar Avargal :— Then it must be a reasonable time after the date of the agreement.

The Hon'ble M.R. Ry. C. Jambulingam Mudaliyar Avargal :— Yes.

The Hon'ble M.R. Ry. V. Bhashyam Aiyangar Avargal :— Under the proviso to section 19, you will see that the amount agreed is conclusive as to the value of the improvements at the date of the agreement. The difficulty will arise when the tender is made two or three years after the date of this agreement.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal :— I submit that if the amount agreed is tendered within a reasonable time after the date of the agreement, then the provisions of section 5 need not apply. I would suggest that three or six months would be sufficient. One year might be too long, because in that year further improvements might be made.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal :— The only thing I would suggest for consideration is—Is it at all likely that when parties eventually come to an agreement, the tenant will not surrender the property on the receipt of the amount agreed, and whether there would really be any necessity for a suit? While I do not see any objection to the principle of the modified suggestion, the matter for consideration is whether for practical purposes there is any necessity for it.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal :— I made the suggestion having in view the condition of the districts in the Presidency. It is common to have village disputes. An agreement arrived at to-day and registered might be set at naught in ten days by the influence of the opposite faction, an amicable settlement made to-day may not be carried out to-morrow. Unless there is any serious objection to my suggestion, I submit it for the consideration of the Council.

The Hon'ble Mr. H. M. Winterbotham :—I love the Malabar district very sincerely and regard it as a foster parent, and having spent some of the best years of my life in it, I am sorry to say anything against its character. But there never was such a distressful country as Malabar for forgery and perjury, and I am sure that every official and vakil acquainted with that district will support this statement. It cannot be allowed that the landlord should be able to come forward and say "I tendered such and such an amount" and that the tenant should say "No, you didn't" and that this dispute as to tender should thus become an issue in every ejectment suit. It was with the object of avoiding this that we have provided in section 6 of the Bill that no tenant should be ejected until pay-

ment by the landlord into Court of the amount due. The landlord cannot be permitted to say "I have cleared my obligations by tendering payment out of Court." That is the understanding which the Committee came to and I must say that it is essential that it should be upheld and therefore the original amendment and the amendment of the amendment should neither of them be accepted.

The amendment was put to the Council and lost.

Section 6.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :—
My next amendment is to add the following as sub-section (4) to section 6 :—

"When under an express agreement in writing any reduction or remission of rent or any other advantage has been given by the landlord to the tenant in consideration of any improvement made or to be made by the tenant, the Court may, on account of such reduction, remission or advantage, make such deduction from the compensation to be awarded as under all the circumstances of the case may be reasonable.

"Provided that the mere omission of a landlord to revise the rent on the expiry of a kanom or lease shall not be taken to authorize any deduction from the compensation contemplated by this section."

This amendment is simply an attempt on my part—it is for you to say whether it will succeed or not—to restore certain portions of the Bill which have been expunged by the Select Committee from the old Bill. Borrowing the language used by the Honourable Mover in retaining certain clauses of the Bill that "there has been no complaint," I ask you to retain this provision because there has been no complaint against it since the time the Bill was introduced. I am not aware whether anybody has made any complaint against it. Apart from it this provision itself is a very healthy one. This is found in the old Act itself. In section 6, clause (6), which is more brief, says: "any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement."

I do not know if the Honourable Mover has statistics of complaints made under Act I of 1887. I am not in a position to say whether there has been any complaint in regard to clause (c) of section 6 or not. It is there in the Act and it has been introduced in the original Bill. Further the provision itself is in the highest degree equitable. Honourable Members will remember that under the expression "tenant" in this clause a class of people who have been very much in evidence before the amiable Member of the Revenue Board, the Hon'ble Mr. F. A. Nicholson—sowcars—is included. Between the sowcars and the landlords it is in the highest degree unfair that you must presume helplessness on the part of sowcar-tenant and domination on the part of the landlord. It is only upon this principle that the Select Committee had expunged this provision. The Select Committee says:—

"We have also omitted sub-section (3) of section 6 of the original Bill which allowed a landlord to set off against the value of the tenant's improvements any reduction of rent or other advantage granted by the landlord as a consideration for making the improvements. In effect, this provision would uphold all contracts whereby the tenant agreed to forego his right to compensation, and is plainly inconsistent with that necessary provision in the existing Act which refuses to allow the tenant to contract himself out of the rights which it is the object of the Act to secure."

That is to say notwithstanding any contract, because the Act says that the tenant cannot contract himself out of the rights and privileges which the Bill proposes to confer upon him, we follow it logically and say that this clause should be removed. I fail to see the connexion between the two. Let us take a single instance. Suppose two landlords lease out properties, one is exactly the same in quality and quantity as the other. One man takes the full rent, Rs. 100, and the other man says "I shall only take Rs. 50 and leave the rest to be expended on the property." According to the section as it stands both the landlords, though they receive Rs. 100 and Rs. 50, respectively, will have to pay the same amount of compensation. I

do not see how we can maintain such a law as this. Is it merely because some tenant may be imposed upon, that these money-lenders should have this disadvantage? You will see that it is the jenmi that suffers and not the tenants. If my memory fails me not, no complaint was made at the introduction of this section when the Bill was introduced. The reasons now given by the Select Committee are not convincing and I hope that this Honourable Council will be pleased to restore the Bill as it was when it was introduced.

The Hon'ble M. R. Ry. P. Ratnasabhapati Pillai Avargal:— I beg to second this amendment. It very often happens that waste and jungly lands may be leased and only nominal rent reserved in consideration of the large outlay necessary for their reclamation. In such a case the reduced rent should be held to be a sufficient consideration for the improvements effected. The clause, as it stands, ignores such a case as this. The object of the amendment is that in such cases the landlord should be allowed consideration for the nominal or the low rent he reserved, when the compensation comes to be assessed.

The Hon'ble Mr. H. M. Winterbotham:—I am very sorry that I do not catch the drift of the last speaker's argument. He takes the case of a tenant being admitted to waste land on a nominal rent on the understanding that the tenant will probably make improvements on the land. What I should wish to prevent is that the landlord at the end of the lease should quote the nominal rent as a reason for not having to pay compensation for improvements. As regards the Hon'ble Mr. Vijayaraghavachariar's statement that there are no complaints that is not correct.

The Hon'ble M. R. Ry. C. Vijayaraghavachariar Avargal:— I did not say there were no complaints. I asked a question whether there was a complaint or not.

The Hon'ble Mr. H. M. Winterbotham:—Then I may tell the Honourable Member that there are many complaints. In one of our memorials from the tenants they say: "This clause looks very fair as regards landlords who deal honestly with their tenants. But in Malabar the landlords have of late hit upon a

device to deprive the tenants of their right to get compensation for improvements. It is this. Fix a fictitious rent and then allow a reduction for making improvements. The balance rent made payable is the actual rent obtainable for the property. At the end of the tenancy, the tenant has to surrender the property without claiming any compensation for the improvements effected by him, or if he has not made any improvements to refund the amount allowed as a reduction or remission with interest." There is another authority which I regard as much more weighty and that is the opinion of the District Judge of North Malabar who has been in the district for many years and knows thoroughly how this Act works. He says that "clause 3 should be omitted; it can only cause disputes and afford a loop-hole for the landlord to evade section 16." The Select Committee at the end of paragraph 12 of its report has given the reason why this plausible-looking amendment cannot be accepted. Section 7 of Act I of 1887 provides that no contract shall be recognized which takes away or limits the right of a tenant to make improvements and to claim compensation for them when evicted. This restriction on freedom of contract is essential, because in Malabar all waste land is presumed to be private property. The old custom under which Government exercised the right to allot waste land for cultivation is temporarily in abeyance, and the teeming population creates so keen a competition for land that the landlord can compel the competing tenants to submit to well nigh any terms which he chooses to impose. But the amendment which the Honourable Member advocates is manifestly inconsistent with this necessary restriction on freedom of contract. In coming to terms with a tenant, the landlord cannot be permitted to evade his obligations by inserting a condition in the lease that the rent has been reduced in consideration of improvements made or to be made by the tenant. So obvious a device would entirely frustrate the intention of the legislature that the tenant shall not be allowed to surrender his right to compensation. On the ground that the amendment is inconsistent with section 19 of the Bill which re-enacts section 7 of Act I of 1887, I submit that the amendment must be rejected.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
 The case I quoted where it would work hardship and where it would be inequitable has not been met by the Honourable Mover. He sets before us two pieces of specious evidence—one being that of a certain tenant and the other being that of a District Judge. As regards the evidence of the tenant the complaint is not proved. I do not know whether the golden maxim “Hear the other side” was adopted in disposing of that complaint. There remains the evidence of the District Judge. In matters of this kind if a landlord has really imposed upon a tenant and cheated him, I do not know whether it is beyond the power of the Civil Court to give remedy. It is stated that the tenant should not be allowed to surrender his rights without compensation. But in the case I quoted why should he have any rights to which he is not entitled? In the case I quoted one man pays a good deal more and the other pays less for making improvements. I say this fact must be taken into consideration. After a good deal of controversy this provision was inserted in the old Act and also in the original Bill. I respectfully submit that the propriety of my amendment has not been questioned and has not been covered by the objections taken by the Honourable Mover.

The amendment was put to the Council and lost.

The next amendment which was consequential on the last amendment was withdrawn with the permission of His Excellency the President.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
 My next amendment is that the following be added as subsection (5):—

“No decree or order for the ejectment of a tenant in which compensation for improvements has been awarded to him shall be executed upon his application except in so far as the said decree or order relates to the costs of the suit or proceeding.”

In moving this amendment I am not over confident of its being passed. It is solely a question of law and I shall be guided by the opinion of the learned Advocate-General. If he

thinks that the law as it is proposed to be passed in the amended Bill is sufficient, I shall withdraw my amendment. The Select Committee's report says :—"The proposal to give the tenant the right to enforce execution has, however, been strongly objected to as inequitable if the landlord be willing to continue the tenancy, and we took great pains to work out a scheme of procedure under which the landlord (decree-holder) who deemed it against his interest to execute the decree should be enabled to escape the consequences of the decree by renewing the lease for a substantial term of years. It would, however, continually happen that the decree-holder being a mortgagee or sub-tenure holder would not be legally in a position to secure the tenant in undisturbed possession for the necessary term, and the difficulties arising from the complicated tenures and sub-tenures in Malabar are so great that we reluctantly gave up our idea as impracticable. The balance of advantage appears to us to weigh against giving the tenant the right to enforce execution, and we have therefore simply omitted sub-section (2) of section 6 of the original Bill."

I entirely concur with what the Select Committee says, and I propose this amendment in order to give fuller effect to the intention of the Select Committee. Having come to the conclusion that it is undesirable to allow to the tenant the right to execute decrees, the question arises whether the omission to say so in the Act is sufficient. That will depend upon the sort of decree that will be passed in the redemption suits as to who shall execute it. The Select Committee says that "we do not want to give this right to the tenant." The reason of the Select Committee I have already read to you, namely that they are unwilling to give this right to the tenant. The only question is whether to give effect to that intention a mere omission is enough—should we not go further and say that the tenant has no right. In my humble opinion it is not enough to omit what was inserted in the Bill. If you do not want to give such a right to the tenant, you can say so.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal:—I may mention that a reference to sections 5 and 6 will establish beyond all doubt that the law is as my learned friend wants to have it declared by this amendment of his. Of course I do not at all say for one moment that the mere omission of the subsection would be enough if section 6 were so worded as to justify a Court in passing a decree for compensation in favour of the defendant which he could seek to recover by execution though the landlord does not seek to execute the decree for eviction. If my Honourable friend refers to section 5, he will see that the principle of the Bill is that the tenant is entitled to compensation for improvement only on eviction. That is the declaration of the substantive law. If you turn to section 6 which, if I may say so, is the processual law, giving effect to the substantive law declared in section 5, you will see "The Court shall ascertain as provided in sections 9 to 18 the amount of compensation and shall pass a decree declaring"—that part is only declaratory—"the amount so found due and ordering"—and not ordering the plaintiff to pay the compensation to the defendant,—“that on payment by the plaintiff into Court of the amount so found due and also the mortgage money (if any) the defendant shall put the plaintiff into possession of the lands with the improvements thereon.” How in the face of section 6—and for its interpretation, if necessary, you may refer to section 5—any judgment-debtor, the tenant, can say “you don't wish to execute a decree by ejecting me, but I shall try to execute the decree”—on the supposition that the decree directs the plaintiff to pay him the amount of compensation, whether he was to be ejected or not, I entirely fail to see. Therefore I submit that the amendment is unnecessary.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—Ejectment includes redemption.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal:—Yes.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—Under the Transfer of Property Act when a decree for redemp-

tion has been passed, the defendant is also entitled to ask for execution of the decree under certain circumstances.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal:— I have considered it. In a suit for redemption of a usufructuary mortgage the property is in the possession of the mortgagee.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :— He can also apply for the execution of the decree under certain circumstances.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal :— We are not at all concerned with it. This decree has reference to compensation. The Transfer of Property Act refers only to mortgage money and has no bearing on the amount of compensation payable on ejectment under this Act.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :— In the light of the remarks made by you some time ago, the suit will be under this Act and also under the Transfer of Property Act. Ejectment includes redemption, and in a decree for redemption the defendant can also apply for the execution of the decree. As for the property being sold in particular cases, the sale-proceeds will have to be applied to the mortgage debts.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal :— I have nothing to do with the decree so far as it relates to the mortgage money.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :— The learned Advocate-General does not understand me. I say in a suit for redemption there will be a decree; the defendant can apply for the execution of the decree, and he can also apply for the sale of the property and for such sale-proceeds to be applied to the mortgage money. If you are silent, will not the Court say that this will not apply? If you are satisfied with the present section, don't accept my amendment. But if you are not, you may accept it even though it may be considered a surplusage.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal :— So far as compensation money is concerned that does not apply,

and assuming that the tenant can and does apply for sale under the Transfer of Property Act for the realization of the mortgage money, the purchaser cannot recover possession from the tenant and evict him except on payment of the compensation fixed in the decree, an amount which is distinct from the mortgage money.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—You may say so, but it is not so in the report. When a man applies to have the properties sold and the proceeds applied to the money due under the redemption decree, which is also an ejectment decree, would the Courts agree to pay it out of the mortgage money?

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal:—I don't think it is profitable to continue this discussion further with the Honourable Member.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—Very likely not. We don't understand each other. So the Council may pass it, and it will be the metaphysical part of the law. I asked a distinct question and it is not answered. You may pass the section, but I am not satisfied with it.

His Excellency the President:—You wish your amendment to be put?

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—Yes, your Excellency, because my question is not answered and I wish to do my duty.

The Hon'ble Mr. H. M. Winterbotham:—As far as I can judge, I cannot see any harm in accepting the amendment. But as the Hon'ble the Advocate-General says that it is unnecessary, I should be willing, and should wish, to be guided by his opinion.

The amendment was put to the Council and lost.

Section 8.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal:—I have given notice of certain amendments to section 8. Section 8 of the Bill, as it stands, recognizes the desirability of

associating assessors with the Judge in determining the question of compensation; it empowers the local Government to fix the number of assessors, to determine the qualifications of those assessors and the mode of selecting them. I want to go a step further and suggest, by means of my amendment, that the assessors who are to be associated with the Judge should be remunerated for the trouble they take in travelling long distances and giving their valuable time to the transaction of public justice. I would also say that the local Government should be empowered to frame rules for the purpose of laying down the procedure in case of conflict of opinion between the Judge and the assessors. My original amendments are notified in the agenda paper. But with your Excellency's permission, I put my amendments in a modified form. I beg to propose that the word "and" occurring in line 52 before the word "determining" be omitted, as well as the word "and" before the words "the mode"; that for the full stop in line 54 after the word "them" be substituted a comma; and after the word "them" be inserted the following: "the fee payable to them and the procedure to be followed in case of a difference of opinion between the Judge and one or more of such assessors."

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal:—The amendment now proposed by my Honourable friend is, with reference to the rules which are now in existence and which have been framed by Government under section 8. There are doubts as to the legality of some of the rules framed under the section as it now stands. If the section be amended in the manner now suggested by the Hon'ble Mr. Ratnasabhapati Pillai, then the rules already framed under the existing section by Government will, under the General Clauses Act, continue to be enforced even after the passing of this Act; and notwithstanding that the existing Act has been repealed these rules will continue and be valid and legal under the section as amended.

The Hon'ble Mr. H. M. Winterbotham:—I think the amendment is desirable, and the Government is prepared to accept it.

The amendment was put to the Council and agreed to.

His Excellency the President:—I think at this stage the Honourable Members will agree with me that it may be convenient to adjourn for a short time. The Council will adjourn till 3 o'clock.

The Council re-assembled at 3, when the consideration of the various sections was resumed.

Section 9.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—The important portion of the next amendment is to omit the portions relating to the calculation of compensation. I propose that in sub-section (1) be omitted the words "and the number of years during which such increase may reasonably be expected to continue and shall then ascertain the present value at 6 per cent. of an annuity equal to such money value for such number of years" occurring after the word "increase" in the second line of page 4. If the principle of the amendment to this new rule, a novel rule in Malabar, is accepted, the language of the section may be improved afterwards. In the first place what is stated there will not be understood by the parties. No doubt the nearest schoolmasters may be able occasionally to oblige them, but however there are very few who can work annuities at particular interest. Those that did know them once forget them afterwards and do not take to them again very kindly. The learned Advocate-General a little while ago said that it would be extremely difficult for the tenant to understand what was to be the amount due. The poor and ignorant tenants will understand much less if you tell him that the compensation is the present value of an annuity at 6 per cent. for $37\frac{1}{2}$ years which could be worked out by the application of logarithms, figures reaching sometimes to 18 digits. What I submit is that this may be omitted and something more easily understood by the parties and the Court may

be substituted. It is all very easy to say that a tree shall be in existence for a certain number of years. An expert witness can say that the value of a coconut tree is so and so and the life of coconut tree is so and so, but that cannot apply to different localities. For instance, we all know that trees exposed to storm are very often destroyed. Trees in the neighbourhood of streams and subject to floods are also destroyed. Trees in the interior of the country well protected live much longer. The Court is not called upon to take all these things into consideration in making the calculation, but all that it has to say is for how many years a given tree will last. We lose the common-sense test that is very necessary as to where the trees are situated and as to how they are exposed. If you take only the market value and go upon that knowledge, it would be extremely easy, while to introduce this element would make an equitable adjustment of compensation extremely difficult if not impossible.

The Hon'ble M. R. Ry. P. Ratnasabhapatil Pillai Avargal seconded the amendment.

The Hon'ble Mr. H. M. Winterbotham:—It appears to me that the Honourable Member's objections to section 9 of the Bill must be due to an entire misunderstanding. He seems to think that this annuity calculation, because it is beyond our powers of arithmetic, must necessarily be to the disadvantage of the landlord. The exact opposite is the case. I cannot for the life of me understand how the Honourable Member would propose to compute the present money value of an improvement without taking into account the probable duration of its effects. Our Bill provides that the present money value of an improvement should be ascertained in the following manner. First, for how many years will the improvement probably last. Second, what is the average net money value of the annual income from the improvement during that period. Third, regarding that income as an annuity for that period, what sum at 6 per cent. is its ready money equivalent. For instance, suppose the improvement is a coconut tree and that it is estimated to bring in an

income of one rupee a year for ten years. What is its present money value? It is not ten rupees, but only Rs. 7-5-9. We have struck the annuity tables out of the Bill, but is fully intended that every Court shall be supplied with annuity tables from which the present money value of any improvement can be immediately ascertained as soon as the Court has estimated how long the improvement will last, and what the average income from it will be. The provisions of the section when understood are simple enough and the amendment can be in no wise accepted.

The Hon'ble M. R. Ry. C. Jambulingam Mudaliar Avargal:— I beg to add a few words to what has fallen from the Honourable Mover of the Bill. To my mind it seems that the section is based on the most intelligible principle. When a person goes to purchase a property, he looks at it, considers all its surroundings, and arrives at a figure. That figure represents, so far as he is concerned and so far as the seller is concerned, the value of the property for so many years. If a garden consisted of old coconut trees, 30 or 40 years old, he values it at a certain figure which represents the number of years that the garden is likely to live and similarly with any other garden. If a garden has any trees which will have a longer life, correspondingly the price of the garden is enhanced, and in the valuation of the garden the number of years for which the garden would be productive is taken into consideration. Do you think that an ordinary person who goes to purchase a garden does not enter into arithmetical and mathematical calculations laid down in the section? Whether he calculates by logarithms or by arithmetic or by experience, the process gone through is absolutely the same. It is identical. He takes into consideration the probable life of the garden and puts the present value at so much, after calculating what outturn he is likely to have. Unless such a consideration enters into his mind, it is impossible for any person who goes to purchase a property to value it. This section reduces into a definite and intelligible principle what is done by a kind of instinctive guesswork by the ordinary purchaser. We simply

lay down here the principle which guides the mental process of the man who purchases the property. He takes the future yield of the garden and arrives at a certain figure. If we analyse the process of his decision, you will find that he takes into consideration the present position of the garden and its probable life. We simply apply some arithmetical process for ascertaining the present value, taking into consideration these premises. It is impossible that the principle can be laid down in any more clear and intelligible fashion. My Honourable friend, the mover of the amendment, has said that it is very difficult for ordinary person to understand it. For example, a person who has to enter into a registered agreement according to proviso to section 19, does not take the trouble of going into mathematical calculations but his ordinary instinctive experience of gardens enables him to arrive at a rough calculation and sets the value of gardens at a certain figure. This goes on in almost all compromises out of Court. The fact that an ordinary ryot is not able to understand and work out an annuity tables is no argument against this section. This section is intended to enable the Court to arrive at a figure by the same process by which an ordinary person arrives at his figure by his experience and common sense. The Court would not in all cases be able to apply experience, because learned District Munsifs and District Judges might not be owners of coconut or mango gardens. They simply take evidence regarding certain facts, and on such evidence the final conclusion has to be arrived at. It is the principle and the process by which this final conclusion is to be arrived at that has been laid down in this section. If there is any plausible objection, it is certainly not to this portion which establishes the procedure. The objection may be taken to the percentage. It may be said that the garden might not produce 6 per cent. The only possible objection can be to the percentage that we have established. If any reasonable ground is shown for thinking that 6 per cent. is too high, then it might be lowered. But if it be too low, it might be raised. The section is absolutely faultless and contains the only intelligible method by which we can ascertain the present value of the property. It is impossible, therefore, to make any kind of change in the section as it stands.

The Hon'ble M. R. Ry. C. Vijayaraghavachariar Avargal :—
 The first law of nature that the mother loves her own child applies in the present instance. It is no wonder that the members of the Select Committee love their child, and therefore I can well understand the argument of my learned friend on the right. On the other hand, neither the Honourable Mover nor my Honourable friend has answered the question as to trees that are destroyed by storm and flood. Suppose to-morrow a storm destroys a garden. How do you provide for this contingency? No Honourable gentleman has given an answer to this question of mine. The next question is, is it the law, the customary law of Malabar, is it the law anywhere in Europe? Can any Honourable Member say that this is the law anywhere in Europe between the landlord and the tenant? I say this is an extremely novel and startling provision. I submit that this provision would not work equitably, and what is more, it would not be understood.

The amendment was put to the Council and lost.

The remaining amendments being consequential on the last amendment, were withdrawn with the permission of His Excellency the President.

Section 10.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :—
 I propose "that section 10 be omitted." My only reason is that I do not quite understand the principle of this section. As the section stands, it includes timber trees and other useful trees. I should like to know what are the trees which are not useful. I always thought that trees would be of some use as fuel or otherwise.

The Hon'ble Mr. H. M. Winterbotham :—Prickly-pear, for instance?

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :—
 I thought it was a plant. However, Mr. Dumergue created fodder out of it, and there are native physicians who use prickly-pear as medicine. One important use of prickly-pear

is that it is a grand fence. I think this section is likely to lead to litigation, while I do not think it serves any useful purpose. Of course in this case some kind of discretion should be given to Courts as to what sort of compensation should be given. But I do not think that there is any necessity for a separate section like this.

The amendment fell through for want of a seconder.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :— I now move that the words "spontaneously grown during the period of the tenancy or" occurring in lines 27 and 28 be omitted. I have given my reasons in moving the last amendment. This amendment refers to trees allowed to grow spontaneously by the tenant. He would only allow them to grow if they are not injurious. The fact that he has allowed these spontaneous trees to grow until the period of eviction comes, shows, we may take it for granted, that these have done him no harm. I do not see why he is entitled to any compensation for these trees. The trees belong to the person to whom the soil naturally belongs.

This amendment also fell through for want of a seconder.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :— I beg to move that for the word "three-fourths" in line 31 be substituted the word "one-fourth." It is generally half and half. I don't see why for spontaneously grown trees the tenant should have three-fourths. Three-fourths is too much.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal :— I beg to second the amendment. The mover of the amendment agrees to three-fourths being altered into one-half. With that reservation I second the amendment. The principle already recognized in the preceding section is that the landlord and the tenant are to share in equal moieties, and the same proportion might be observed in this section also.

The Hon'ble Mr. J. Sturrock :—With reference to the remark that the proportion recognized here is different from that recognized in other cases, I would point out that in the case of coconut trees the compensation which is given is for the future

produce. But here the compensation is for the existing value only. It partakes of the nature of crops. If it had been in the form of annual produce, he would have cut the crops. But here he loses the crops standing for ten years. He is therefore entitled to the whole of it, strictly speaking. It is therefore as a kind of compromise that the Select Committee has decided to give three-fourths.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal :— If the Council would permit my Honourable friend, Mr. Vijayagharavachariar, to alter his amendment from one-fourth to one-half, I should like to support it and also say a few words. First of all it is necessary to know whether Your Excellency would permit him to alter one-fourth into one-half.

His Excellency the President :—Yes.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal :— That being so, there is something to be said in favour of the amendment proposed, namely, to reduce three-fourths into one-half. It will be seen that the trees contemplated in this section—timber trees and other useful trees and plants of spontaneous growth—are not trees of such a kind as require enormous labour. They grow themselves, do not want manuring and do not want perpetual watering. The only thing necessary is that the tenant should take care that they are not eaten away by cattle, and that some kind of watch is kept or some fencing put up. Beyond that the trees contemplated in this section do not require any extraordinary amount of labour or toil on the part of the tenant. Therefore it follows that what contributes to the growth of these trees is the rain which is not the tenant's making and the soil which is also not the tenant's making. The rain and the soil contribute to the growth of the trees, and the part that the tenant has to do is that he guards the trees from being eaten away by goats. The portion contributed by the landlord, that is the soil, is just as good as, if not better than, the labour contributed by the tenant in guarding or watching these plantations. Of course if he does not cut away the spontaneously grown trees during the time of his tenancy, it is another piece of kindness. It would

be perfectly equitable and just to give the tenant when his tenancy comes to an end one-half for his labour—his labour and his toil is not very much—and the other half to the landlord for the value of the soil. But for the soil these trees would have no existence and the tenant would get nothing. Therefore one-half, which is the highest limit, is a very reasonable compensation. The Honourable Mover thinks that prickly-pear comes under it. Prickly-pear, I may add, requires no care at all, requires no kind of labour or watering. If that is also a kind of plant and brought under section 10, the tenant is not entitled to get any compensation.

The Hon'ble Mr. J. Sturrock:—The Honourable Mover quoted it as an instance of a useless tree.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal:—The trees that come under this section do not require much labour. One-half is therefore much more than what the tenant is entitled to for his labour.

The Hon'ble Mr. H. M. Winterbotham:—The Hon'ble Mr. Vijayaraghavachariar asked for an example of a plant which was not useful within the meaning of this section.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—I said tree.

The Hon'ble Mr. H. M. Winterbotham:—I gave prickly-pear as an instance of a plant which may not be useful. The product to which the provisions of this section will perhaps most generally apply is the bamboo. Bamboos may be taken as a very common example of useful trees or plants of spontaneous growth which the tenant is at liberty to uproot or cut down or protect and maintain. Botanically the bamboo is only a grass; but, especially in the vicinity of towns, it has a money value, and when the evicted tenant leaves a crop of bamboos on the ground, it is quite right and proper that the landlord should not be allowed to appropriate them without the payment of compensation. There is, no doubt, room for difference of opinion as to how the compensation should be estimated. If the tenant chose to cut

down the bamboos during the period of his lease, there is nothing to prevent his doing so, and thus it seems fair to give him as compensation three-quarters of the sum which they might be reasonably expected to realize if sold by public auction to be cut and carried away. The members of the Select Committee will remember that after a prolonged argument this was the view to which the Committee unanimously agreed—that the tenant ought to receive three-fourths and not one-half.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal:—Speaking for myself I do not think I agreed. You said unanimously, and I do not know if I agreed to the proportion of three-fourths.

The Hon'ble Mr. H. M. Winterbotham:—I think it is obvious as regards bamboos, which is the most usual product to which this section would apply, that the tenant should get at least three-fourths. I cannot see why in regard to any other trees he deserves any less. On the whole, I do not think it is desirable that the amendment should be accepted.

The Hon'ble M. R. Ry. V. Bhashyam Aiyangar Avargal:—I do not know if the Hon ble Mr. Jambulingam Mudaliyar was present at the time when this was discussed. But in connection with this I may draw his attention and the attention of the Members of Council to clause (h) of section 108 of the Transfer of Property Act and the definition of the words “attached to the earth” in section 3 of the Transfer of Property Act. I do not say that the section of the Transfer of Property Act relating to leases is applicable to this Presidency, because Honourable Members of Council are aware that section 117 of the Transfer of Property Act provides that nothing contained in the chapter about leases is applicable to agricultural leases, unless it is specially extended by the local Government. To indicate the principle enunciated by the legislature, I draw your attention to clause (h) which says: “The lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth, provided he leaves the property in the state in which he received it.” If you turn to clause (b) dealing

with the rights and liabilities of lessees, the lessee may remove at any time during the period of the lease all things which he has attached to the earth provided he leaves the property in the state in which he received it. The interpretation of the phrase, "attached to the earth" is "rooted in the earth," as in the case of trees and shrubs to which you will find a reference in clause (a), section 3. Thus under clause (h) the lessee may remove at any time during the tenant's lease all the trees planted by him. Under this clause he will be entitled to the full value of the trees at the expiration of the lease; but, however, as that section is not strictly applicable it was considered fair that the landlord should have some portion of the present value. Therefore it was, that one-fourth was given in favour of the landlord, if the tenant does not exercise the right if any, which he may have, of cutting and carrying them away. It would be rather difficult to maintain that the landlord should have one-half or any other fixed proportion. One-fourth was fixed as probably the best solution of the difficulty and we have assigned three-fourths to the tenant as some inducement to him not to cut and remove the trees.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—With very great diffidence and respect to the learned Advocate-General I differ from him in the meaning he puts. It is not a question of law. But it is a question of the meaning he puts on clause (h). He says that the lessee may remove the trees. He begins by defining "attached to the earth" as "rooted in the earth" as in the case of trees and shrubs. Clause (h) reads thus: "The lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth, provided he leaves the property in the state in which he received it." By things which he, the tenant, has attached to the earth, the learned Advocate-General seems to think that what is meant is the things he has and which are attached to the earth. He makes attached an adjective qualifying the word things. Until he told me this, I thought "attached" was a verb, the nominative being he. I humbly submit that it is a forced and violent construction which the Advocate-General has put. The

Hon'ble Mr. Sturrock and the Hon'ble Mr. Winterbotham say that the tenant has a right to cut and carry away the spontaneously grown trees during his tenancy. I wish to know on what evidence they say so. I do not know if there is a little of evidence to support such a statement. The Malabar custom is quite the contrary. I shall quote so great an authority as Sir Charles Turner and I shall sit down. In the list of suggestions he makes for legislation, he records this fact:—"This might be continued to him, the right to cut down trees of spontaneous growth, provided he does no injury to the productive power of the whole." His suggestion is: If he exercises this power in land held by the occupancy tenant, half of the value of timber should belong to the tenant. As a fact he records this with his usual energy and care. Remembering all the authorities dating from 1793, I demur to the statement of the Hon'ble Mr. J. Sturrock and the Hon'ble Mr. Winterbotham that the tenant has a right to cut the trees of spontaneous growth. I deny the right and say he has not.

The amendment was put to the Council and lost.

Section 12.

The Hon'ble M. R. Ry. P. Ratnasabhapati Pillai Avargal:—As the Hon'ble Mr. Vijayaraghavachariar has notified his intention to move a more comprehensive amendment to this section, I beg to withdraw mine.

With the permission of His Excellency the President the amendment was withdrawn.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—I beg to move "that section 12 and the illustrations be omitted." I need not detain the Council very long in moving this amendment. It is stated that in making calculations for the award of compensation under this law, if two results are arrived at, the larger result should be given to the tenant. The section says, "Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favour-

able to the tenant." My amendment does not say that it shall or shall not be given to the tenant. It would be extremely undesirable to state in the Bill what course should be adopted. It would depend upon circumstances, it would depend upon the evidence. Let us take an example. If a tenant happens to be the mortgagee with a high rate of interest, say 40 or 50 per cent., then it must readily be granted that to such a tenant it would be in the highest degree unfair the higher result should be given. On the other hand, it may be in the case of a tenant who has spent a good deal of labour that such a course may be equitable. I say "don't fetter the discretion of the Court." We have introduced two classes of tenants—two classes of people under the term "tenant." I do not mean to deprive a deserving tenant of the higher result. There may be a tenant who may not deserve it. I hope the Honourable Members will leave the Court unfettered. At any rate, I don't see the principle of the thing. If there are two results, I must take it that both the results are good. We are now preparing elaborate rules for the calculation of results. We must take it that we have applied nothing but equitable rules in making the calculation. If under one set of rules which we have prepared with the greatest care the tenant is entitled to one result and if under another there is another result, what is the principle of giving the higher result to the tenant? The landlord in Malabar is unlike our Zemindars, the full owner of the soil, and it is too late to disturb him. If under one section the compensation be adequate, I do not see why the tenant should have the higher compensation. I do not see the justice of the principle and I do not see the necessity for fettering the hands of the Court.

The Hon'ble M.R.Ry. P. Ratnasabhapati Pillai Avargal, seconded the amendment.

The Hon'ble Mr. H. M. Winterbotham:—The justice and the necessity of section 12 seem to me so obvious that I am perfectly unable to understand the Honourable Member's objection to it. If he would only read the section and the two

illustrations, I feel almost convinced that he will understand the necessity for this provision. Take the first illustration. It is well known that the jack tree is extremely valuable as a fruit tree and also as a timber tree. As it increases in years its fruit-bearing capacity diminishes while its value as timber increases, and when it attains to great age its timber alone is useful. What section 12 provides is that in ascertaining the amount of compensation payable for such a tree the Court shall calculate what it is worth as a fruit tree and what it is worth as a timber tree. If it is worth more as a fruit tree then the compensation will be made under section 9, but if it is worth more as a timber tree the compensation will be made under section 10. In the same way the second illustration speaks of the man who has planted a casuarina plantation. The young plants may be only 2 or 3 years old. Are you going to compensate the man by giving him the value of the plantation as timber to be cut down and carried away? It is monstrous to do that. We say you must go to the next section and ascertain what is the cost of the labour spent in making the plantation. The young plants are of no present value themselves as timber, whereas the toil expended on them is very great. We say that he should receive the cost of the toil that he has expended on the plantation. That is obviously just. The amendment should of course be rejected.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
In the case put forward by the Honourable Member the Court will certainly know under what section to proceed. My amendment does not deprive the tenant of his benefit.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
I beg to propose that in section 12 the words "equitable under all the circumstances of the case" be substituted for the words "favourable to the tenant" in line 51; and that with regard to illustrations, for the words "the higher" in line 5, page 5, be substituted the word "such" and after the word "amount" in line 6 be added the words "as the Court may find to be most equitable." I need not repeat the reasons

that I have already given. The reasons that I have already advanced are sufficient to show that the Courts may be entrusted with the duty of finding out under what circumstances the higher compensation would be equitable and in what circumstances it would not be. On the other hand a hard and fast rule might work a great hardship. As in the case of the money lender which I have already pointed out, he would be getting moneys to which he would not be entitled either in law or custom.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble Mr. H. M. Winterbotham:—I do not think that I need add anything to what I have already stated.

The amendments were put to the Council and lost.

Section 13.

The Hon'ble Mr. H. M. Winterbotham:—Section 9 applies to fruit trees in bearing. Section 10 applies to timber trees or other useful trees or plants. Section 13 applies both to bearing fruit trees and to timber trees belonging to the landlord, i.e., not planted by the tenant. As it stands, section 13 repeats the wording of section 10, and it might be argued that it accordingly does not refer to the fruit trees to which section 9 applies. To remove possible doubt it is desirable to insert the words "or fruit" between the words "timber" and "trees," and I beg to move this amendment.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu:—I beg to second this amendment.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal:—For the reasons I have already stated *in extenso* in connection with clause (h) of section 4, I oppose this amendment. This section by the introduction of the words "or fruit" as proposed by the Honourable Mover of the Bill taken in connection with clause (h) of section 4, makes my interpretation absolutely certain that a lessee of a fruit garden reaping the fruit year after year will at the end of the term, say 12 years,

claim the cost of maintenance and protection, watering and manuring for these 12 years though all the time he has been enjoying the fruit. If it is left as it is, namely timber tree or other useful trees, it might be as I have stated in connection with section 10, that the cost of maintenance and the labour would be very inconsiderable as it will be only to keep the cattle and goats away from them. But if you add fruit trees to section 13 and say that the proper compensation is the cost of maintenance and protection of such trees, that section taken in connection with clause (h) of section 4 leads to the undoubted conclusion that that person who is the lessee of the fruit bearing garden may at the end of his tenancy claim the cost of his trouble for watering and manuring, which is a very inequitable provision. Of course it was suggested when I was discussing clause (h) of section 4 that in practice Courts will never grant compensation calculated on that basis. No doubt such a decree has not been passed hitherto and no Court will take that view. But if you introduce "or fruit" into the section, the Courts will be bound to take that view. For the same reasons as I have already stated *in extenso*, the words "or fruit" should not be introduced; if this phrase is introduced, I am sure it will lead to serious consequences and startling results, and Courts will be compelled to pass a decree which this Council never contemplated and even the Honourable Mover never contemplated.

The Hon'ble Mr. H. M. Winterbotham:—With due deference to the Honourable Member I must hold that the Courts will not be compelled to do anything of the sort. As I have already pointed out, protection and maintenance is only presumed to be an improvement until the contrary is shown. Let us in the first place suppose that the tenant has spent nothing on the trees and there has been no cost. The Court will find in such case that such protection and maintenance is not an improvement, and if by any chance it is held to be an improvement he has spent nothing on the trees and therefore he will get nothing. That is my argument for saying that the landlord is perfectly secure. If the trees were in bearing at the

beginning of the lease, and if the tenant has taken no unusual steps for maintenance and protection, the Court will hold that there has been no improvement. But if he has taken unusual steps, if he has expended an unusual amount of labour in protecting and maintaining the trees, then he may fairly be regarded as entitled to compensation. In either case the landlord is perfectly secure.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal:—With your Excellency's permission I submit that the Honourable Member has not followed my argument. In the case of the fruit bearing garden it is not that the tenant spends immensely or not for watering and manuring. What I submit is that the whole of that is covered by the tenancy. He pays rent and he should not be specially entitled for any cost of maintenance and protection. If he spends nothing there is no grievance. But he spends a month or two in watering and manuring; he has for his benefit the excess that he derives every year after paying his rent. His profit covers the cost of watering and manuring. He cannot say that he could destroy the garden and that because he has preserved it he is entitled to the cost of protection. His proper remuneration is his profit.

The Hon'ble Mr. H. M. Winterbotham:—I must again explain that, under the circumstances supposed by my Honourable friend, the Court will hold that the equivalent for protection and maintenance is the enjoyment of the usufruct and will not grant any compensation.

The amendment was put to the Council and agreed to.

Section 14.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—The next amendment to omit this section also stands in my name. When I sent in the list of my amendments I had a sort of vague and indefinite hope that some of the important ones would be carried; and as they have not been carried I beg to withdraw this amendment. I thought this amendment would be necessary, but as my other amendments have been lost, I don't want to press this amendment for my own reasons.

With the permission of his Excellency the President this amendment was withdrawn.

Section 15.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :— I beg to propose that in sub-section (1) after the word "may" in line 32 be added the words "in communication with the High Court". The amendment I propose is the restoration of clause I to where it already existed in the Act which we are now amending. The expression is taken literally from the Act. Sub-section (2) of section 6 says, "The Governor in Council may, in communication with the High Court, order tables, etc." In the Bill "in communication with the High Court" has been omitted. My amendment is that that expression should be restored. Nothing has been said in the course of the debate to show why the influence of the High Court should be excluded. Nothing has been said in regard to it in the Select Committee's report, nor in the Statement of Objects and Reasons, nor in the course of the debate since this Bill was introduced. The introduction of the phrase I have quoted would be very healthy as the High Court with their experience of cases coming from Malabar will be able to make valuable suggestions from time to time and the executive Government in conjunction with the High Court might frame tables which would be far more reliable and healthy than if left entirely to the Collector's establishment in the district and the Secretariat of Government. I humbly submit that my amendment may therefore be passed.

The Hon'ble M.R.Ry. G. Venkataratnam Pantulu Garu seconded the amendment.

The Hon'ble M.R.Ry. V. Bhashiyam Aiyangar Avargal :— I think the amendment is not founded upon any principle. It is strange that the High Court should be consulted as to the prices of coconuts, arecanuts, pepper and paddy in Malabar or the cost of cultivating and harvesting a crop of paddy or of planting, protecting and maintaining coconut trees. It may, no doubt, happen that one of the Judges of the High

Court may be one who has had considerable experience in Malabar. That may or may not be the case. I think on principle it is quite wrong to throw such a responsibility or assign such duties to the Honourable the Judges of the High Court. I may mention that these cases of compensation generally come before the High Court only in second appeals. They would rarely have to decide the price of coconuts, pepper or paddy upon evidence. I think the amendment proposed is one which could not be accepted.

The Hon'ble Mr. H. M. Winterbotham:—I agree with the learned Advocate-General in the reasons he has given in opposing the amendment. I do not think I need say anything more on the subject.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—I do not say anything of the propriety or the impropriety of consulting the High Court, but if I err at all in moving my amendment I err in company with the framers of the previous Act. The framers of the previous Act did not consider it an impropriety to lay down that the High Court might be consulted. I cannot well understand why such a strong objection should be taken to the connection of the High Court in the matter. I perfectly agree that the High Court, or for the matter of that His Excellency the Governor in Council, would not know the prices of paddy and so forth. I do not know how it looks more ridiculous when it applies to the High Court than when it applies to His Excellency the Governor in Council. In both cases it comes from village officials. How is it more ridiculous if the High Court is called upon to give its opinion than His Excellency the Governor in Council is called upon to give an opinion? In the preparation of these tables some sort of principle has to be applied. Various prices prevailing in the various localities will have to be obtained, an average will have to be struck and tables will have to be prepared. It is in this connection the opinion of the High Court would be most healthy.

The amendment was put to the Council and lost.

Section 16.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :—
My next amendment is that the following words be omitted in lines 5 and 6 of section 16 : "In respect of any product for which no table showing the price has been published." This amendment involves no principle and is merely verbal. I would leave it to the Honourable Mover and the Advocate-General to say whether they will accept it or not. The meaning of the amendment would be clear if we read together sections 15 and 16. In section 15, sub-section (2) says that the tables prepared by Government—now without the assistance of the High Court—shall be evidence, but that that evidence may be rebutted by the average price as provided in section 16. But when we go to section 16, it says : "In respect of any product for which no table showing the price has been published, the Court shall adopt as the money value for the purpose of awarding compensation under section 9, etc." That is to say the Courts will be precluded from going into evidence where tables are published. The previous section says that wherever tables are published that evidence can be rebutted. This will mislead the Courts.

The Hon'ble M.R.Ry. V. Bhashyam Aiyangar Avargal :—I will second the amendment if my Honourable friend will move the amendment in a modified form which I suggest ; that is, in section 16, after the word "published" be added the words "and whenever the presumption under section 15 as to price is sought to be rebutted."

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal :—
I have no objection to adopt it.

The amendment as thus modified was put to the Council and agreed to.

Section 18.

The Hon'ble M.R.Ry. P. Ratnasabhupati Pillai Avargal :—
I beg to move that section 18 be omitted and that sections 19 and 20 be numbered as sections 18 and 19. In moving the omission of this section I may quote no less an authority

than the Select Committee itself. The Select Committee has stated in its report that it was not without considerable hesitation that it retained this provision. I do not think that the quantity of tree-planting is a matter which can be regulated by statutory regulation. The quantity to be planted depends upon conditions of climate and soil. The more crowded the trees are, the less productive they become, and the amount of compensation will be proportionately reduced. In the long run matters will adjust themselves. The impracticability of laying down a hard-and-fast rule will be obvious from the instance cited by the Honourable Mover in introducing the Bill, of the late Collector of Malabar, Mr. Logan, having found no less than 433 coconut trees on three-fourths of an acre.

The Hon'ble Mr. Winterbotham :—Not cocoñut trees, but trees of sorts.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal :—The Select Committee could not obtain the standard as regards the pepper vine. Therefore they omitted it. The matter may, I think, be left to the discretion of the Court especially as no tenant will be acting against his own interests by overplanting, when he knows the more the planting is, the less productive the trees will become and that will naturally result in the reduction of compensation.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal seconded the amendment.

The Hon'ble M.R.Ry. C. Jambulingam Mudaliyar Avargal :—I oppose this amendment. The whole scheme of this Bill is to calculate the compensation on the number of trees in a garden and the probable life that each tree might have or the garden might have ; and the compensation is based upon certain calculations resulting in the present value of the garden. That being the case, there will be the strongest temptation at the fag end of a tenancy to stick in a number of arecanuts and just allow them to grow for two years and claim compensation. The result in this case will be disastrous. Each acre or a given extent of land is capable of bearing or taking a certain number of trees and planting over that is ruination to the plantation

itself. That being so we must prevent the temptation on the part of the tenant to stick in more nuts. The temptation will be to put in more nuts and raise a bigger garden with a larger number of trees so that he may have more money. That will be in the long run injurious to the interests of the tenant. If the objection were only taken to the schedule giving the number of coconut trees, jack trees and arecanut trees that a garden is capable of taking, or to some figure that is given, or suggested that these figures be omitted and the Court be given the power in each case according to each locality to judge as to what would be the probable number of coconut and arecanut trees and jack trees that might be planted in a certain area or that the legislature need not fix the number, I can quite understand it. But if the whole section is to be omitted then the principle of taking into consideration overplantation and calculating compensation on the basis of such overplantation and the injury likely to be done to the garden is taken away and the landlord is in a serious position indeed. Therefore, I strongly oppose the omission of the whole section, but if the amendment comes in any other amended form the Council may consider it.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal:— I take the suggestion of the Hon'ble Mr. Jambulingam Mudaliyar and move for the omission of that portion of the section relating to the number of trees. The section as amended by me will run as follows:—

“ When trees are planted in excess of the customary scale, the Court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may, *notwithstanding anything hereinbefore contained*, either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the customary scale.”

The Hon'ble Mr. J. Sturrock:—It seems essential to retain the words “ and are immature ” at the end.

The Hon'ble Mr. H. M. Winterbotham:—I think there seems to be a misunderstanding as to the object of this section. The

Act provides that the Government may prescribe tables under which the Courts shall, in the absence of evidence to the contrary, award compensation at certain rates. Suppose the Government prescribes a table that for every coconut plant the compensation shall be As. 4, and suppose that on the termination of the lease the tenant, with a view to obtain this compensation, should stick in 1,000 plants before he is evicted. If it were not for this section the Court will be compelled to give him As. 4 for each plant. That is what we have sought to avoid by this section. I have no objection to accept the amendment that the whole section be omitted, but I cannot for a moment agree to the second amendment for the reasons that I have already stated, because the whole object of the section would be lost and we should open up a wide field of dispute as to customary scales.

The Hon'ble Mr. H. P. Hodgson:—It is highly desirable that this section should be retained in some form or another for the protection of landlords. I quite follow what the Hon'ble Mr. Jambulingam Mudaliyar has said. It is well known that only a certain number of trees can be profitably grown on a given area of ground. Of course, there are different classes of trees for which these numbers would vary. It is quite possible that such a case as the one which the Hon'ble Mr. Jambulingam Mudaliyar has pointed out might arise, that is, a tenant about to relinquish his occupancy might put in a very large number of plants which could never grow into mature trees and which are practically of no real value, but for which he might get compensation at the rates provided for in the Act. I think therefore it is highly desirable that this section should be retained in some form or another.

The Hon'ble M.R.Ry. P. Ratnasabhapatil Pillai Avargal:—I quite understand the principle embodied in this section. The Select Committee has expressed itself with very great diffidence:

“*Section 18.*—In section 18 of the amended Bill we have, not without considerable doubt, retained with some modifications the provisions of section 15 of the original Bill against overplanting.

“We have omitted pepper because our information as to the proper number of vines, or standards, to the acre is very defective

“We have raised the number of coconut trees per acre to 120, which is by general repute the usual number for a fully planted garden. We have raised the number of jack trees from 30 to 60. Even this larger figure gives an area of over 80 square yards per tree—an area which only the finest trees would occupy.”

The Select Committee has been acting upon a general notion which may be correct or fallacious. The Select Committee has not had sufficient data to fix the number of trees which should be planted on each acre. Seeing that the Select Committee has not had definite data—nor is it possible for it to have such data—the Courts should be empowered to exercise their discretion so that they might take into consideration the circumstances of each case and see whether there has been deliberate overplanting on the part of the tenants. That the hands of the Courts should be tied by a hard-and-fast rule as regards the number of trees to be planted is a procedure that is hardly tenable.

The amendment was put to the Council and lost.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
I beg to withdraw my next amendment, viz., that the section 18 be omitted.

With the permission of His Excellency the President the amendment was withdrawn.

The Hon'ble Mr. H. M. Winterbotham:—I beg leave to move that the Bill as amended by the Select Committee and the Council be now passed into law.

The Hon'ble Mr. J. Sturrock:—I beg to second the motion.

The Hon'ble M.R.Ry. C. Vijayaraghavachariar Avargal:—
I shall not detain the Council very long. All that I have had to say I did say when the Bill was first introduced. The whole situation briefly stands thus. In a few minutes we shall have added to the statute book of this Presidency a statute specially

applicable to Malabar. This is a special law indeed. Apart from the complicated provisions introduced into the Bill, one leading idea that pervades the whole is to restrain the landlord in turning out the tenants by placing difficulties in his way. At all events that is the origin of most of the provisions, disguise it how you may. The Government or the chief executive officers of Government as opposed to the Judicial officers of Government somehow have a faith, an unproved and unproveable faith, in some sort of connection between the outrages by Mappillas in Malabar and an agrarian discontent, whatever that discontent may be. If, on the former occasion, I tried to show that there is no evidence to connect the Mappilla outrages with any agrarian discontent that may be found to exist in Malabar, the lot of objections that have subsequently been received both from the tenants and the advocates of tenants on the one hand and from jenmis and others interested in the preservation of janmam rights in Malabar on the other hand, all follow the lines I took. As regards the Mappilla outrages I emphatically deny that there is any connection between them and any agrarian discontent. Agrarian discontent in Malabar, it seems to me, is a creation only fifteen or sixteen years old. So far as the records can go, we have got a very good account of the land tenures of Malabar for over one hundred years. Books, centuries old, have been consulted and examined by every able man including Sir Thomas Munro. They have come to the conclusion which is embodied in two passages given by Sir Charles Turner which I beg leave to quote. Quoting from the minute of Lord William Bentinck, he says "the rights of landed property and the division of the produce of the soil between the landlord and the tenant are in Malabar perfectly defined and confirmed by immemorial usage." Then elsewhere in another passage Major Walker, one of the early brave explorers, observes: "In no country in the world is the nature of species of property better understood than in Malabar nor its rights more tenaciously maintained." That being so, in some ways, to me mysterious, the discontent arose and I notice this discontent was confined to the executive officers only, and of these the first person was Mr. Logan, the

Collector of Malabar. He himself was appointed to examine into the grievances of Malabar and on going into the records submitted by him I find that an initial mistake was made by him in the enquiry. From the scope of his enquiry he excluded those people who would be able to give very good and disinterested evidence. But in order to prevent agitation, he invited the evidence from those persons only who had grievances. The result was that he heard one side only. That was the side of the tenants and their representatives. Having heard only that side he made the report. This report was placed before a committee. Curiously enough, the constitution of the committee is somewhat interesting. I cannot give the exact passage about the constitution, but the committee in their own language admit that there was no representative on the committee of the jenmi's rights. That admission is, to my mind, a fatal admission that every one of them approached the question with opinions previously formed. So that the result of the enquiry did not take us beyond the report of Mr. Logan. That is this agitation was thus started and enquired into by Mr. Logan; the tenants' men were on the committee who admitted that there were no representatives of the jenmis' rights and that they entered upon the investigation of the question with opinions previously formed. One member of the committee was Mr. Wigram who has already written a book in which he has expressed himself strongly and he made converts, if conversion was needed, of his colleagues to his views. On the other hand, they had to combat series of facts—hard facts recorded as I have stated—by the earlier rulers at a time when there was no Suez Canal and when they were all much more in touch with the people of the land. I do not mean any disrespect to our present rulers. But paradoxical though it might look, yet it is a fact that you do not know us as well as your ancestors knew us one hundred years ago. Those gentlemen with a knowledge and with a spirit of enquiry rarely equalled and never surpassed by the present rulers ascertained and recorded facts necessary for a satisfactory revenue administration of the province. Then followed the Courts established by British Government. These Courts, be it remembered, so far

as Malabar is concerned, were almost entirely manned by tenants' men. As I stated on a former occasion the jenmis in Malabar consisted chiefly of Rajas, Nambudri Brahmins, and a few fictitious persons that is temples. These gentlemen have not taken to British civilization and have no representative in offices, Courts and elsewhere and their rights were never pressed before Government. On the other hand, the tenants' class, to which my esteemed friends the Nayars and Menons belong, put forward their cause with an amount of intelligence and pertinacity, worthy of admiration indeed ; but that prevented the Government from hearing the other side, as it ought to in making a legislation of this kind, with the result that those that were in contact with the educated classes of the district were in the hands of tenants' representatives. And yet the Munsifs and Sub-judges so far as they came from Malabar were from the tenants' class ; and it is curious to see that the executive officers of Government object to the land tenures of Malabar as judge-made law forgetting that the judge-made law took its foundation from the tenants, that is Munsifs and Sub-judges. How they came to the conclusion that the judge-made law was not in accordance with the customs of the land I tried to get at, but I was unable to find any evidence to show that the court-made law is otherwise than in accordance with the evidence and usages recorded by brilliant men whom I have already mentioned before, including the joint Commissioners, very able men who created not but found. In 1881, an enquiry was started with the result that there was the Act I of 1887 and we are now amending that Act. Before the people knew the full scope of that Act and before the Courts understood it, there rose a cry to the effect that the Act did not work well and the agitation was kept up for some time, the result being the present Bill. This Bill is intended to stop eviction ; but I am afraid that this Bill will not achieve one or two of the objects in contemplation of this Council. On the other hand, it would produce heart-burning and a great deal of discontent ; divide class from class and possibly, far from enabling the Government to cope with the special situation in Malabar, may add to its troubles. If it is true that Mappilla outrages have nothing whatever to do

with agrarian discontent, then so soon as they shall learn that in making this special law which practically puts more money into the pockets of the tenants, taken out of the pockets of the jenmis, we had in view that the troubles would be put an end to; we give an additional inducement to these great boys—as the name “Mappilla” implies—and these sturdy boys will take this additional inducement not to behave better but to behave worse because it gives them money in addition to the advantage of going to heaven. As regards the administration of the measure I am sorry to say that it will not work well. There are so many provisions in the Bill for the calculation of the compensation, for the ascertaining of the number of trees, of the fruit-bearing trees and the average produce, that I wonder whether it would be possible, with all the precautions which you have now given and which the Government may give, to work it well. There is one thing to which I must call the attention of the Honourable Council specially. The Government of India has been modifying the Indian Contract Act in order to give special powers of discretion to Courts of justice in view to give them more equity jurisdiction in dealing with contracts. If you read the debates of the Governor-General's Council you will find that this was really intended to protect the borrowing class from the lending class. There can be no disguising that that was the real object of the extension of the principle that already existed in the Contract Act. We now find that the expression “undue influence” has been so defined as to cover a number of cases to which the Courts will have power to give relief, as Courts of Equity in England do, in cases where they believe that bargains were unconscionable. By a strange process we have reversed this in the special law. If you take the Contract Act, the man that needs help is the weaker and the help is to be given to the borrower. The man against whom the Court is asked to give help is the lender. In Malabar, the borrower under the name of jenmi is a landlord and the lender under the name of kanomdar is the tenant. We place the lender of the money in a helpless position. The Government of India places him in a dominating position and hopes to relieve the borrower against any unconscionable bar-

gains which this man might have entered into with him. We have reversed the whole thing and placed the lender under the name of kanomdar, that is the tenant, in a dominating position and he is to be relieved and he is to get an amount of money along with the poor houseless menials, the real tenants, the agriculturists, who really cultivate the land. This man under the name of the kanomdar, the sowcar, takes the rent from the man who is a poor tenant. This man takes rank with him and is to get the benefit which was intended to be given to the tenant proper. Reading all the papers connected with Mr. Logan's commission, the real object was to give relief to the actual cultivators and occupiers of the land. But the hard-headed logic of somebody introduced money-lenders. On the whole, the question is whether such a Bill as this is fair and equitable ; nowhere have we any provision in this Bill against excessive compensation being got from the landlord. No doubt, there is section 14 in which the ingenuity of the Select Committee has provided that the Government, in order that the whole complicated machinery might not do any harm, might prepare maximum and minimum rates for compensation. Upon what basis they are to do it, the section does not say. What are their bases to find the maximum and minimum compensation—terms which have a great meaning with mathematicians? The whole Act is a clumsy machinery and as it is bound to burst it is not in the power of these governor balls to make it work well. I do not think that this Bill will achieve the object in view. A more statesmanlike law founded upon real facts will soon have to be placed on the statute book for Malabar.

The Hon'ble Mr. H. M. Winterbotham:—I do not think it necessary to make any reply, because the Honourable Member's speech, as far as I can understand it, is a direct attack on the principles of the Bill, and the time for such an attack is passed.

The motion was put to the Council and agreed to.

APPENDIX C.

Fort St. George, February 25, 1910.

No. 116.—In exercise of the powers conferred on him by sub-section (1) of section 15 of the Malabar Compensation for Tenants' Improvements Act, 1899, the Governor in Council has framed the following tables for the purpose of determining the amount of compensation to be awarded under the said Act :—

I.

Prices of coconuts, arecanuts, pepper and paddy.

Area.	Coco-nuts.	Arecanuts.	Pepper.	Paddy, second sort.		
	Per thousand.	Per thousand.	Per pound.	Number of Imperialseers of 80 tolas per rupee.	Equivalent in local measures.	
					Name of measure.	Number of measures
1	2	3	4	5	6	7
	RS. A. P.	RS. A. P.	RS. A. P.			
Chirakkal taluk—						
Taliparamba Deputy Tahsildar's division.	33 11 0	1 8 0	0 5 0	18'44	Dangali ..	13'76
Remainder of the taluk.	34 4 0	2 4 0	0 5 0	15'06	McLeod's seer	12'24
Kottayam taluk—						
Kuttuparamba Deputy Tahsildar's division.	30 7 0	1 9 0	0 5 0	13'39	Dangali ..	10'82
Remainder of the taluk.	30 3 0	1 11 0	0 5 0	15'80	McLeod's seer	12'84
Wynaad taluk—						
Vayittiri Deputy Tahsildar's division.	48 15 0	3 1 0	0 7 0	..	..	..
Remainder of the taluk.	41 4 0	2 5 0	0 5 0	32'60	Seer ..	38'80
Kurumbranad taluk—						
Quilandi Deputy Tahsildar's division.	25 7 0	2 0 0	0 5 0	17'46	Do. ..	28'62
Remainder of the taluk.	26 2 0	1 13 0	0 5 0	19'30	McLeod's seer	15'69
Calicut taluk ..	27 14 0	2 7 0	0 6 0	17'88	HalfMcLeod's seer.	29'31
Ernad taluk—						
Tirurangadi Deputy Tahsildar's division.	24 12 0	1 15 0	0 5 0	24'51	Seer ..	19'45
Remainder of the taluk.	35 3 0	1 14 0	0 5 0	19'98	Do. ..	23'50
Ponnani taluk—						
Vettatpudiyangadi Deputy Tahsildar's division.	24 9 0	2 9 0	0 7 0	23'70	Do. ..	35'37
Chavakkad Deputy Tahsildar's division.	27 3 0	2 10 0	0 5 0	24'22	Do. ..	17'67
Remainder of the taluk.	28 2 0	2 10 0	0 6 0	22'58	HalfMcLeod's seer.	37'01
Walavanad taluk—						
Ottappalam Deputy Tahsildar's division.	35 6 0	2 20 0	0 6 0	20'52	McLeod's seer	12'58
Remainder of the taluk.	31 7 0	1 14 0	..	25'28	Do. ..	20'72
Palghat taluk—						
Alattur Deputy Tahsildar's division.	37 6 0	3 4 0	0 7 0	22'69	..	..
Remainder of the taluk.	36 12 0	3 8 0	0 6 0	23'60	McLeod's seer	19'50
Cochin taluk ..	37 9 0	3 0 0	0 6 0	15'85	Nali ..	39'62

II.

Cost of cultivating and harvesting a crop of paddy.

(a) In the Wynaad taluk—Rs. 4 an acre.

(b) In other taluks.

Taram.							Cost per acre.		
(i) Wet lands.							RS.	A.	P.
1	..	..	..	..	..	..	12	8	0
2	..	..	..	..	..	..	12	0	0
3	..	..	..	..	..	..	11	0	0
4	..	..	..	..	..	..	10	0	0
5	..	..	..	..	..	..	8	8	0
6	..	..	..	..	..	..	7	0	0
7	..	..	..	..	..	..	5	8	0
8	..	..	..	..	..	..	4	0	0
(ii) <i>Modan</i> (dry land paddy) lands.									
1	..	..	..	..	..	..	6	0	0
2	..	..	..	..	..	..	5	12	0
3	..	..	..	..	..	..	5	8	0
4	..	..	..	..	..	..	5	0	0
5	..	..	..	..	..	..	4	0	0
6	..	..	..	..	..	..	3	0	0

III.

Cost of planting, protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine until the tree or vine is in bearing.

Name of tree or plant.	Area.	Cost.
Cocunut ..	The whole district except the Wynaad taluk.	Rs. 2-12-0
Arecanut ..	Do.	Irrigated tree, 12 annas. Unirrigated tree, 2 annas and 6 pies.
Jack tree ..	The whole district	Rs. 2-2-0.
Pepper vine ..	Chirakkal, Kottayam and Wynaad taluks. Other taluks	6 annas. 3 annas and 6 pies.

IV.

Cost of protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

Name of tree or plant.	Area.	Cost.
Cocunut ..	The whole district	2 annas and 6 pies.
Arecanut ..	Do.	Irrigated tree, 1 anna and 3 pies. Unirrigated tree, 2 pies.
Jack tree ..	Do.	2 annas.
Pepper vine ..	Chirakkal, Kottayam and Wynaad taluks. Other taluks	1 anna and 6 pies. 6 pies.

W. S. MEYER,
Chief Secretary.

[Fort St. George Gazette 1-3-1910, Part I, pp. 270-72.]

APPENDIX

Schedule showing the present Value of an Annuity of sums from
at the rate of six

—		1 year.	2 years.	3 years.	4 years.	5 years.
1		2	3	4	5	6
		RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.
1 pie	..	0 0 1	0 0 2	0 0 3	0 0 3	0 0 4
2 pies	..	0 0 2	0 0 4	0 0 5	0 0 7	0 0 8
3 "	..	0 0 3	0 0 6	0 0 8	0 0 10	0 1 1
4 "	..	0 0 4	0 0 7	0 0 11	0 1 2	0 1 5
5 "	..	0 0 5	0 0 9	0 1 1	0 1 5	0 1 9
6 "	..	0 0 6	0 0 11	0 1 4	0 1 9	0 2 1
1 anna	..	0 0 11	0 1 10	0 2 8	0 3 6	0 4 3
2 annas	..	0 1 11	0 3 8	0 5 4	0 6 11	0 8 5
3 "	..	0 2 10	0 5 6	0 8 0	0 10 5	0 12 8
4 "	..	0 3 9	0 7 4	0 10 8	0 13 10	1 0 10
5 "	..	0 4 9	0 9 2	0 13 4	1 1 4	1 5 1
6 "	..	0 5 7	0 11 0	1 0 0	1 4 9	1 9 3
7 "	..	0 6 7	0 12 10	1 2 9	1 8 3	1 13 6
8 "	..	0 7 7	0 14 8	1 5 5	1 11 9	2 1 8
9 "	..	0 8 6	1 0 6	1 8 1	1 15 2	2 5 11
10 "	..	0 9 5	1 2 4	1 10 9	2 2 8	2 10 1
11 "	..	0 10 5	1 4 2	1 13 5	2 6 1	2 14 4
12 "	..	0 11 3	1 6 0	2 0 1	2 9 7	3 2 7
13 "	..	0 12 2	1 7 10	2 2 9	2 13 1	3 6 9
14 "	..	0 13 2	1 9 8	2 5 5	3 0 6	3 11 0
15 "	..	0 14 2	1 11 6	2 8 1	3 4 0	3 15 2
1 rupee	..	0 15 1	1 13 4	2 10 9	3 7 5	4 3 5
2 rupees	..	1 14 2	3 10 8	5 5 6	6 14 11	8 6 10
3 "	..	2 13 3	5 8 0	8 0 4	10 6 4	12 10 2
4 "	..	3 12 5	7 5 4	10 11 1	13 13 9	16 13 7
5 "	..	4 11 6	9 2 8	13 5 10	17 5 2	21 1 0
6 "	..	5 10 7	11 0 0	16 0 7	20 12 8	25 4 5
7 "	..	6 9 8	12 13 4	18 11 5	24 4 1	29 7 9
8 "	..	7 8 9	14 10 8	21 6 2	27 11 6	33 11 2
9 "	..	8 7 10	16 8 0	24 0 11	31 3 0	37 14 7
10 "	..	9 6 11	18 5 4	26 11 8	34 10 5	42 2 0
100 "	..	94 5 5	183 5 5	267 4 10	346 8 0	421 3 9

D.

one pie to Rs. 100 for from one to fifty years, and in perpetuity,
per cent. per annum.

6 years.			7 years.			8 years.			9 years.			10 years.			11 years.		
7			8			9			10			11			12		
RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.
0	0	5	0	0	6	0	0	6	0	0	7	0	0	7	0	0	8
0	0	10	0	0	11	0	1	0	0	1	2	0	1	3	0	1	4
0	1	3	0	1	5	0	1	7	0	1	8	0	1	10	0	2	0
0	1	8	0	1	10	0	2	1	0	2	3	0	2	5	0	2	8
0	2	1	0	2	4	0	2	7	0	2	10	0	3	1	0	3	3
0	2	6	0	2	9	0	3	1	0	3	5	0	3	8	0	3	11
0	4	11	0	5	7	0	6	3	0	6	10	0	7	4	0	7	11
0	9	10	0	11	2	0	12	5	0	13	7	0	14	9	0	15	9
0	14	9	1	0	9	1	2	8	1	4	5	1	6	1	1	7	8
1	3	8	1	6	4	1	8	10	1	11	2	1	13	5	1	15	7
1	8	7	1	11	11	1	15	1	2	2	0	2	4	10	2	7	5
1	13	6	2	1	6	2	5	3	2	8	10	2	12	2	2	15	4
2	2	5	2	7	1	2	11	6	2	15	7	3	3	6	3	7	2
2	7	4	2	12	8	3	1	8	3	6	5	3	10	11	3	15	1
2	12	3	3	2	3	3	7	11	3	13	3	4	2	3	4	7	0
3	1	2	3	7	10	3	14	1	4	4	0	4	9	8	4	14	10
3	6	1	3	13	5	4	4	4	4	10	10	5	1	0	5	6	9
3	11	0	4	3	0	4	10	6	5	1	7	5	8	4	5	14	8
3	15	11	4	8	7	5	0	9	5	8	5	5	15	3	6	6	6
4	4	10	4	14	2	5	6	11	5	15	3	6	7	0	6	14	5
4	9	9	5	3	9	5	13	2	6	6	0	6	14	5	7	6	4
4	14	8	5	9	4	6	3	4	6	12	10	7	5	9	7	14	2
9	13	4	11	2	8	12	6	9	13	9	8	14	11	6	15	12	5
14	12	0	16	11	11	18	10	1	20	6	6	22	1	3	23	10	7
19	10	8	22	5	3	24	13	5	27	3	4	29	7	1	31	8	9
24	9	5	27	14	7	31	0	9	34	0	2	36	12	10	39	6	11
29	8	1	33	7	11	37	4	2	40	13	0	44	2	7	47	5	2
34	6	9	39	1	3	43	7	6	47	9	9	51	8	4	55	3	4
39	5	5	44	10	7	49	10	10	54	6	7	58	14	1	63	1	6
44	4	1	50	3	10	55	14	3	61	3	5	66	3	10	70	15	9
49	2	9	55	13	2	62	1	7	68	0	3	73	9	7	78	13	11
49	11	8	558	3	10	620	15	8	680	2	8	736	0	2	788	11	0

Schedule showing the present Value of an Annuity of sums from
at the rate of six

		12 years.		13 years.		14 years.		15 years.		16 years.	
		13		14		15		16		17	
		RS.	A. P.	RS.	A. P.	RS.	A. P.	RS.	A. P.	RS.	A. P.
1 pie	..	0	0 8	0	0 9	0	0 9	0	0 10	0	0 10
2 pies	..	0	1 5	0	1 6	0	1 7	0	1 47	0	1 8
3 "	..	0	2 1	0	2 3	0	2 4	0	2 5	0	2 6
4 "	..	0	2 10	0	2 11	0	3 1	0	3 3	0	3 4
5 "	..	0	3 6	0	3 8	0	3 10	0	4 1	0	4 3
6 "	..	0	4 2	0	4 5	0	4 8	0	4 10	0	5 1
1 anna	..	0	8 5	0	8 10	0	9 4	0	9 9	0	10 1
2 annas	..	1	0 9	1	1 8	1	2 7	1	3 5	1	4 3
3 "	..	1	9 2	1	10 7	1	11 11	1	13 2	1	14 4
4 "	..	2	1 6	2	3 5	2	5 2	2	6 10	2	8 5
5 "	..	2	9 11	2	12 3	2	14 6	3	0 7	3	2 6
6 "	..	3	2 4	3	5 1	3	7 9	3	10 3	3	12 8
7 "	..	3	10 8	3	14 0	4	1 1	4	4 0	4	6 9
8 "	..	4	3 1	4	6 10	4	10 4	4	13 8	5	0 10
9 "	..	4	11 5	4	15 8	5	3 8	5	7 5	5	10 11
10 "	..	5	3 10	5	8 6	5	12 11	6	1 1	6	5 1
11 "	..	5	12 3	6	1 5	6	6 3	6	10 10	6	15 2
12 "	..	6	4 7	6	10 3	6	15 6	7	4 7	7	9 3
13 "	..	6	13 0	7	3 1	7	8 10	7	14 3	8	3 5
14 "	..	7	5 4	7	11 11	8	2 2	8	8 0	8	13 6
15 "	..	7	13 9	8	4 9	8	11 5	9	1 8	9	7 7
1 rupee	..	8	6 2	8	13 8	9	4 9	9	11 5	10	1 8
2 rupees	..	16	12 3	17	11 3	18	9 7	19	6 10	20	3 5
3 "	..	25	2 5	26	8 11	27	14 4	29	2 2	30	5 1
4 "	..	33	8 7	35	6 7	37	3 2	38	13 7	40	6 9
5 "	..	41	14 9	44	4 3	46	7 7	48	9 0	50	8 6
6 "	..	50	4 10	53	1 10	55	12 8	58	4 5	60	10 2
7 "	..	58	11 0	61	15 6	65	1 4	67	15 9	70	11 10
8 "	..	67	1 2	70	13 2	74	6 5	77	11 2	80	13 7
9 "	..	75	7 3	79	10 9	83	11 0	87	6 7	90	15 3
10 "	..	83	13 5	88	8 5	92	15 2	97	2 0	101	0 11
100 "	..	838	6 2	885	4 3	929	8 0	971	3 7	1,010	9 5

one pie to Rs. 100 for from one to fifty years, and in perpetuity,

per cent. per annum—continued.

17 years.			18 years.			19 years.			20 years.			21 years.			22 years.		
18			19			20			21			22			23		
RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.
0	0	10	0	0	11	0	0	11	0	0	11	0	1	0	0	1	0
0	1	9	0	1	10	0	1	10	0	1	11	0	2	0	0	2	0
0	2	7	0	2	8	0	2	9	0	2	10	0	2	11	0	3	0
0	3	6	0	3	7	0	3	9	0	3	10	0	3	11	0	4	0
0	4	4	0	4	6	0	4	8	0	4	9	0	4	11	0	5	0
0	5	3	0	5	5	0	5	7	0	5	9	0	5	11	0	6	0
0	10	6	0	10	10	0	11	2	0	11	6	0	14	9	0	12	0
1	4	11	1	5	8	1	6	4	1	6	11	1	7	6	1	8	1
1	15	5	2	0	6	2	1	6	2	2	5	2	3	4	2	4	1
2	9	11	2	11	4	2	12	8	2	13	11	2	15	1	3	0	2
3	4	5	3	6	2	3	7	9	3	9	4	3	10	10	3	12	2
3	14	10	4	1	0	4	3	0	4	4	10	4	6	7	4	8	3
4	9	4	4	11	10	4	14	1	5	0	3	5	2	4	5	4	3
5	3	10	5	6	7	5	9	3	5	11	9	5	14	1	6	0	4
5	14	4	6	1	5	6	4	5	6	7	3	6	9	11	6	12	4
6	8	9	6	12	3	6	15	7	7	2	8	7	5	8	7	8	5
7	3	3	7	7	1	7	10	9	7	14	2	8	1	5	8	4	5
7	13	9	8	1	11	8	5	11	8	9	8	8	13	2	9	0	6
8	8	2	8	12	9	9	1	1	9	5	1	9	8	11	9	12	6
9	2	8	9	7	7	9	12	3	10	0	7	10	4	8	10	8	7
9	13	2	10	2	5	10	7	4	10	12	1	11	0	6	11	4	7
10	7	8	10	13	3	11	2	6	11	7	6	11	12	3	12	0	8
20	15	3	21	10	6	22	5	1	22	15	0	23	8	5	24	1	4
31	6	11	32	7	9	33	7	7	34	6	7	35	4	8	36	2	0
41	14	7	43	5	0	44	10	1	45	14	1	47	0	11	48	2	8
52	6	2	54	2	3	55	12	8	57	5	7	58	13	2	60	3	4
62	13	10	64	15	5	66	15	2	68	13	1	70	9	4	72	4	0
73	5	5	75	12	8	78	1	9	80	4	8	82	5	7	84	4	8
83	13	1	86	9	11	89	4	3	91	12	2	94	1	10	96	5	4
94	4	9	97	7	2	100	6	9	103	3	8	105	14	0	108	6	0
104	12	4	108	4	5	111	9	4	114	11	2	117	10	3	120	6	8
1,047	11	7	1,082	12	2	1,115	13	0	1,146	15	10	1,176	6	6	1,204	2	6

Schedule showing the present Value of an Annuity of sums from
at the rate of six

		23 years.		24 years.		25 years.		26 years.		27 years.	
		24		25		26		27		28	
		RS.	A. P.	RS.	A. P.	RS.	A. P.	RS.	A. P.	RS.	A. P.
1 pie	..	0	1 0	0	1 1	0	1 1	0	1 1	0	1 1
2 pies	..	0	2 1	0	2 1	0	2 2	0	2 2	0	2 2
3 "	..	0	3 1	0	3 2	0	3 2	0	3 3	0	3 4
4 "	..	0	4 1	0	4 2	0	4 3	0	4 4	0	4 5
5 "	..	0	5 2	0	5 2	0	5 4	0	5 5	0	5 6
6 "	..	0	6 2	0	6 3	0	6 5	0	6 6	0	6 7
1 anna	..	0	12 4	0	12 7	0	12 9	0	13 0	0	13 3
2 annas	..	1	8 7	1	9 1	1	9 7	1	10 0	1	10 5
3 "	..	2	4 11	2	5 8	2	6 4	2	7 0	2	7 8
4 "	..	3	1 3	3	2 2	3	3 2	3	4 0	3	4 10
5 "	..	3	13 6	3	14 9	3	15 11	4	1 0	4	2 1
6 "	..	4	9 10	4	11 4	4	12 8	4	14 0	4	15 3
7 "	..	5	6 1	5	7 10	5	9 6	5	11 0	5	12 6
8 "	..	6	2 5	6	4 5	6	6 3	6	8 0	6	9 8
9 "	..	6	14 9	7	0 11	7	3 1	7	5 0	7	6 11
10 "	..	7	11 0	7	13 6	7	15 10	8	2 0	8	4 1
11 "	..	8	7 4	8	10 1	8	12 7	8	15 0	9	1 4
12 "	..	9	3 8	9	6 7	9	9 5	9	12 0	9	14 6
13 "	..	9	15 11	10	3 2	10	6 2	10	9 0	10	11 9
14 "	..	10	12 3	10	15 8	11	3 0	11	6 1	11	8 11
15 "	..	11	8 7	11	12 3	11	15 9	12	3 1	12	6 2
1 rupee	..	12	4 10	12	8 10	12	12 6	13	0 1	13	3 4
2 rupees	..	24	9 8	25	1 7	25	9 1	26	0 1	26	6 9
3 "	..	36	14 6	37	0 5	38	5 7	39	0 2	39	10 1
4 "	..	49	3 5	50	3 3	51	2 2	52	0 2	52	13 6
5 "	..	61	8 3	62	12 0	63	14 8	65	0 3	66	0 10
6 "	..	73	13 1	75	4 10	76	11 2	78	0 4	79	4 3
7 "	..	86	1 11	87	13 8	89	7 9	91	0 4	92	7 7
8 "	..	98	6 9	100	6 5	102	4 3	104	0 5	105	10 11
9 "	..	110	11 7	112	15 3	115	0 10	117	0 5	118	14 4
10 "	..	123	0 6	125	8 1	127	13 4	130	0 6	132	1 8
100 "	..	1,230	5 5	1,255	0 7	1,278	5 4	1,300	5 1	1,321	0 10

one pie to Rs. 100 for from one to fifty years, and in perpetuity,

per cent. per annum—continued.

28 years.			29 years.			30 years.			31 years.			32 years.			33 years.		
29			30			31			32			33			34		
RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.
0	1	1	0	1	2	0	1	2	0	1	2	0	1	2	0	1	2
0	2	3	0	2	3	0	2	4	0	2	4	0	2	4	0	2	4
0	3	4	0	3	5	0	3	5	0	3	6	0	3	6	0	3	7
0	4	6	0	4	6	0	4	7	0	4	8	0	4	8	0	4	9
0	5	7	0	5	8	0	5	9	0	5	10	0	5	10	0	5	11
0	6	8	0	6	10	0	6	11	0	7	0	0	7	1	0	7	1
0	13	5	0	13	7	0	13	9	0	13	11	0	14	1	0	14	3
1	10	10	1	11	2	1	11	6	1	11	10	1	12	2	1	12	6
2	8	3	2	8	9	2	9	4	2	9	9	2	10	3	2	10	8
3	5	7	3	6	4	3	7	1	3	7	9	3	8	4	3	8	11
4	3	0	4	3	11	4	4	10	4	5	8	4	6	5	4	7	2
5	0	5	5	1	7	5	2	7	5	3	7	5	4	6	5	5	5
5	13	10	5	15	2	6	0	4	6	1	6	6	2	7	6	3	7
6	11	3	6	12	9	6	14	1	6	15	5	7	0	8	7	1	10
7	8	8	7	10	4	7	11	11	7	13	4	7	14	9	8	0	1
8	6	1	8	7	11	8	9	8	8	11	3	8	12	10	8	14	4
9	3	6	9	5	6	9	7	5	9	9	3	9	10	11	9	12	6
10	0	10	10	3	1	10	5	2	10	7	2	10	9	0	10	10	9
10	14	3	11	0	8	11	2	11	11	5	1	11	7	1	11	9	0
11	11	8	11	14	3	12	0	8	12	3	0	12	5	2	12	7	3
12	9	1	12	11	10	12	14	6	13	0	11	13	3	3	13	5	4
13	6	6	13	9	5	13	12	3	13	14	10	14	1	4	14	3	8
26	13	0	27	2	11	27	8	6	27	13	9	28	2	8	28	7	4
40	3	6	40	12	4	41	4	9	41	12	7	42	4	0	42	11	1
53	10	0	54	5	10	55	0	11	55	11	5	56	5	5	56	14	9
67	0	6	67	15	3	68	13	2	69	10	4	70	6	9	71	2	5
80	7	0	81	8	8	82	9	5	83	9	2	84	8	1	85	6	1
93	13	6	95	2	2	96	5	8	97	8	1	98	9	5	99	9	9
107	4	0	108	11	7	110	1	11	111	6	11	112	10	9	113	13	6
120	10	6	122	5	1	123	14	2	125	5	9	126	12	1	128	1	2
134	1	0	135	14	6	137	10	5	139	4	8	140	13	5	142	4	10
1,340	9	10	1,359	1	1	1,376	7	9	1,392	14	6	1,408	6	6	1,423	0	4

Schedule showing the present Value of an Annuity of sums from
at the rate of six

		34 years.		35 years.		36 years.		37 years.		38 years.	
		35		36		37		38		39	
		RS.	A. P.	RS.	A. P.	RS.	A. P.	RS.	A. P.	RS.	A. P.
1 pie ..	..	0	1 2	0	1 2	0	1 3	0	1 3	0	1 3
2 pies ..	..	0	2 5	0	2 5	0	2 5	0	2 5	0	2 6
3 „ ..	..	0	3 7	0	3 7	0	3 8	0	3 8	0	3 9
4 „ ..	..	0	4 9	0	4 10	0	4 10	0	4 11	0	4 11
5 „ ..	..	0	6 0	0	6 0	0	6 1	0	6 2	0	6 2
6 „ ..	..	0	7 2	0	7 3	0	7 4	0	7 4	0	7 5
1 anna ..	..	0	14 4	0	14 6	0	14 7	0	14 9	0	14 10
2 annas ..	..	1	12 9	1	13 0	1	13 3	1	13 6	1	13 8
3 „ ..	..	2	11 1	2	11 6	2	11 10	2	12 3	2	12 7
4 „ ..	..	3	9 6	3	10 0	3	10 6	3	10 11	3	11 5
5 „ ..	..	4	7 10	4	8 6	4	9 1	4	9 8	4	10 3
6 „ ..	..	5	6 3	5	7 0	5	7 9	5	8 5	5	9 1
7 „ ..	..	6	4 7	6	5 6	6	6 4	6	7 2	6	7 11
8 „ ..	..	7	2 11	7	4 0	7	5 0	7	5 11	7	6 9
9 „ ..	..	8	1 4	8	2 6	8	3 7	8	4 8	8	5 8
10 „ ..	..	8	15 8	9	1 0	9	2 3	9	3 4	9	4 6
11 „ ..	..	9	14 1	9	15 6	10	0 10	10	2 1	10	3 4
12 „ ..	..	10	12 5	10	14 0	10	15 5	11	0 10	11	2 2
13 „ ..	..	11	10 9	11	12 6	11	14 1	11	15 7	12	1 0
14 „ ..	..	12	9 2	12	11 0	12	12 8	12	14 4	12	15 11
15 „ ..	..	13	7 6	13	9 6	13	11 4	13	13 1	13	14 9
1 rupee ..	..	14	5 11	14	8 0	14	9 11	14	11 9	14	13 6
2 rupees ..	..	28	11 9	28	15 11	29	3 10	29	7 7	29	11 1
3 „ ..	..	43	1 8	43	7 11	43	13 10	44	3 4	44	8 7
4 „ ..	..	57	7 7	57	15 11	58	7 9	58	15 2	59	6 2
5 „ ..	..	71	13 5	72	7 10	73	1 8	73	10 11	74	3 8
6 „ ..	..	86	3 4	86	5 10	87	11 7	88	6 9	89	1 3
7 „ ..	..	100	9 3	101	7 10	102	5 7	103	2 6	103	14 9
8 „ ..	..	114	15 1	115	15 9	116	15 6	117	14 4	118	12 3
9 „ ..	..	129	5 0	130	7 9	131	9 5	132	10 1	133	9 10
10 „ ..	..	143	10 11	144	15 9	146	3 4	147	5 11	142	7 4
100 „ ..	..	1,436	13 0	1,449	13 2	1,462	1 7	1,473	10 10	1,484	9 7

one pie to Rs. 100 for from one to fifty years, and in perpetuity,

per cent. per annum—continued.

39 years.	40 years.	41 years.	42 years.	43 years.	44 years.	45 years.
40	41	42	43	44	45	46
RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.
0 1 3	0 1 3	0 1 3	0 1 3	0 1 3	0 1 3	0 1 3
0 2 6	0 2 6	0 2 6	0 2 6	0 2 7	0 2 7	0 2 7
0 3 9	0 3 9	0 3 9	0 3 10	0 3 10	0 3 10	0 3 10
0 5 0	0 5 0	0 5 1	0 5 1	0 5 1	0 5 2	0 5 2
0 6 3	0 6 3	0 6 4	0 6 4	0 6 5	0 6 5	0 6 5
0 7 6	0 7 6	0 7 7	0 7 7	0 7 8	0 7 9	0 7 9
0 14 11	0 15 1	0 15 2	0 15 3	0 15 4	0 15 5	0 15 5
1 13 11	1 14 1	1 14 3	1 14 5	1 14 7	1 14 9	1 14 11
2 12 10	2 13 2	2 13 5	2 13 8	2 13 11	2 14 2	2 14 4
3 11 10	3 12 2	3 12 7	3 12 11	3 13 3	3 13 7	3 13 10
4 10 9	4 11 3	4 11 8	4 12 1	4 12 6	4 12 11	4 13 3
5 9 8	5 10 3	5 10 10	5 11 4	5 11 10	5 12 4	5 12 9
6 8 8	6 9 4	6 10 0	6 10 7	6 11 2	6 11 8	6 12 2
7 7 7	7 8 4	7 9 1	7 9 10	7 10 5	7 11 1	7 11 8
8 6 6	8 7 5	8 8 3	8 9 0	8 9 9	8 10 5	8 11 1
9 5 6	9 6 6	9 7 5	9 8 3	9 9 1	9 9 10	9 10 7
10 4 4	10 5 6	10 6 6	10 7 6	10 8 4	10 9 3	10 10 0
11 3 5	11 4 7	11 5 8	11 6 8	11 7 8	11 8 7	11 9 6
12 2 4	12 3 7	12 4 10	12 5 11	12 7 0	12 8 0	12 8 11
13 1 3	13 2 8	13 3 11	13 5 2	13 6 4	13 7 4	13 8 5
14 0 3	14 1 8	14 3 1	14 4 4	14 5 7	14 6 9	14 7 10
14 15 2	15 0 9	15 2 3	15 3 7	15 4 11	15 6 2	15 7 4
29 14 4	30 1 6	30 4 5	30 7 2	30 9 10	30 12 3	30 14 7
44 13 7	45 2 3	45 6 8	45 10 9	45 14 8	46 2 5	46 5 11
59 12 9	60 3 0	60 8 10	60 14 4	61 3 7	61 8 6	61 13 2
74 11 11	75 3 8	75 11 1	76 2 0	76 8 6	76 14 8	77 4 6
89 11 1	90 4 5	90 13 3	91 5 7	91 13 5	92 4 9	92 11 9
104 10 4	105 5 2	105 15 6	106 9 2	107 2 3	107 10 11	108 3 1
119 9 6	120 5 11	121 1 8	121 12 9	122 7 2	123 1 1	123 10 4
134 8 8	135 6 8	136 3 11	137 0 4	137 12 1	138 7 2	139 1 8
149 7 10	150 7 5	151 6 1	152 3 11	153 1 0	153 13 4	154 8 11
1,494 14 6	1,504 10 1	1,513 12 10	1,522 7 3	1,530 9 10	1,538 5 1	1,545 9 4

Schedule showing the present Value of an Annuity of sums from one pie to Rs. 100 for from one to fifty years, and in perpetuity, at the rate of six *per cent. per annum*—concluded.

	46 years.			47 years.			48 years.			49 years.			50 years.			In perpetuity.		
	47			48			49			50			51			52		
	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.	RS.	A.	P.
1 pie ..	0	1	4	0	1	4	0	1	4	0	1	4	0	1	4	0	1	5
2 pies ..	0	2	7	0	2	7	0	2	7	0	2	7	0	2	8	0	2	9
3 „ ..	0	3	11	0	3	11	0	3	11	0	3	11	0	3	11	0	4	2
4 „ ..	0	5	2	0	5	2	0	5	3	0	5	3	0	5	3	0	5	7
5 „ ..	0	6	6	0	6	6	0	6	6	0	6	7	0	6	7	0	6	11
6 „ ..	0	7	9	0	7	10	0	7	10	0	7	10	0	7	11	0	8	4
1 anna ..	0	15	6	0	15	7	0	15	8	0	15	8	0	15	9	1	0	8
2 annas ..	1	15	1	1	15	2	1	15	4	1	15	5	1	15	6	2	1	4
3 „ ..	2	14	7	2	14	9	2	14	11	2	15	1	2	15	3	3	2	0
4 „ ..	3	14	1	3	14	4	3	14	7	3	14	10	3	15	1	4	2	8
5 „ ..	4	13	7	4	13	11	4	14	3	4	14	6	4	14	10	5	3	4
6 „ ..	5	13	2	5	13	6	5	13	11	5	14	3	5	14	7	6	4	0
7 „ ..	6	12	8	6	13	1	6	13	7	6	13	11	6	14	4	7	4	8
8 „ ..	7	12	2	7	12	9	7	13	2	7	13	8	7	14	1	8	5	4
9 „ ..	8	11	9	8	12	4	8	12	10	8	13	4	8	13	10	9	6	0
10 „ ..	9	11	3	9	11	11	9	12	6	9	13	1	9	13	7	10	6	8
11 „ ..	10	10	9	10	11	6	10	12	2	10	12	9	10	13	5	11	7	4
12 „ ..	11	10	4	11	11	1	11	11	10	11	12	6	11	13	2	12	8	0
13 „ ..	12	9	10	12	10	8	12	11	5	12	12	2	12	12	11	13	8	8
14 „ ..	13	9	4	13	10	3	13	11	1	13	11	11	13	12	8	14	9	4
15 „ ..	14	8	10	14	9	10	14	10	9	14	11	7	14	12	5	15	10	0
1 rupee ..	15	8	5	15	9	5	15	10	5	15	11	4	15	12	2	16	10	8
2 rupees.	31	0	9	31	2	10	31	4	10	31	6	8	31	8	5	33	5	4
3 „ ..	46	9	2	46	12	3	46	15	2	47	2	0	47	4	7	50	0	0
4 „ ..	62	1	7	62	5	8	62	9	7	62	13	3	63	0	9	66	10	8
5 „ ..	77	9	11	77	15	1	78	4	0	78	8	7	78	12	11	83	5	4
6 „ ..	93	2	4	93	8	7	93	14	5	94	3	11	94	9	2	100	0	0
7 „ ..	108	10	9	109	2	0	109	8	10	109	15	3	110	5	4	116	10	8
8 „ ..	124	3	1	124	11	5	125	3	2	125	10	7	126	1	6	133	5	4
9 „ ..	139	11	6	140	4	10	140	13	7	141	5	11	141	13	9	150	0	0
10 „ ..	155	3	11	155	14	3	156	8	0	157	1	3	157	9	11	163	10	8
100 „ ..	1,552	7	0	1,558	14	5	1,565	0	0	1,570	12	1	1,576	3	0	1,666	10	8

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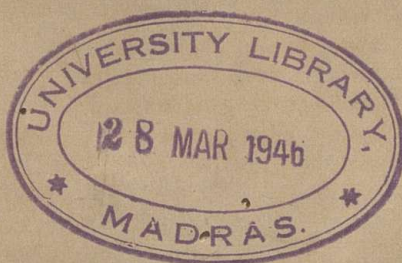
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