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MALABAR TENANCY. ACT.

GOVINDAN NAIR

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# MALABAR TENANCY ACT

WITH

A CRITICAL & ANALYTICAL COMMENTARY.

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PRINTED AT

THE MALABAR PRESS, TRIVANDRUM.



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by

T. GOVINDAN NAIR, B. A. & B. L.

VAKIL, CHOWGHAT ;

Author of "Malabar Land Tenure" &c.

MALABAR TENANCY ACT



A CRITICAL & HISTORICAL COMMENTARY

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*Law College  
Madras*

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## PREFACE.

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As the Malabar Tenancy Act is a new statutory law, no words are necessary by way of explanation for the appearance of this book. Besides stating and explaining the tenancy law, I have endeavoured in the short compass of this book, to show what, in my humble opinion, that law ought to be. Some may say that the latter work is beyond the scope of an ordinary commentary and that in pursuing it, I have unnecessarily increased the bulk of the book without adding to its utility. My only explanation is that my aim is to produce a work which will be something more than a mere practitioner's hand-book. The provisions of law contained in the Act are so entirely new that it is impossible to write a useful commentary without offering some constructive criticism of the many complex principles embodied or dealt with in it. I have given a short history of the Tenancy question in order to help the student and the practitioner in the construction of the Act.

5th February 1931.

*T. Govindan Nair.*

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FOREWORD

As the Alaska Territory Act is a new statutory law  
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T. G. ...

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## INTRODUCTION.

The law of landlord and tenant as understood now is of comparatively recent origin. As a part of the general law of property, it has passed through the same stages of development as the substantive law of property itself. Property in land is a legal conception of slow growth. In primitive societies rights to landed property depend upon certain conventional arrangements rather than on definite laws and formal documents. Ownership of land is seldom vested in individuals, land being a partnership concern in which one member or body of members generally called the sleeping partner claims certain payments from the cultivator who may be called the working partner. The member entitled to these payments is sometimes the State, but if the State has conferred the right of collecting these payments upon another, the latter acquires a right which may become in course of time a right of ownership, "more or less definite, more or less absolute." The partnership will consist of three members if the conferee of these powers is under an obligation as is usually the case to make certain payments to the ruler of the State. In such a case, two of the partners will be sleeping partners. If the sleeping partner who is generally called the proprietor or landlord is restrained by the convention from arbitrarily evicting the cultivator, the partnership is a free partnership of members having almost equal rights and he can hardly be called a 'landlord' nor is the word 'rent' really applicable to the payment due from the cultivator as that suggests the use of another's land which is hardly the case in the case of such a partnership. It is only a payment which under the constitution of the partnership he is liable to make from the gross proceeds of the partnership property. \*

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\* Marshall "Political Economy".

Property in land is also acquired by conquest. Here land is forcibly taken by the occupier and appropriated by the conqueror. The cultivator is not always ousted. The conqueror who becomes the 'lord' the soil or landlord leaves the subjected people in actual possession of the land. The same is the case when owing to unsettled conditions the weak has to seek the protection of a neighbour who is powerful enough to render him assistance in critical times. In such cases, the cultivator becomes a 'tenant' who agrees to certain terms imposed by the conqueror.

In not a few cases, religious considerations prompted people to make free gifts of lands. Here the donor voluntarily chooses to hold his lands under the donee who is supposed to have peculiar powers of protecting his person or property or saving his soul.

In all such cases there is at first no right of eviction implied nor is the idea of partnership necessarily excluded. The change is due to time and circumstances which have moulded the development of the law of landlord and tenant. The law regulating this relationship is not a law of free growth. Sir Frederic Pollock shows how contract which, in so far as it was express, was drawn up by landlords so as to suit their own purposes came to be strictly interpreted by Judges and how customs which primarily governed these relations could not be proved to the satisfaction of Judges who called for strict proof of them. Similarly, executive action and legislative interference proved at first detrimental to the interests of the tenants.

The result of all this was that the important rights given to the tenant by contract and custom and even by law were gradually lost as a result of the changing times which gave rise to the rights of the rent-receiver.

Indian Tenancy law was no exception to this, not escaping from any of the evils mentioned above. There was an additional complication here arising out of the foreign domination to which the country was subjected from time to time during the course of her long and chequered history. From this originated the novel and pernicious theory that the ownership of the soil in Indian lay in the sovereign power—a theory that is not supported by any principle of the law of any civilized country, ancient or modern, and which is therefore rightly discredited now. What was formerly an impost levied by the State for administrative purposes or a share of the produce of land due to its ruler as the protector of the country, and its people became now a fixed demand, more or less arbitrary, exacted by the conqueror or his representatives and assignees not necessarily or solely for any such protection rendered or required and what was in most cases a simple partnership became an undivided ownership more or less absolute, but the cultivators were not under normal conditions deprived of their customary rights.

But when the East India company assumed responsibility as the ruling power, the question of regulating the payments due to the State came up prominently for consideration and when by the Permanent settlement, proprietary rights were conferred upon a large number of middlemen who thus became landholders, power was reserved to make provision for the protection of the rights of ryots and other cultivators.

These rights of the cultivators came to the threatened both by the slow operation of changing times and by the strict judicial interpretation of doubtful points and the imperfect recognition of ill-defined customary rights (as the judges conceived.) Sir courtency Ilbert thus speaks of the difficulties of the situation:—“The modern theory of competitive rents is jostling the old practice of customary rates; the new fashion

of terminable leases is threatening to displace ancient occupancy rights." It was in accordance with the policy declared in fulfilment of the pledge solemnly given at the time of the Permanent settlement that the Government afforded protection to the Bengal tenants by the series of legislative measures that began with the Bengal Tenancy Act of 1859 and culminated in the Act of 1885 and to the Madras tenants by the Estates Land Act of 1908.

But the bulk of the agricultural lands lie not in permanently settled districts but in what are called temporarily settled tracts of which there are two main subdivisions, viz, (1) the zamindari tract where the state gets the revenue from the landlord whether he cultivates the land himself or through tenants who pay him rent and (2) ryotvari area where the cultivator pays directly to the State. Here also the tenancy problem was not less acute, tenant right being threatened in the same way, and the Government had to interfere by timely legislation for the protection of the rights of subordinate landholders and cultivators. In Punjab, Tenancy Acts have been passed from time to time for regulating the relations of landlord and tenant and although "the rule that 12 years' continuous cultivation gives a tenant a right of occupancy has never been introduced into the Punjab" and the tenants at will may therefore be ejected at the will of the landlord, it has been found that the Acts have on the whole worked well, and the tenants are in a prosperous condition. Similar laws have been passed in Madras, the Central Provinces and the United Provinces by which tenants with rights of occupancy have been protected from arbitrary ejection or enhancement of rent and their position is a secure one.

These Acts apply to Zamindari districts but judicial decisions have recognised that tenants occupying lands in

ryotwari tracts can under certain circumstances acquire permanent rights of occupancy, though not by express statutory provision of law.

While the Government was interfering in several provinces to protect the tenants from the arbitrary exactions of landlords, Malabar with its peculiar land tenure and agrarian customs did not altogether escape the attention of the authorities. The history of tenancy question in Malabar may be said to begin from the year 1852 when Mr. Justice Strange was deputed by the Madras Government to inquire into the causes of the Moplah outrages which had become common then and propose remedies for their prevention. Mr. Strange submitted his report in which he expressed the opinion that although there were a few cases of hardship to individual tenants, the general character of the dealings of Hindu landlords was equitable and forbearing. He however recommended the adoption of the twelve years' term as a compromise between the Kanom tenant's alleged permanent right of occupancy and the absolute proprietary right claimed on behalf by the Janmi. This was formally recognised and authoritatively affirmed by the sudder Court in their proceedings dated the 13th February 1854. Mr. Strange did not go into the tenancy question fully but directed his efforts towards the repression of fanaticism and recommended the Moplah outrages Act which was accordingly passed in 1854 as a temporary measure.

The policy of repression adopted on Mr. Strange's proposals failed in its essential object and the hot embers of fanaticism fanned by agrarian discontent continued to burn. Several outrages took place between 1858 and 1880. In the latter year, the Madras Government received an anonymous petition, setting forth the grievances of the agriculturists particularly in regard to their holdings and stating that the

people and particularly the Moplahs were determined to create a disturbance the magnitude of which could not be foreseen and that they were only waiting for the answer of the Government to their representations. The memorial concluded with a definite prayer for the appointment of a Committee to inquire into the whole tenancy question.

This petition was referred by the Madras Government to Mr. Wigram, the District Judge of South Malabar and to Mr. Logan, the Collector, for confidential report and both officers agreed that agrarian discontent was the cause of the outrages and that the special Commissioner Mr. Strange had attached too little importance to agrarian discontent in his report. Both officers were also agreed that although no general rising was imminent, agrarian discontent might end in individual acts of fanaticism.

On the receipt of the reports of these and other officers, the Government appointed Mr. Logan as special Commissioner to inquire into and report on the general question of land tenure and tenant right and the alleged insufficiency of compensation awarded for improvements made by tenants. He was further asked to submit proposals for the redress of any grievances which were, in his opinion, well founded and ought to be redressed.

Mr. Logan made an exhaustive inquiry, visited several parts of the district and received petitions during his tours. Finally in June 1882, he submitted his report to the Government the gist of which was that, at the commencement of the British rule, the Janmi was entitled to no more than a definite share of the net produce and that the British authorities mistaking his position had invested him with full proprietary interests. He was of opinion that the cultivators were rack rented and that tenures had become precarious and insecure. He found that certain evictions were attended with real hardship and

that there was great distress on account of the progressive augmentation of rent and renewal fee by which the tenants were largely deprived of the benefit of their improvements. He also found that during the ten years just preceding his inquiry, evictions had been steadily on the increase. He submitted proposals for conferring fixity of tenure on the tenants and fixing fair rents.

Mr. Logan's report was circulated among select officials and non-officials whose views were invited by the Government. Owing to the diversity of opinion expressed by these persons and the importance and complexity of the subject, the Government appointed a special commission in 1884 with Raja sir T. Madhava Rao as President to go into the whole question and advise them as to the main lines on which legislation if any, should be undertaken. The result of the deliberations, of this commission was four bills of which the more important were the Malabar stay of Execution Bill and the draft Tenancy bill. The former was a temporary measure intended to safeguard the interests of tenants, pending final legislation. The latter proposed to confer permanent rights of occupancy on the tenants. They generally agreed with Mr. Logan that according to the old custom the janmi had only a very limited interest in land and that the absolute right with which he was invested was unwarranted. They proposed that the tenants should be protected by law from arbitrary eviction. Referring to the necessity for legislation the commission observed thus: "The political necessity for interference with the janmi'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 janmies and apprehended from others."

The object of the legislative action proposed by the commission was to restore to certain classes of tenants some of the valuable rights and privileges of which they were believed to have been unjustly deprived since the advent of the British rule. The commission submitted a draft bill embodying their proposals by which occupancy rights were to be conferred on (1) any tenant who held the same land continuously for a period of thirty years; and (2) any tenant who had reclaimed land and continuously held it for fifteen years. Although the members of the commission disagreed on certain minor points, they were unanimous in their main recommendations. The draft tenancy bill which was referred to the High Court for opinion was subjected to severe criticism by Sir Charles Turner, the Chief Justice, who went into the question of Malabar land tenures at great length and recorded a long dissenting minute in which that eminent judge tenaciously stuck to the view taken by the courts. But he agreed with Mr. Logan that legislative interference was necessary in the interests of actual cultivators whether they held on kanom or inferior tenure. He proposed to confer occupancy rights on tenure holders of small holdings on the lines of the Bengal Tenancy Act.

In view of this difference of opinion between the High Court and the commission, the Government considered it inexpedient to proceed further with the bills submitted by the commission until after the matter was fully considered by a competent body in the light of the criticism passed by the High Court. The Government accordingly appointed a Committee presided over by the Hon. Mr. Master to review the question in all its aspects after fully considering the interests of all persons concerned.

The Committee in their report dated the 16th March 1886 expressed their unanimous opinion that legislation was

necessary to secure to evicted tenants full compensation for improvements effected by them and a draft bill was submitted to secure this object. There was keen difference of opinion among the members of the Commission as to the necessity for undertaking legislation to restrain the janmi from arbitrarily evicting the tenants. Finally they agreed on a bill by which power was given to courts to refuse eviction in certain cases. The Government ultimately decided that it was not necessary to undertake legislation either on the lines indicated in the draft tenancy bill submitted by the commission or with the far more limited scope of the measure proposed by the committee and that all that was necessary was an Act making adequate provision for compensation for improvements effected by tenants. This Act was accordingly passed in 1887.

Six years after the Act remained in force, the Government called for a report as to the effect of the Act. Mr. Bradley, the then Collector of Malabar, submitted his report in which he stated that although the Act on the whole worked well, its scope was very limited inasmuch as it did not fix the tenant in his holding and that legislation was urgently required to check evictions which were on the increase and regulate if not altogether abolish melcharths. He also suggested certain amendments in the Improvements Act. The Government agreed that legislation was necessary not only to amend certain parts of the Improvements Act but also to regulate the renewal fee by fixing the maximum rates that may be claimed at renewals. The idea was to pass separate measures dealing with these matters.]

At this stage, the Government of India pointed out to the Madras Government the desirability of passing a comprehensive tenancy law for Malabar. Mr. Benson who was then a District Judge was placed on special duty to draw up a new Tenancy Bill. He prepared and submitted a draft bill,

re-enacting the Improvements Act of 1887 the provisions of which had been found to be defective. Mr. Benson who soon became a Judge of the High Court was succeeded by Mr. Ross who was charged with the duty of preparing a draft Tenancy bill embodying the provisions of the Improvements bill drafted by Mr. Benson and prepared a draft Tenancy bill, but before he could complete the work, he died.

At this stage, the Government of India again (1898) drew the attention of the Madras Government to the urgent necessity of immediately proceeding with the Improvements bill if there was no reasonable certainty of passing a comprehensive tenancy law for Malabar at an early date. The Improvements bill was at once taken up for consideration and passed into law as Act No. 1 of 1900 which is now in force. For some reason or other it was not thought necessary to proceed further with the draft Tenancy bill prepared by Mr. Ross, the Government being apparently of opinion that the tenant's position was secure by the Improvements Act. For the same reason the Government did not accept Mr. Dance's proposal to regulate melcharths by a legislative enactment.

In 1911 the Government again took up the tenancy question calling for a report on the working of the Improvements Act of 1900. The High court was decidedly of opinion that the Act worked well and that no further legislative interference was called for in the interests of the tenants. Others were not so sanguine among whom was Mr. (now Sir Charles) Innes who was then the Collector of Malabar. While regarding it as a gleam of light on a dark horizon, he like many others did not subscribe to the opinion that it had achieved the object desired. In his opinion the Act was not and could not be an unqualified success, for besides the limitations that it imposed, in actual administration the compensation awarded to the evicted tenant proved inadequate in

most cases. It did not also fix the tenant in his holding, nor did it prevent the tenants of paddy lands from being evicted at the will of the landlord or rack-rented, for in such cases there would ordinarily be no question of improvements and even if the tenant had effected improvements, it would be difficult for him to establish his claim. While he was of opinion that there was a growing insecurity of tenure, the Improvements Act was not fair to the Janmi who in his difficulty to find funds to pay the evicted tenant was compelled to have recourse to melcharth. He was therefore of opinion that the right and the only safe course was to enact a comprehensive Tenancy law. But neither the Government nor the Board of Revenue concurred with him in his immediate proposals as in their opinion there were not sufficient materials before them to justify them in embarking on legislation on such a complex subject. Mr. Innes was therefore requested to make a detailed examination of the whole question and submit a report showing the lines on which legislation, if any, should be undertaken and the classes of tenants who in his opinion, stood in need of protection.

Mr. Innes accordingly submitted his memorandum in 1915 in which he formulated his final proposals for tenancy legislation. It was much more elaborate than the ordinary official submissions, being a masterly statement of the case, starting from the assumption for the sake of argument that the Improvements Act worked well; then proceeding upon the basis of a practically admitted political necessity and a strongly expressed desire on the part of many neutrals to advance on the lines indicated in his note; and concluding with a strong plea for immediate interference by the Government to prevent the ejection and rack-renting of tenants. The essence of his proposal was the conferring of fixity of tenure on cultivating tenants who occupied their land con-

tinuously for a period of fifteen years and although he did not advocate legislation in favour of middle-men, he was strongly of opinion that any comprehensive tenancy legislation would be impossible without provision being made for kanom tenureholders.

Mr. Inne's note was forwarded by the Board of Revenue to the Government with a recommendation that ejection, rack-renting and other matters covered by it should either be made the subject of a full public inquiry or privately inquired into by a special officer deputed for the purpose. In the meantime, Mr. Evans who had become the Collector of Malabar and to whom Mr. Innes' note was referred for remarks expressed himself not satisfied with the necessity for any change, being of opinion that neither on political necessity nor on economic grounds could interference by the Government be justified and that the proposed legislation would "impose artificial and alien restriction on a system evolved out of an accepted custom and would involve a reversion from a long established freedom of contract 'to the tyranny of the law courts'."

In the new situation created by Mr. Evans's remarks, the Board of Revenue reconsidered the question and unhesitatingly agreed with him. The difficulty of providing funds for buying out the landlords as a necessary and equitable part of the scheme for giving occupancy rights to tenants and the impossibility of devising measures for the prevention of occupancy tenants from parting with their newly acquired rights or losing the same to money lenders and reverting to the inevitable state of tenants at-will were the two grounds on which they principally rested their final decision. But the Board seems to have been more actuated by the political reason as in their opinion the proposed tenancy legislation would certainly tend to the alienation of the janmies from the Govern-

ment, It is important to remember that Mr. Evans's remarks were made at a time not only when the British Government were in the thick of the Great European War but when Malabar had joined the great Home rule fight with which the great majority of tenants were believed to be in close sympathy but from which the janmies as a class had kept aloof. The Government agreed with the Revenue Board and decided that no legislation should be undertaken and the matter was tacitly allowed to drop.

The political reforms which were put into operation in 1920 gave to the tenancy question a prominent place in public interest. Without making it an issue in the election, Mr. (now Sir) M. Krishnan Nair had given to tenancy reform the paramount place in his stirring addresses to the electorate which now for the first time embraced the lower strata of the middle class to whom it was of vital importance. The abstract question which commissions and committees were hitherto discussing without direct personal knowledge of the intricate matter under consideration now took colour and shape and when Sir M. Krishnan Nair was returned to the Legislative Council, he at once brought forward a resolution recommending to the Government the passing of a legislative measure for the grant of fixity of tenure to kanom tenants. In June 1922, he produced his draft tenancy bill by which he proposed to confer permanent occupancy rights on kanom tenants who could claim uninterrupted possession of not less than 25 years. Provision was made for regulating rent and fixing renewal fees through courts. The bill was regarded as a partial measure inasmuch as it did not propose to give any protection to verumpattom tenants who were supposed to stand in need of immediate relief. The bill was, however, not brought before the Council. In December 1922, Sir M. Krishnan Nair gave notice of a motion to introduce a new

bill by which it was proposed to confer fixity of tenure on kanom tenants as well as a certain class of cultivating tenants. The motion was allowed to lapse. In the meantime, another election took place in 1923 when Sir M. Krishnan Nair reiterated his promise to bring forward a decisive and comprehensive measure and he was again returned to the council by a large majority. He moved for leave to introduce the bill in 1924 which was accordingly given. This bill differed from the first in two essential particulars, viz, that it proposed to confer fixity of tenure on all kanom tenants irrespective of the period of their possession and also on all simple tenants provided they could claim six years' continuous possession. This bill was passed by the Legislative Council on the 2nd September 1926. But His Excellency the Governor did not give his assent probably on the advice of the reserved half of the Government which was made amply clear during the progress of the bill in the Council. The main alleged reason for such refusal of assent was that the measure was confiscatory in character inasmuch as it proposed to confer valuable rights of property upon one section of the community without attempting to give any compensation to the other section which was affected by such grant. It was however announced that the Government would be asked to reconsider the whole question in the light of the observation contained in the order which announced the decision withholding his assent. <sup>1926</sup> The Government accordingly appointed a committee with Dewan Bahadur T. Raghaviah as President to re-examine the whole question and submit a report proposing remedies and a draft bill giving effect to their recommendations. The following was the order of reference:—

- (1) What disabilities, if any, are pressing hard on the tenants of Malabar in general; on the extent of unjustifiable evictions by the janmies in particular and how far the kanamdar as such is in need of any protection;

(2) on the best means of remedying such disabilities as the committee find to really exist and which they think should be remedied. The committee will, in this connexion, consider—

(a) Whether the disabilities cannot be removed without the grant of permanent occupancy rights and how far fixity of tenure can be secured for the actual cultivator of the soil ;

(b) on whom and under what conditions permanent occupancy rights should be conferred if the grant of such rights is found to be necessary ;

(c) the nature and extent of compensation that should be paid by those on whom such rights are conferred ; and

(d) the effective methods which should be made available to the janmies to collect rents and other dues from those on whom such right are conferred,

(3) to suggest such other means as the committee deem necessary and feasible to secure to the tenant fixity of tenure and security from arbitrary evictions and bring about such cordial relationship between the janmies and the kanamdars and other tenants in Malabar as would make for their social and economic efficiency.

“The committee are requested to prepare and submit the draft of a Bill or Bills which may be necessary to give effect to their recommendations.”

The Committee thus constituted met and recorded evidence giving every reasonable opportunity for the advocates of both the janmies and the tenants to represent their case, but the tenants as a body abstained from placing their views before the committee or taking part in its proceedings as they thought they had no effective voice in its composition or upon the character and scope of its powers or their procedure but

chiefly because they thought that the matter was fully discussed before and there were ample materials for determining in what respects the laws relating to the holding of land in Malabar were capable of improvement. The committee submitted its report with the draft bill in March 1928 with a dissenting minute by Mr. Pate who was of opinion that no case was made out for legislation though at an earlier stage of the proceedings and even when the final report was moulded and settled he was a different opinion.

The main recommendations were:—

(1) That fixity of tenure should be conferred upon verumpattom tenants subject to certain conditions but such fixity was optional and could be obtained only on application made by them.

(2) That kanam tenants shall be entitled to claim renewal as a matter of right on payment of the prescribed renewal fees subject to similar, if not, the same conditions.

(3) That the occupying tenants of homesteads shall be entitled to purchase the evicting landlord's interests in such homesteads at the market price.

On the receipt of the report of the committee, the Government invited certain representatives of the janmies and the tenants to an informal Round Table Conference at which there was a prolonged discussion of the committee's proposals in which much ground is believed to have been covered. The tenant's representatives and friends seemed satisfied and everybody was interested in the novelty of the proceeding, for no precedent could be found in the history of provincial legislation for the friendly discussion of such a highly contentious measure before its actual introduction in the Council between the representatives of the parties interested in it.

The principles of legislation being thus discussed and partly settled, the bill submitted by the committee was published for the information of the public in the Fort St. George of the 30th July 1929 and it was formally introduced in the Legislative Council as a Government measure. It was referred to a strong and representative select committee which made extensive and important changes, some agreed upon at the conference and most in favour of tenants whose interests they thought were not adequately represented before the committee which prepared the draft bill. It was afterwards fully discussed in the Council and finally passed substantially in the form in which it emerged from the Select Committee.

Although the most difficult stage in the life of a legislative enactment had passed, the fate of the bill was not yet settled as it had to receive the assent of the Governor first and then of the Governor-General before it became law. The bill was at first returned by the Governor to the Legislative Council with a recommendation that the provisions in the original bill which required the verumpattom tenant to furnish security for a year's rent which had been deleted by the Select Committee should be inserted and that the provisions relating to summary procedure made available to the landlord for the realisation of rent and michavaram by distress should be deleted. The Council accepting the recommendation of the Governor deleted the provision relating to summary procedure and inserted the provision as to security for a year's rent but made an exception in favour of tenants who had not less than three year's continuous possession. The exception thus made was not approved of by the Governor who returned it again with a recommendation that the exception should be removed. The Council having accepted the recommendation and restored the provision as to security *in toto*, the Governor gave his assent on the 28th March 1930.] The Governor-

General also after some delay gave his assent on the 18th November 1930, and the Act came into force on the 1st December as notified by the Local Government in virtue of the power conferred upon it under subsection (3) of section 1.

*Lm* The main Act which is divided into seven chapters is preceded by a preliminary part which consists of two sections. Section I defines the extent, commencement and operation of the Act, proviso to subsection (3) making the Act retrospective to the limited extent mentioned in it, thus forming an exception to the ordinary rule that pending cases are not to be affected by any change in the substantive law. Section 2 deals with general exemptions which relate to lands and tenements which are owing to their special characteristics or the special purpose for which they were transferred, excluded from the Act.

Chapter I which has only one section (S. 3) is an important one as it contains the definition of all important terms except fair rent used in the body of the Act. They must be carefully studied if the substantive provisions of the Act are to be properly understood as some terms are used in a highly technical sense. In the draft bill submitted by the Tenancy Committee the definition of 'fair rent' appeared in this section, but the Select Committee has transposed it to a separate chapter (ch. II) probably because they thought that it was something more than a mere definition.

Chapter II which consists of Ss. 4 to 9 deals exclusively with fair rent. They describe the various modes of ascertaining fair rents which are brought under several heads according to the nature of the crop raised in, or the produce of or income derived from the land in respect of which fair rent is to be fixed. Of these, sections 5 and 6 deal with wet (paddy) lands, S. 7 garden lands, S. 8 dry lands and S. 9 lands situated within municipal limits. The determination of fair rents a

necessary part of the scheme for conferring fixity of tenure upon verumpattom tenants and the right to claim renewal upon kanam and other classes of tenants whose tenure is subject to the incident of renewal.

Having laid down the general principles governing the determination of fair rent, the Act deals with the several classes of tenants for whose protection it was enacted, the nature and extent of the rights and privileges conferred upon them and the conditions under which such rights and privileges are given. Of these, chapter III deals with verumpattom tenants who form the most important class of tenants coming within the purview of the Act. S. 10 contains the declaration of law conferring fixity of tenure upon such tenants, Ss. 11 to 13 contain the rules relating to the determination and payment of fair rent subject to which fixity of tenure is conferred, S. 14 deals with cases in which such tenants are liable to be evicted and S. 15 with cases in which tenants evicted or sought to be evicted may claim restoration or impunity from actual eviction.

Chapter IV contains the rules relating to renewable tenures which according to the Act are of three kinds, viz, (1) kanom, (2) leases or what are called customary verumpattom and (3) kuzhikanom. S. 16 deals with the so-called customary lease and the renewal fee payable by such tenants, S. 17 with kanam, the renewal fee prescribed in such cases and the excepted kanom and S. 18 with kuzhikanam. S. 20 deals with cases in which such tenants may be evicted and Ss. 22 to 27 lay down the procedure for claiming or granting renewal and the effect of such renewal.

Chapter V provides for the payment of fair rent and revision of such rent.

Chapter VI which consists of Ss. 33 to 38 deals with the purchase of homesteads. 33 provides that a tenant who

is sought to be evicted is entitled to offer to purchase the evicting landlord's rights in such homesteads and Ss. 34 to 37 prescribe the procedure to be adopted in cases of such offer and S. 38 the legal effect of such purchase.

Chapter VII contains the miscellaneous provisions which are explanatory of, or are necessary to give effect to or complete the foregoing main provisions.

Such are the main provisions of the Act passed after years of discussion and deliberation. Nobody will say that the Act is a perfect measure nor do we think the authors of it believe it to be such. We have not the practical experience of any length of time in the actual working of the Act. The subject is full of complexities and is highly technical and the principles can be understood only by those who have spent years within the four walls of the law courts of the district and may be univiting and unintelligible to some even then. It was said of the Irish land bill that "if the Prime Minister had asked the House of commons to pass the *koran* or the *National Almanac* as a land bill, he would have met no difficulty." Similarly, we may say, without meaning any disrespect, that there were not many in the Legislative Council who cared a straw about the Malabar Tenancy bill. We appreciate the difficulty of framing a Tenancy bill which would be so acceptable to the landlords as to induce them to refrain not only from opposing the passage of the measure but also from joining the political agitation directed against the Government. The problem to be solved was no easy one. Apart from the complexity of the subject, the question was how to reconcile the tenant's customary ownership with the absolute proprietary rights of the jannies as established by the court's decisions. The bill had to encounter exceptional difficulties, difficulties of politics and difficulties of law, difficulties of principle and difficulties of party and difficulties of person, difficulties of

race and difficulties of class." And he would indeed be a strangely misled man, not to say an uncharitable critic, who would say that the measure is essentially faulty. Such criticism will show an inadequate appreciation of the "embarrassment of the situation." But this should not deter us from pointing out the errors both of principle and drafting which can be rectified without destroying the essentials of the Act.

It is no part of our present purpose to discuss the historical aspect of Malabar land tenancy nor is it necessary to consider the expediency of legislation in this respect, for it abundantly appeared at the time of the vetoing of Sir M. Krishnan Nair's bill that there was little difference between the advocates of the Janmi and the friends of the tenant except the class of tenants who stood in need of protection, the extent of protection and the manner in which that protection should be given.

*The defect*  
Our main objection to the principle of the Act is that kanom and verumpattam are treated alike for purposes of eviction, fundamentally different as the two tenures are. While an ordinary lease is terminable, any such presumption in the case of kanom is contrary to local conditions and customs. That a kanom tenant had an equitable and customary ownership of property which was extensively confiscated owing to the influence of British administration and influx of modern ideas is clearly proved and is now practically admitted. The customary right of renewal specifying the rate of renewal fee which a kanom tenant undoubtedly possessed — a right which depended upon the will of the landlord but that will controlled by custom — is clear proof of this. This custom the present Act has converted into a law to which the courts would give effect and the provisions of the Act relating to this tenure are eminently fair, equitable and even just provided

that an exception is made in the case of new kanom and another in favour of small landlords. But a verumpattom stands on a different footing. Such a tenant has no interest in the land, being in most cases only a tenant-at-will and any fixity of tenure conferred on him is confiscatory and can be justified only on economic grounds or on political expediency. But the Act treats all such leases alike, no distinction being made on any ground whatever, either of the lease or the class of landlords under whom the land is held. Such lands are ordinarily lands which are in the constructive possession of the landlord even if he has no present idea of directly cultivating any of those lands. For this purpose, landlords can be divided into four classes: (1) Landlords who as a class do not actually cultivate their lands, (2) Landlords who so cultivate their lands, (3) absentee landlords and (4) Small landlords. To the first category may be said to belong (1) all Rajas including malikhanaholders, (2) Devasuams and (3) others who pay an assessment of not less than say Rs. 1000. It must be provided that landlords coming under the first and third categories cannot bring suits to eject their tenants on grounds Nos. 5 and 6 in section 14 except upon the certificate of a Court of Arbitration or Land Commissioners to be constituted under the Act saying that the tenant specified therein is liable to be evicted. Landlords of this class who want to evict their tenants and recover properties in their possession must apply in the first instance to these functionaries who shall inquire into the bonafides of the landlord and grant or refuse the certificate asked for. This will obviate separate inquiries as to the bonafides of the landlord which cannot but be unsatisfactory when confined to the holdings of a particular tenant. Such certificate shall contain particulars as to the holding, the purpose for which eviction is sought and the special conditions on which the tenant may be evicted. A list of such landlords shall be prepared and appended to the Act or their

names published periodically in the district Gazette. In the case of landlords coming under class (2), viz, those who pay an assessment of less than, say, Rs. 1000, the law relating to eviction may be left as it is, leaving the question of bonafides to be decided in the suit itself. Landlords coming under class (4), that is, those who pay an assessment of less than say Rs. 100 may be altogether exempted from the provisions of the Act giving the landlord complete freedom to enter into any engagement he can with the tenant.

The next <sup>defect</sup> objection is to the principle of the unqualified right of purchase of homsteads. The question bristles with more difficulties than the authors of the Act seem to think. Of all the changes, this is the most drastic and the most confiscatory. To give a tenant to whom you have temporarily let a plot of ground the right to purchase that plot outright without any considerations of the legal character, duration or purpose of the tenure or the position of the parties is something which is opposed to all principles of natural justice and whatever may be the expediency of such a measure in a growing industrial city, there can be no justification for conferring such a right on tenants in rural areas without any reservation or qualification. The legislature has by one stroke of the pen destroyed property. What with the peculiar joint family system with the incident of impartibility and the still more peculiar social and religious conditions, the actual working of the scheme is sure to be attended with practical difficulties of no ordinary kind. In most cases the evicting landlord will be either the Karnavan of a Marumakathayam tarwad which may consist of numerous members, a Stani with a life interest or a Devasuam with several trustees. In all such cases, the evicting landlord's powers are essentially powers of management with little or no right of disposition. In all such cases who is to receive the purchase money? Who is interested in conducting the litigation pro-

perly? A right to claim renewal in the case of kanom and, in the case of an ordinary lease, to convert the lease into a kanom with the usual incidents annexed to it is sufficient for all practical purposes. In any case the right of purchase should be confined to lands held on kanom or other tenure to which is annexed the incident of renewal.

A third <sup>defect</sup> objection is to the principle of the proviso to sec. 28 which makes it impossible for a tenant ordinarily to apply to the court for a period of 12 years to settle fair rent where the existing rent is too high to be regularly paid or for the landlord to have it raised by the same agency for the same period where the present rent is relatively low and can be raised by proper management. To the tenant, fixity of tenure without fair rent is practically useless; to the landlord, such fixity granted without the necessary safeguards is unfair and a period of twelve years is unreasonably long.]

We cannot but express our regret that the provision for summary procedure for realising rent by distress has been altogether deleted from the Act. Such a provision is highly necessary to help needy landlords in easily realising their legitimate dues provided that there are proper safeguards. The merit of a good tenancy Act, to use the clear words of Mr. Joseph Chamberlain, is this, "We want to try how we can protect the honest tenant from the unjust procedure on the part of a cruel and harsh landlord; and we want, on the other hand, to do that, so that we may not at the same time protect the dishonest tenant in his dishonesty, and help him to take advantage of this agitation to rob his creditors, refusing, with money in his pocket, to pay his landlord, who perhaps is poorer than himself." And we cannot say that the present Act satisfies this essential condition.

It is likewise a matter of regret that there is no provision for increasing or reducing michavaram in proper cases.

As to the drafting, although the work has on the whole been performed with consummate skill considering the intricacy of the subject, there is one serious defect which we cannot but notice as it may in our opinion detract from its merit. The chief merits of a legislative enactment are clearness of diction and brevity of language and although the Act is not lacking in the first quality considering the complexity of the subject, we think that the second rule has not been steadily kept in view. Verbosity is always a vice but in a law draftsman it is a double vice. In certain sections especially in the interpretation clause there are many superfluous words vide 'cultivate' cl. (c) 'Kanom' cl. (b) and 'rent' cl. (u) The definition of 'fair rent' is inelegantly worded, clumsy and is unintelligible to the ordinary cultivator.

The Act contains certain definite provisions for the determination of rent and renewal fee. The Act also lays down certain broad principles for the guidance of courts in suits for eviction. Most of the provisions are just, fair and equitable and some even generous and will, if followed in their right spirit, put a salutary restraint upon arbitrary and capricious evictions. Every tenant could go to an impartial tribunal in order to fix a fair rent between himself and his landlord if they should happen to disagree. The Act must be administered with becoming regard to the circumstances of the locality and the condition of the parties. There must be not only moderation but even sympathy in its working. The discretion given to the courts is wide and even dangerous in certain respects and it remains to be seen how the courts will discharge the difficult and delicate task assigned to them.]

It must be said on the whole that the Act, if properly administered and amended in the light of the experience that may be gained in its working, is suited to the condition of the people and is sure to promote the best interests of all

connected with agriculture and that the dues it fixes which are lenient in certain respects will be paid by the tenants with little hardship and received by the jannies without discontent. It is also hoped that wherever the dues fixed by the Act are found by the courts to be incapable of variation so as to suit the circumstances of the case, the jannies will treat their interests as identical with the interests of the tenant and that they will not harshly exact from their impoverished tenants a rent which they are unable to pay simply because they are under an obligation to pay it.

We also hope that the Act which is on the whole framed on right lines and is capable of improvement if amended on the lines indicated above will alleviate the sufferings if not altogether put an end to the grievances that had so long been associated with the tenure of land in this district and that although it may possibly cause some immediate loss to the landlord he would ultimately be a gainer inasmuch as he has a right to share in the huge potential national wealth that is in the soil yet undeveloped.

We cannot conclude this short introduction without expressing the gratitude of the people of Malabar in general and the tenant classes in particular to the Government for the wise and beneficent measure passed after prolonged controversy and much vacillation which will pass as a great reform of land tenure and lead to the economic development and social and material prosperity of a land possessed of immense resources.

# THE MALABAR TENANCY ACT, 1930.

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# MADRAS ACT NO. XIV OF 1930.

PASSED BY THE LEGISLATIVE COUNCIL OF MADRAS.

*Received the assent of the Governor on 28th March 1930 and that of the Governor-General on the 18th November 1930, the assent of the Governor-General was first published in the "Fort St. George Gazette" of the 25th November 1930.*

## THE MALABAR TENANCY ACT.

WHEREAS it is necessary and expedient to define, declare, alter and amend, to the extent, in the manner, and for the purposes hereinafter appearing, the law relating to landlord and tenant in the district of Malabar; And whereas the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows:—

Preamble

### PRELIMINARY.

1. (1) This Act may be called the Malabar Tenancy Act, 1929.

Short title

(2) It extends to the whole of the district of Malabar.

Local extent

(3) It shall come into force on such date as the Local Government may, by notification in the *Fort St. George Gazette*, appoint:

Commencement

Provided that in all suits for eviction instituted after the 30th July 1929 and pending in the court of first instance on the date when this Act comes into force, which would have been governed by the provisions of this Act had it been in force at the time of their institution, the rights and obligations of the parties concerned shall be regulated by the provisions of this Act.

**Preamble.** The preamble which is a necessary part of every Act briefly states the reason and scope of the enactment and is an important guide to its construction. It is a sort of introduction to the Act though necessarily short, and is a valuable key not only to open the mind of the Legislature and but to disclose the mischiefs sought to be remedied. Besides showing the extent of the operation of the Act, it reveals the change made in the existing law. Every legislative enactment will introduce some new provision of law or other and the precise extent of the alteration will appear from the preamble. It is however a fundamental principle of the science of legislation and Government that every law passed should be congenial to the disposition and habits and conform to the approved usages of the people for whom it is enacted. A good law should therefore effect as little change as possible in the existing law. But certain exceptions have been recognised owing to the peculiar modern conditions. Malabar tenancy Act is to a certain extent such an exception, inasmuch as in such matters as simple leases and purchase of homesteads the Act makes drastic changes and introduces novel principles, not recognised in any shape or form before. This is clear from the preamble which says not only that it "declares and defines" but "alters and amends" the law; but this it does only to a very limited extent. So far as the express provisions of the Act go, it is authoritative and peremptory, but on matters on which it is silent — and no Act is exhaustive — the courts will be guided by the rules of equity, justice and good conscience so far as they are not inconsistent with its express provisions.

**Title.** Similarly, the title of a legislative enactment is a material part of it and indicates in a general way the nature of the subject covered by it. The title of this Act, though fairly correct, is somewhat misleading. Although it is called "the Tenancy Act", it deals with the compulsory purchase of land (Vide Chapter VI).

**(Cl. 3) Commencement of the Act.** In accordance with this provision, the Madras Government has notified in the "Fort St. George Gazette" of the 25th November 1930 that the Act shall come into force on the 1st December 1930. An Act of a Legislative Council is deemed to come into operation on the day on which it receives the assent of the Governor-General unless the Act itself fixes a day on which it is to come into force. This Act was passed by the Madras Legislative Council in 1929, received the assent of the Governor on the 28th March 1930 and that of the Governor-General on the 18th November. The Act must have therefore ordinarily come into force on the latter date, but the clause of this section gives power to the Local Government to fix the day on which the Act is to be brought into force and there is nothing in the Act itself which makes it obligatory on the Government to postpone its operation. There is however an important proviso to this section which gives the Act a retrospective effect to a limited extent. According to this proviso, all suits for eviction instituted after the 30th July 1929 when the bill was officially published shall be governed by the provisions of this Act so far as they are applicable to such suits, provided they are not disposed of by the court of first instance before the day on which this Act is declared to come into force. Consistently with the principle underlying this proviso, all suits instituted after the 30th July 1929 ought to have been staid by a temporary Act of the Legislature. As this was not done, there was an unseemly race in the litigation for a pretty long period in which the diligent and the wary won and the scrupulous and the unwary lost. Neither expediency nor principle affords any valid justification for such differential treatment.

In a case under another special Act (Madras City Tenant's Protection Act) the High Court has held that the Act applies to a case where the suit in ejectment has ended in a decree which has not been executed or led to actual ejectment. But the judgment shows that the language of the relevant portions of the Act is different from this Act which contains a special proviso which expressly defines and limits the

retrospective character of the Act. But Mr. Justice Jackson observes, "Apart from the language, there would be no sense in discriminating between suits in which decrees had and suits in which decrees had not been passed. (1).

The Act will clearly apply to a suit instituted after 30th July 1929 and disposed of before 1st December 1930 but restored to file for any reason afterwards either by the order of the same Court or of any Court having appellate or revisional jurisdiction over it as the order restoring the suit to file will be dated back to the institution of the suit, annulling the disposal altogether and there is really no injustice as the effect of the order is that the disposal was either wrong or due to an accidental circumstance of which the landlord should not be allowed to take advantage.

The Act will not apply to suits which have finally ended in decrees passed before the 1st December though they have not led to actual ejection as such suits cannot be said to be pending at any time after the Act came into force. The principle of the proviso seems to be that where a suit has ended in a decree the matter should rest there and should not be reopened unless the disposal itself was found to be wrong or not proper.

**Retrospective effect.** It is contrary to all accepted principles of legislation to give retrospective effect to legislative enactments which introduce important changes in any branch of substantive law. This undoubtedly rests upon a sound principle as rights validly acquired cannot be taken away or impaired by any subsequent act of the Legislature. The rule of construction of statutes on this point is stated thus by the Calcutta High Court: "Retrospective effect is not ordinarily given to an enactment so as to affect substantive rights, but that provisions affecting mere procedure are applied to pending proceedings," and that, "an enactment affecting rights of property is not to be so construed as to give retrospective effect, unless the intention that it shall have such effect clearly appears." (2)

Again, the same High Court says in a full Bench case "that a law creating a new right ought not to have retrospective effect, is not

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(1) *Omer V Gopal*, 41 M. L. J. 350.

(2) *Dutt V Krishna* 16 Cal 276 (F. B.)

universally true. Ordinarily, no doubt, a new law should affect only future transactions, and not past ones. But the rule against retrospective operation is intended to apply not so much to a law creating a new right as to a law creating a new obligation or interfering with vested rights. This is how the rule has generally been understood and laid down in textbooks. Maxwell, in his treatise on the interpretation of Statutes, says, 'It is chiefly when the enactment would prejudicially affect vested rights, or the legal character of past transactions, that the rule in question operates.'<sup>(3)</sup> But the proviso to this section is so worded as to remove all possible doubts as to the extent of the retrospective character of the Act.

This is one view of the matter. There is another view that the Act will apply to all suits instituted before the 1st December without the Act being regarded as retrospective. The only effect of the proviso is to exempt by implication suits instituted before the 30th July 1929, the legislature being under the impression that without some such proviso, the Act will not apply to suits instituted before the 1st December or such other date on which the Act may be brought into force. According to this view, the section may be rendered thus: 'This Act shall come into force on the 1st December 1930. But nothing in this Act shall apply to suits instituted before the 30th July 1929 or to suits which have ended in decrees before the 1st December 1930'.

### Interpretation of Statutes.

(1) It is one of the cardinal principles of the construction of Indian Acts as of other Acts that they should be construed as far as possible according to their plain grammatical meaning.<sup>(4)</sup>

(2) This rule is however subject to another rule which is equally salutary that if the strict grammatical sense is inconsistent with any expressed intention, or any declared purpose, of the Act it should be

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<sup>(3)</sup> *J. Singh V. Sircar* 22 Cal. 767.

<sup>(4)</sup> *Gurubathe Sircar V Hohunlal* 7 Cal. 127. *Philipot V St. G. Hospital*, 6 H. L. C. 338.

modified so far as to avoid an inconvenience, but no further <sup>(5)</sup> Thus the conjunction "or" may be read to mean "and" and vice versa <sup>(6)</sup>

(3) It also happens that Acts passed by the Legislature are not prepared and passed under the direction of skilled lawyers or that the bills are carelessly drafted. In such cases the language used is not precise or free from ambiguity and the rule is that where the construction is repugnant to the context or inconsistent with the avowed intention and primary object of the enactment, it is permissible to consider such things as the law before the Act, the mischief intended to be remedied, the remedy applied by the Legislature and the reason therefor. <sup>(7)</sup> In other words, all rules must be construed with reference to their real object. <sup>(8)</sup>

(4) Every Act which takes away or restricts vested rights must be presumed to have no retrospective operation unless there are clear words in the enactment which give it any such force <sup>(9)</sup>.

(5) In cases of doubt or ambiguity, the construction which is consonant with equity, reason and accepted legal principles must be preferred <sup>(10)</sup>.

(6) The construction must as far as possible be such as shall prevent or minimise the evils aimed at and promote the remedy <sup>(11)</sup>.

(7) A legislative enactment is presumed not to intend to make any alteration in the existing law beyond what it expressly declares <sup>(12)</sup>.

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<sup>(5)</sup> *Promanath V Kali Prasanna* 28 Cal. 744., "Maxwell's Interpretation of Statutes" *Gokul Naudum V. Pudmanund* 29 Cal. 707 P. C. *Narendra V. Kambulsini* 23 Cal. 563 P. C.

<sup>(6)</sup> *Fowler V. Paget* 7 T. R., 50, *R V. Morbake*, 6 East, 397,

<sup>(7)</sup> *Madan Chandra V. Jaki* 6. C. W. N. 377, *Dea Narain V. Kukur Bind* 24 All 319 F. B. *Hough V. Windus* 12 Q. B. D 224.

<sup>(8)</sup> *Gujusal V. Fattchsal*, 6. Cal, 1z1.

<sup>(9)</sup> *Dash V. Van kleck* 7 John 502; *Mohumad V. Qurlau* 26 A. 119; *Ramakrishna V. Sucaray* 24 M. L. 755.

<sup>(10)</sup> *Co. Litt*, 97 a.

<sup>(11)</sup> *Maxwell's "Interpretation of Statutes"*; *France V. Dutton* 2 Q. B. 208.

<sup>(12)</sup> *Secretary of State V. Purvendu*, 40 Cal. 123.

(8) No word or clause used in an enactment shall be superfluous or, unimportant or insignificant (13).

(9) Acts restricting or taking away private rights or imposing obligations must be strictly construed, and as far as possible, so as to respect those rights (14).

(10) The word "may" is sometimes construed as "must" or "shall" to give effect to the intention of the Legislature, but in the absence of proof of any such intention, it is interpreted in its usual permissive, and not obligatory sense (15).

It must be remembered that this Act which introduces novel principles and creates new rights and imposes new obligations should not be interpreted like ordinary Acts of the Indian Legislature. While it requires to be construed strictly, giving the language of the section its plain grammatical meaning, we must at the same time bear in mind the primary intention of the Legislature so far as the same can be gathered from the Act itself.

### Headings.

There are no expressive headings in this Act to sections or set of sections as in some other Acts. The headings, so far as they go, form an important part of the Act and may be usefully considered for the purpose of explaining the sections which follow them. They are a sort of preamble to the sections but serve a better purpose than a mere preamble (16).

### Illustrations.

The illustrations, though attached to the sections, do not form part of the Act and are not absolutely binding upon the courts. They merely go to show the intention of the framers of the Act and are useful in construing its language; but little or no weight should be given to the illustrations if

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(13) *Mohur Sheik V. R.* 21 Cal. 399.

(14) *Krnibray V. Draper* 3 Q.B. 160.

(15) *Delhi and London Bank V Orchard.* 3 Cal. 47; *R. V Aloc Paroo* 3 M. I. A. 488; *Ran Dayal V. Madan Mahan* 21 A. 432.

(16) *Maxwell on Statutes.*

they contravene the section itself (17). There are only two illustrations in the whole of this Act (sec 26 & 43).

### Marginal Notes.

It has been held in England that unlike the preamble the marginal notes are not a necessary part of the Act and they should not be referred to for the purpose of constructing the section (18). They are only intended to catch the eye making the work of reference easier. In India there is some difference of opinion on this point. The Calcutta High Court held in some cases that although such notes formed no part of the enactment they might be referred to for the purpose of construing it (19). But this view has not been followed in subsequent cases, the Court holding that marginal notes formed no part of the Act and should not be referred to on the question of construction (20).

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(17) *Kylas Chunder V. Sonatum Chum* 7 Cal. 132, *Coke Litt* 24 (a), *Shaikh Omed Ali. V. Nidhee Ram* 22 W. R. 366; *Narak Ram V. Maxhin Lal* 1 A. 487;

(18) *Wilber force* 293; *Maxiwell*; *Claydon V. Green*, 3 C. P. 5 U, & *Sutton V. Sitou*, 22 Ch. D 5 U.

(19) *Kamesar Prasad V. Bikan Narain*; 20 Cal 609, *Administrator Sonegal V. Prem Lall*; 21 Cal 758, *Duki Mullah V. Halneary*, 23 Cal. 55.

(20) *Punrea Narain V. Ram Sarup*, 25 Cal. 858, *Thakurain Balroj V. Rai Jaipal*, 8 C. W. 699.

2. Nothing in this Act shall apply to

(1) lands transferred by a landlord for felling timber or for fugitive cultivation or for planting tea, coffee, rubber, cinchona or any other special crop prescribed by a rule made by the Local Government, or the erection of any building for the purpose of or ancillary to, the cultivation of such crop, or the preparation of the same for the market:

Provided that no rule under this clause shall affect any land in respect of which any cultivating verumpattamdar has a right of fixity of tenure under this Act or any customary verumpattamdar, kanamdar or kuzhikanamdar has a right of renewal under this Act, so long as such rights subsist; or

(2) lands on which pepper is the principal crop, or

(3) any building owned by a landlord including a house, shop or warehouse, and the site thereof, together with the garden or land appurtenant thereto.

**Principle.** This section contains certain important exceptions by which certain lands demised by a landlord or used by the tenant for certain special purposes and any building the ownership of which lies in the landlord are saved from the operation of the Act. The exemption so far as it relates to lands mentioned in subsection (1) is presumably due to the fact that the lands mentioned there are used for raising industrial crops and as the main object of the enactment is to protect agricultural tenants the legislature thought that the exemption was necessary in the interests of landlords who are otherwise prejudiced by the Act.

This section containing, as it does many words and phrases which find a place in many parts of the body of the enactment, could have been more appropriately placed towards the latter part of the Act or at any rate

after the interpretation clause. As it is, they are used in the same sense as that assigned to them in the interpretation clause.

(1) "Lands transferred" Neither the word 'land' nor 'transfer' is defined in the Act and presumably, they are used in the popular sense. The former term is defined in the central Provinces Tenancy Act as follows. "Land means land which is let or occupied for agricultural purposes or for purposes subservient to agriculture and includes the sites of buildings appurtenant to such land". but the word cannot have been used in that sense in this clause, as a transfer for felling timber is not for agricultural purposes. The word "transfer" is not used in the wide sense in which it is used in the Transfer of Property Act, for according to sect. 6 of that Act it means an Act by which a living person conveys property, in present or in future, to another living person and includes absolute transfers such as sales, while here it can have only the limited meaning 'demise' or 'lease'. In Malabar there are many leases for felling timber, but every such transaction does not necessarily imply any lease in the strict sense of the term. For example, trees are sometimes sold with a view to their being cut and removed at an early date in which case there is no lease or any kind of transfer of lands. There is in such cases only a mere sale of trees which, when cut, become moveable property. But the parties may, while entering into a contract respecting such trees, expressly or by necessary implication agree that the transferee of the timber shall enjoy, for varying period of time, some additional benefit to arise out of the land on which such trees grow. In such a case, the transaction is not a sale of mere moveables, but would operate as a transfer of an interest in lands. A lease of a forest for felling trees for a period of two years, being a sale of standing timber which according to the Transfer of Property Act and the Indian Registration Act is moveable property, requires no registration. (1) But if the lessee is also given the right to take the forest produce, the lease would then be a lease of immoveable property. (2) The principle seems to be that, if at the time of the contract, it is contemplated that the transferee should have some clear benefit from the further growth of the thing sold, the contract is to be considered as for an interest in land, but where, the process of vegetation being over, it is clearly understood that

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(1) *Aledulla V. Ali* 7 C. L. 7., 152; *Muttra Das V. Jadubir* 28 A. 277.

(2) *Sukry V. Gmadukul*, 6 M. H. C. R. 71; *Seeni V. Santhanadhan*, 20 M. 58.

the thing sold should be at once removed from the land, the contract is for goods alone and there is no passing of any interest in land. <sup>(3)</sup>

**Timber:** The word is not defined in the Act. For purposes of the Transfer of property Act, it means trees the timber of which is fit for use in building houses, <sup>(4)</sup> but here it is used in a wider sense and includes trees fit for firewood and other purposes.

In order to entitle the lessee to fell timber, the right must be expressly conferred on him.

**Fugitive** cultivation means cultivation of a temporary or minor character.

**Special crop.** The crops mentioned here being in the nature of industrial products, lands, leased for such purposes have been exempted from the operation of the Act which primarily applies only to tenures created for agricultural purposes.

A nice question may arise whether the Act will apply to lands primarily transferred for the special purposes mentioned in this section but after-wards used by the transferee or his representative in interest for ordinary agricultural purposes. It is in accordance with the general policy of the Act to hold that it applies to such cases provided that the act which constitutes diversion is prudent and beneficial. Another difficulty may arise on account of the word 'rule' used in the proviso, for grammatically it can apply only to "any other special crop" and not to the crops or purposes specifically mentioned in S. S. I., but it is clear that the intention of the Legislature was to give the benefit of the Act to all who, but for the exemption, would be found entitled to it.

(2) The Draft Tenancy bill did not contain this exemption which was afterwards introduced for the benefit of the landholders of N. Malabar where pepper is an important crop, but the principle of exemption is not clear.

(3) This exemption relates to leases of houses granted for residential and other purposes. 'Garden' or 'land' means the garden or land which is necessary for the enjoyment of the house. According to the

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<sup>(3)</sup> *Sir Vaughan Williams in Duppa V. Mayo; Lord Coleridge in Marshall V. Green, I. C. P. D. 35.*

<sup>(4)</sup> *Krishna Rao V. Babaji, 24 B. 31.*

English statute (Agricultural Rates Act) cottage gardens exceeding one quarter of an acre are agricultural land.

As the section says that the Act will not apply to any house owned by a landlord together with the land, if any, appurtenant thereto, the provisions of the Act will apply to the demise of a land even if it contains a house belonging to the landlord.

## CHAPTER I. DEFINITIONS.

Definitions.

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

'Agricultural years

(a) 'Agricultural year' means the year commencing with the 15th March in any calendar year and ending with the 14th March of the following calendar year, or the year between such other dates as the Collector may specify in that behalf, by notification in the District Gazette, for the whole or any part of the district of Malabar ;

'Court'

(b) 'Court' means the Civil Court having jurisdiction under the Code of Civil Procedure, 1908, to entertain a suit for the possession of the holding or part thereof to which any legal proceeding under this Act relates ;

'Cultivate.

(c) 'Cultivate', with its grammatical variations, means cultivate either solely by one's own labour or with the help of the labour of the members of one's household or family, or of hired labourers or both, or direct or supervise cultivation by such members or hired labourers, jointly or separately, provided that such members or hired labourers have not agreed to pay or take any fixed proportion of the produce of the land they cultivate as compensation for being allowed to cultivate it or as remuneration for cultivating it ;

(d) 'Dry land' means a land which is neither a 'wet land' nor a 'garden land';

'Dry land'

(e) 'Eviction' means the recovery of possession of land from a tenant and includes the redemption of a kanam;

'Eviction'

(f) 'Fair rent' means rent as determined in accordance with the provisions of Chapter II;

'Fair rent'

(g) 'Garden land' means any land used principally for growing fruit-bearing trees;

'Gardenland'

(h) 'Holding' means a parcel or parcels of land held under a single engagement by a tenant from a landlord and shall include, any portion of a holding as above defined, which the landlord and the tenant may agree to treat as a separate holding;

'Holding'

(i) (1) The word 'improvement' shall have the same meaning as it has in the Improvements Act;

'Improvement'

(2) 'Improvement Act' means the Malabar Compensation for Tenants' Improvements Act, 1899;

'Improvements Act'

(j) 'Intermediary' means any person who, not being a janmi, has an interest in land, and is entitled, by reason of such interest, to possession thereof but has transferred such possession to others;

'Intermediary'

(k) 'Janmi' means a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof;

'Janmi'

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(l) 'Kanam' means the transfer for consideration in money or in kind or in both by a landlord of an interest in specific immovable property to another (called the 'kanamdar') for the latter's enjoyment, the incidents of which transfer include

'Kanam'

44A 146A 165

(1) a right in the transferee to hold the said property liable for the consideration paid by him or due to him which consideration is called 'kanartham';

(2) the liability of the transferor to pay to the transferee interest on the kanartham,

(3) the payment of 'michavaram' by the transferee,

(4) the right of the transferee to enjoy the said property for twelve years or any other period, and

(5) the liability of the transferee to pay a renewal fee to the transferor, if the transferee is permitted to enjoy the said property for a further period after the termination of the original period ;

(m) (1) 'Kudiyiruppu' means and includes the site of any residential building, the site or sites of other building appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential building, and the easements attached thereto ;

'Kudiyiruppu'

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(2) 'Separate kudiyiruppu' means a kudiyiruppu which is the sole property comprised in a holding ;

'Separate

kudiyiruppu'

(3) 'Separable kudiyiruppu' means a kudiyiruppu which is included with other property in a holding and which is not necessary for the convenient enjoyment, as usual, of any other part of the holding ;

'Separable

kudiyiruppu'

(n) 'Kuzhikanam' means and includes a transfer by a landlord to another (called the kuzhikanamdar) of garden lands or of other lands or of both, with the fruit-bearing trees, if any, standing

'Kuzhikanam'

42 A. 44 P

thereon at the time of the transfer, for the enjoyment of those trees and for the purpose of planting such fruit-bearing trees thereon, the incidents of which transfer include (1) the right of the transferee to enjoy the lands for twelve years or for any other period, and (2) the liability of the transferee to pay a renewal fee to the transferor, if the transferee is permitted to enjoy the said lands for a further period after the termination of the original period ;

(o) 'Landlord' means a person under whom a tenant holds and to whom he is liable to pay rent or michavaram, and includes a janmi ;

'Landlord'

(p) 'Melcharth' means the transfer by the landlord of part of his interest in any land held by his tenant by which the transferee is entitled to evict such tenant ;

'Melcharth'

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(q) 'Michavaram' means whatever is agreed by a kanamdar in a kanam deed to be paid periodically, in money or in kind or in both, to or on behalf of the janmi ;

'Michavaram'

44A:455

(r) 'Pay', with its grammatical variations, includes deliver ;

'Pay'

(s) 'Prescribed' means prescribed by rules made under this Act ;

'Prescribed'

(t) 'Renewal fee' means fee or fees payable by a tenant to his landlord for the renewal of the legal relationship under which the tenant has been holding any land ;

'Renewal fee'

(u) 'Rent' means whatever is lawfully payable in money or in kind or in both, to a person entitled to the use or occupation of a land, by another, permitted by the person so entitled, to

'Rent'

have the use or occupation of the said land, for any purpose, on the understanding, express or implied, that the person so permitted would pay consideration for such use or occupation ;

'Tenant'

(v) 'Tenant' means any person who has paid or has agreed to pay rent, or other consideration, for his being allowed by another, to enjoy the land of the latter, and includes an intermediary, a kanamdar, a kuzhikanamdar, and a verumpattamdar of any description ;

'Verumpattamdar'

(w) (1) 'Verumpattamdar' means a tenant other than a kanamdar or kuzhikanamdar of a holding, for agricultural purposes, which includes wet lands, and may or may not include other lands;

'Cultivating verumpattamdar'

(2) 'Cultivating verumpattamdar' in respect of a holding means any verumpattamdar who, not being a janmi, intermediary or customary verumpattamdar of that holding has, expressly or impliedly, contracted to cultivate the lands in that holding, either as a tenant-at-will or during a fixed term, and actually cultivates the same;

'Customary verumpattamdar'

(3) 'Customary verumpattamdar' means any verumpattamdar who is entitled by custom of the locality in which the land is situate to possession of the said land for a definite period of years and for whose continuance thereon after termination of that period, for a further period, a renewal fee has to be paid to the landlord as an incident of the tenure } and

'Wet land'

(x) 'Wet land means land which is adapted for the cultivation of paddy.

This Chapter which contains the interpretation clauses is an important part of the enactment. Some of the words used in the Act have got a technical meaning and their definitions serve only the limited purpose of this Act (1). Legislative definitions as a rule do not control express provisions on the subject matter of the same definition which necessarily follows them. They should not however be strictly construed, serving rather the purpose of general examples than overruling provisions (2). The definition of a word gives the meaning assigned to it wherever that word appears in the particular Act and that particular meaning should be followed unless the contrary clearly appears (3). When a particular expression has by long use acquired a special legal or technical signification the expression must in the absence of a defining clause, be understood in that special sense (3). When a definition "includes" certain persons or things, it does not, as a rule, necessarily exclude other persons or things not so expressly included, for that is the usual grammatical sense. When a definition is intended to be given an exclusive signification, the usual form of words is "means and includes" (4).

**Agricultural year.** This definition is suitable to the agricultural conditions of most parts of Malabar where the second crop of the year is reaped in February at the latest. It begins on the 1st *Meenam* of the Malayalam year. In the central and eastern parts of the district, the first crop which is the principal crop of the year is raised in May and reaped in September and the second crop is raised in October and reaped in February while in the rest of the district where agricultural operations commence earlier, the first crop is reaped in September and the second crop in January. As the year defined is most important for purposes of eviction as contemplated by sect. 14. cl 5, a better year will be one beginning on the 14th February when crops will have been reaped in most lands. As some preliminary plough work has to be done as soon as the crop is reaped it may be inconvenient for the landlord to enter and the tenant to surrender after the time suitable for such operations.

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(1) *Panda V. Jemdi*, 4 Cal., 665; *Umachum V. Agadinisa Bu*, 12 Cal. 430.

(2) *Uda Begum V. Indian*, 2 A. 74, 86; *Darris ou Statues*.

(3) 5 M. I. A. 234; 21 N. R. 178.

(4) *R. V. Ashutosh*, 4 Cal. 493.

The year is unsuitable to a class of cultivation called "Kole" which is peculiar to the southern parts of Malabar, Cochin and Travancore where it is perhaps the most important wet cultivation. Here the land is completely under water till January when it is drained by means of engine worked by motor power and paddy cultivated so that the crops will be just ripening in March when the year as defined begins, but the Collector has power to notify other dates.

**Cultivate.** This definition is not only overexact but betrays some confusion of ideas on the part of the draftsman. The underlying principle is that a tenant if he is to get the benefit of the Act must be a cultivator in the strict sense of the word and that there shall be no sharing of the produce of any kind whatever. The object can be secured by fewer words being used, the usual definition of "cultivate" is to cultivate by oneself or by hired labour or by both. The definition is clumsy.

**Dry land.** The section does not attempt to define the expression 'dry land' except negatively and as both 'wet land' and 'garden land' in terms of which it is interpreted are defined, it is easy to have some idea of it. But every dry land is in a sense garden land and *vice versa* although garden lands are not all fit for dry cultivation. Thus interpreted, dry land is land which is not ordinarily used for planting fruit-bearing trees but is at the same not adapted to the cultivation of paddy.

**Eviction.** This word includes every kind of legal process allowed for the recovery of possession of land from a tenant.

**Garden land.** Although the definition is not precise, it conveys the idea correctly. A land on which timber trees are grown which are not fruit bearing trees as well will be dry land within the meaning of this Act.

**Holding.** The definition is the same as that contained in the Estates Land Act which defines 'holding' as a parcel or parcels of land held under a single puttah or engagement in a single village provided that a part of the holding shall be treated as a separate holding if the landlord and ryot so agree. According to C. P. T. Act, it means "a parcel of land held by a tenant of a landlord under one lease or one set of conditions".

**Intermediary.** The word simply means a middleman who has acquired interests in land intermediate between those of actual cultivator and the Jenmi or other landlord. There can be several gradations of such

middlemen and the growing multiplication of such tenureholders is regarded as one of the evils of the present system of landholding in India.

**Janmi** Although the definition of the word 'Janmi' given here is theoretically correct, it is not quite in consonance with the position of a Janmi as popularly understood in Malabar. The word has got a technical meaning and is used of a landlord more in relation to tenants holding lands on kanom or other similar tenure than as possessing absolute proprietary rights. A 'Janmi' is according to the popular acceptance of the term a superior landlord who not being himself liable to pay rent in kind or money to a like landholder is in possession or enjoyment of lands through tenants holding on tenures to which is annexed the customary incident of renewal. Such a landlord will not necessarily have unlimited power of disposition as understood by certain jurists.

(l) **Kanom** This clause contains a description rather than a definition of kanom. It is a tenure of land granted by a person for a sum of money advanced by another person who is entitled to possession of such land usually for twelve years and is liable to make a fixed payment annually called michavaram and also a fee or premium to that person if at the end of the term the tenure is renewed.

(m) (1) 'Kudiyiruppu' as defined here does not seem to be the same thing as 'homestead' inasmuch as it does not include buildings but only the sites thereof and the contiguous grounds which are not defined. The buildings are excluded as they must belong to the tenants if the Act is to apply.

(2) 'Separate kudiyiruppu.' The definition is necessarily vague as the question as to what other buildings and lands are necessary for the convenient enjoyment of the house is a question which depends upon the facts of the case.

(3) This definition is also vague as the question whether any part of the kudiyiruppu is necessary for the enjoyment of the remaining is a question which must be decided with reference to the facts of the case. Naturally the courts will lean in favour of separable character of kudiyiruppu in order that the object of the Act may not be defeated.

(n) **Kuzhikanom** is a tenure granted for the purpose of planting fruit-bearing or other trees on lands which are either waste or are in an undeveloped state of cultivation. It may mean either the tenure or the

amount due to a tenant for improvements which consist chiefly of trees. In some places it is synonymous with improvements; but the term as defined here may include not only garden and dry lands but wet lands also which is against the popular notion of the tenure. The definition is cumbrous if not clumsy. *Such* in 'such fruit-bearing trees' is out of place.

(b) **Melcharth.** The term as defined here may apply to many forms of transfer which are not ordinarily meant by it. It is generally used in connection with tenures which are subject to the customary incident of renewal. As defined here it may include a transaction by which a landlord gives power to another to evict a simple lessee or even a tenant-at-will.

(q) **Michavaram.** Unlike melcharth, this term is used in a restricted sense. Ordinarily it means payments made periodically by tenants whose tenure is subject to the customary incident of renewal. It is also applied to payments made to intermediaries, while here 'Janmi' and not 'landlord' is the word used.

The words 'or on behalf of the Janmi' can be very well omitted.

**Rent.** The definition is inartistically worded. There is no justification for it when we have got excellent definitions given in other local Acts, *i. e.*, Bengal Tenancy Act, Estates Land Act and many other Acts. Of these Acts the Bengal Tenancy Act which was drafted by an eminent English jurist (Sir Courtney Ilbert) contains a definition which can be very well followed. It is certainly better to borrow a good definition from an important bill brought forward and passed into law as drafted by an eminent lawyer well-versed in the language in which it is drafted than introduce new explanatory words and phrases which imperfectly express the idea intended to be conveyed. The idea, however, is in the definition, namely, that rent is anything in kind or in money payable by a person who holds land under another person for the use of that land.

**Tenant.** The definition of tenant like that of rent is clumsy. The term is used so as to include every species of tenure and is also comprehensive enough to include every kind of land, wet, dry or garden.

(w) (1) **Verumpattamdar** means a simple lessee of agricultural land which includes wet lands but popularly the word means the simple lessee of any kind of land, wet, dry or garden. Literally verum-

pattam means bare lessee (verum means bare and pattam lease) as distinguished from Kanom. A verumpattomdar has no pecuniary or saleable interest in the holding.

Agriculture is not defined but includes horticulture. A lease must be distinguished from license. A lease implies the passing of an interest in land, while license only gives the licensee permission to use the land for a particular purpose without passing any interest in it.

(2) Verumpattomdar is of two kinds under the Act, (1) cultivating and (2) customary. Cultivating verumpattomdar is one who cultivates the land he occupies.

(3) **Customary verumpattomdar.** This is not a happy term nor is it, we conceive, correct and we do not know who is responsible for it. The report of the Tenancy Committee would show that they themselves coined the term. When we speak of a customary thing, we mean that it is such a thing by custom and not by itself, while the tenure which the authors of the Act mean is much higher than verumpattam for even according to the definition, it has got far more permanency of tenure than ordinary verumpattom. The word 'Customary' in that expression applies not to verumpattom but to the incident of renewal which is customary and it is submitted that it does not correctly express the idea intended to be conveyed by the term. In fact, it is just the reverse. A better name will be customary kanomdar. The words "of the locality in which the land is situate" may be very well omitted.

(x) **Wet land.** The term is used in a technical sense as only land fit for paddy cultivation can be called wet under the Act. It is due to the fact that rice is the staple-food of the people of the district. This definition is of great practical importance inasmuch as fixity of tenure conferred by 10 is on tenants of wet lands as defined here. (S. 3 cl. (w<sup>2</sup>)) This definition is very vague. A better definition will be that given in the draft bill, viz, 'land which has been levelled, bunded and adapted for the cultivation of paddy and registered as wet land in the registers of the Government.'

CHAPTER II. FAIR RENT.

Interpretation  
clause

4. In this Chapter,—

(a) 'seed required' means the quantity of seed customarily deemed to be required and,

(b) 'gross produce' in respect of wet lands means the produce obtained after paying the expenses of reaping.

Fair rent of dry  
lands converted  
into wet by  
tenant's labour

5. Fair rent in the case of dry lands converted into wet by the tenant's labour shall be —

(a) for a period of twenty years from the year in which the first wet crop is raised on the land, one-fifth of the difference between the annual gross paddy produce of the land and three times the seed required for the said land for an agricultural year, and

(b) after the expiration of the said period of twenty years, one-fifth of the difference between the annual gross paddy produce of the land and two and a half times the seed required for the said land for an agricultural year.

Fair rent of  
other wet lands

6. In the case of wet lands not falling under the previous section, fair rent shall be two-thirds of the difference between one-third of the gross paddy produce of land for the three years immediately previous to the date on which fair rent is to be ascertained and two and a half times the seed required for the said land for an agricultural year :

Provided that

(i) if, in any particular year, no crop at all is raised, or only a dry crop is raised on a land

registered in the registers of the government as a single-crop land, the produce shall be deemed to be the estimated produce of a single paddy crop; and

(ii) in the case of lands registered as double-crop lands in the said registers, account shall be taken as though two paddy crops had been harvested, irrespective of the number and the kind of the crops raised, and of the fact that no crop whatever is raised in any particular year on such lands.

The provisions contained in these sections (5 to 8) which relate to the fixing of fair rent are entirely new. They are based upon definite mathematical fractions of produce, as the maximum share of the landlord. While admitting the utility of such standards as general principles of guidance, one must be careful in accepting them as hard-and-fast rules of practice and applying them to particular cases. While, in the absence of a better formula it is reasonable and equitable to fix the rent at a definite share of the produce, it is clear that in practice there is considerable difficulty in estimating the average produce. It depends upon a number of varying factors, such as the condition and the industry of the cultivator, the nature of the crop, the productivity of the soil and the character of the seasons including rainfall. Lands vary not only in productivity but in many other matters and it is difficult to apply any one criterion to all parts of the district. A rule of division of produce which would work smoothly in one case might be attended with immense hardship in another; a share which would ordinarily leave a margin of profit in one place or in one class of cultivation might be inequitable and burdensome in another. One must therefore be cautious in accepting these rules as definite and precise mathematical formulae as they may unduly tie the hands of courts which have ultimately to decide these complicated questions of crop outturn.

Section 5 deals with fair rent of dry lands converted into wet by the tenant; Sect. 6. other wet lands; Sect. 7. garden lands; Sect. 8. dry land, and set. 9. with lands within municipal limits.

**Formula.** *Dry lands converted into wet*

(a) for the 1st twenty years: Fair rent =  $\frac{1}{5}$  of annual gross produce minus 3 times the seed.

(b) After 20 years: F. R. =  $\frac{1}{5}$  of gross produce minus  $2\frac{1}{2}$  times the seed.

Section 5 deals with the case of dry lands converted into wet by the tenants labour or at his cost, in which case for a period of twenty years from the year of the raising of the first crop, the tenant is liable to pay only one-fifth of the annual gross produce after deducting the expenses of cultivation which in this case is three times the seed required. The proportion is liberal and is clearly due to the tenant's right to enjoy the full benefit of the increased productiveness of the soil which is due to his own exertion. The time allowed is sufficiently long to enable the tenant to reap a remunerative return for the labour and capital expended by him. The cultivation expenses allowed also are more, owing to the recent change in the character of the land which may involve the expenditure of additional labour and use of better manure. But it must be said that the proportion of one-fifth which is the maximum share of the landlord is too small and the period, viz, twenty years, too long and may work injustice to the landlord, especially if as dry land he was getting more.

This section does not specify the period or the year of which the gross produce is to be estimated for fixing the fair rent, while under sections 7 and 8 it is the average of the three years immediately prior to date on which the fair rent is ascertained. It can hardly be supposed that the produce is uniform for the whole period of twenty years for which the fair rent calculated under this sub-section remains in force or for the whole of the subsequent period that comes after such period as laid down in subsection 2. It can hardly mean the year in which the first crop is raised, for that will be a lean year; it can therefore be only the year just previous to the date on which fair rent is ascertained.

A nice question may arise whether a landlord can apply for determining the fair rent under this section as soon as the conversion is complete or whether he should wait for twelve years as laid down in the proviso to Sect. 28. On principle it is clear that he cannot claim any enhancement, for he is not concerned with the improvement which was effected solely by the tenant. But he can now maintain a suit for eviction only on certain specified grounds and if those grounds do not exist he is

left without any remedy. No doubt he can evict the tenant and cultivate the land himself; but he must prove his bonafides and if he fails to establish the same to the satisfaction of the court, he will not get a decree for possession. If, however, he succeeds, the tenant stands to lose, as he will be compelled to surrender the land after receiving the value of improvements which may be insufficient compensation for disturbance.

Under this section, the tenant does not get any additional advantage if he effects improvements other than converting dry lands into wet, such as converting single crop land into double crop.

(b) After the expiration of twenty years, the landlord is entitled only to the same share of produce, with this difference that the cultivation expenses allowed are a little less. This also may be said to be a little unjust, as the difference between the share fixed under this subsection and that under sect. 6 is very great.

Sect. 6. This section deals with the most numerous class of wet lands in Malabar and its provisions are very important. Under it, the fair rent is two-thirds of the average annual gross produce after deducting the expenses of cultivation which is the same as under subsec. (b) of Sect. 5, viz, two and a half times the seed required, the remaining one-third going to the tenant for the profits of cultivation.

The important principle underlying these provisions is the net produce standard, i.e, the rent is not a definite fraction of the gross produce as defined in the Act but a fixed share of the net produce which is the surplus that remains after deducting the cultivation expenses. Another principle is the estimate of gross produce as based upon the average produce of a number of years immediately previous to the year in which fair rent is to be ascertained and the third is the uniform scale of cultivation expenses.

### Illustration.

Suppose the fair rent of an acre of a single crop land is to be ascertained in January 1931. The Court estimates the gross paddy produce for the years 1928, 1929 & 1930. Suppose the produce for 1928 is 120 paras, for 1929, 100 paras and for 1930, 90 paras. Suppose the seed required for an acre of land is 10 paras.

$$\text{Fair rent} = \frac{2}{3} \text{ of } \left( \frac{1}{3} \text{ of gross produce for 1928} + \text{g. p for 1929} + \text{g. p for 1930.} \right)$$

Minus cultivation expenses for the 3 years.

$$= \frac{2}{3} \times \frac{1}{3} (120 + 100 + 80 - 75) \text{ paras.}$$

$$= \frac{2}{3} \times \frac{1}{3} \times 225 = 50 \text{ paras.}$$

The tenant is allowed 25 paras for cultivation expenses and 25 paras as profits. Both the cultivation expenses and the profits allowed are not only fair and equitable but even generous. Suppose the same plot of land is let on half-share system. The average produce being 100 paras, the landlord will get 50 paras as fair rent and the tenant will get an equal quantity for cultivation expenses and profits. The yield in this case being ten fold the seed sown, there is no difference in the produce absorbed by rent whether the gross produce standard or the net produce principle is adopted. Both the landlord and the tenant get the same amount which is half the gross produce. But take another plot of land of the same extent but of different productive capacity and let us suppose that the average annual produce is more, say, 150 paras instead of 100. Then on the 'half share' system, both the landlord and the tenant will each get 75 paras. But when the net produce principle is adopted as under the Act the fair rent will be proportionately more, or in other words,

Fair rent =  $\frac{2}{3}$  of  $(150 - 25) = \frac{2}{3} \times 125 = 83\frac{1}{3}$  paras and the tenant will get 25 paras for cultivation expenses and  $41\frac{2}{3}$  paras as profits, making a total of  $66\frac{2}{3}$  which is not only less than the fair rent he has to pay but also less than the amount he will be entitled to get under the 'half-share' system. If however the yield is less than 100 paras, say only 80 paras, then he will be a loser on the gross produce standard as will be shown below, as he will get only 40 paras on the half share system while he will get  $\frac{1}{3}(80 - 25)$

+ 25 (cultivation)

expenses

=  $\frac{1}{3}$  of  $55 + 25 = 43\frac{1}{3}$  and the landlord will get as fair rent

$$= \frac{2}{3} \text{ of } 55 = 36\frac{2}{3}.$$

So while in the case of lands of high productive capacity the tenant is a loser on the net produce standard, he is a gainer in the case of less fertile lands. While in case of lands of the least fertility, he will get the cultivation expenses and something more on the net produce standard, he may not get even the cultivation expenses on the half share system.

The fact is that rent, like land revenue assessment, depends upon so many varying factors that it is hopeless to reduce it to any exact arithmetical proportion.

The next principle adopted is the fixing of the fair rent with reference to the average produce of a number of years. The average produce is taken because owing to vicissitudes of season and other extraordinary circumstances, there may be fluctuations in crop outturn.

But there are certain serious objections to the procedure prescribed in this section. The practical difficulties of estimating agricultural produce are many and obvious. It involves the inspection of crops which requires besides practical knowledge technical skill of a high order and even then the result may not be very satisfactory especially as the produce of a number of years is to be estimated.

The other objection is that the rule rests upon exact mathematical formulæ which if rigidly applied may prove unfair and iniquitable.

Another thing is that the 'net average produce' principle, though sound in theory, is a fallacious basis on which to found fair rent, especially as it is difficult of accomplishment. Suppose for three successive years just previous to the date of ascertainment of fair rent, there was a total failure of crops owing to some extraordinary circumstance such as draught or flood, what will be the fair rent? On what principle is it to be calculated? The proviso does not apply, for it applies only to wilful refusal to raise crops. It rests upon the assumed net assets of a long period of 20 years during which the fair rent determined or revised is to remain in force.

Again, cultivation expenses are a variable factor, depending not only upon the productivity of the soil but also upon the crop raised. For example, the cultivation expenses allowed here will be insufficient for what is called "cole" cultivation which is prevalent in the southern parts of British Malabar, Cochin and Travancore. Fair rent fixed under this section will be unfair to the tenant. It is therefore necessary to give power to the court to increase the cultivation expenses in such cases. It is seen from a recent memorial submitted by the mirasidars of Tanjore to the Government that cultivation expenses for the first taram comes to 35% and last taram 50% of the produce.

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Fair rent of  
garden lands

7. (1) In the case of garden lands, fair rent shall be a share, ascertained under sub-sections (2), (3) and (4) of this section, of one-third of the gross produce for the three years immediately previous to the date on which fair rent is to be ascertained.

(2) As regards cocoanut trees in respect of which the landlord is bound to pay compensation under the Improvements Act in case of eviction, the share shall be one-fifth of the said one-third, of only the nuts included in such produce and, as regards trees in respect of which he is not bound to pay such compensation the share shall be two-fifths of the said one-third.

Provided that where a cocoanut tree has been let for tapping, its produce of nuts for the purposes of this sub-section during the said three years shall be deemed to be the same as the produce of nuts during the three years of a tree of a similar description and with similar advantages in the neighbourhood which has not been let for tapping;

(3) As regards areca trees and pepper vines where pepper is not the principal crop on the land in respect of which the landlord is bound to pay compensation under the Improvements Act in case of eviction, the share shall be one-sixth of the said one-third of only the nuts and pepper included in such produce, and as regards trees and pepper vines in respect of which he is not bound to pay such compensation, the share shall be one-third of the said one-third;

(4) Nothing shall be payable (i) for the minor produce of cocoanut or areca trees such as leaves, fibre, etc., whether such compensation is

payable or not in respect of the said trees, or (ii) for the produce of other classes of fruit-bearing trees such as jack, mango, tamarind, palmyra and cashewnut.

This section deals with the fair rent of garden lands which are for the purposes of their section classified under three main heads. (1) Coconut trees (2) Arecanut trees (3) Pepper vines where pepper is not the principal crop, Sub-sect. (1) contains the general principle applicable to all the three classes of lands, which is the average gross produce standard and not the net average as in the case of wet lands under sect. 5 & 6, and sub-sect. (2) deals with the most numerous class of garden lands, viz, coconut and sub-sect. (3) deals with arecanut trees and pepper vines. Sub-sect. (4) is only explanatory of the other sub-sections inasmuch as it simply says that minor products should not be taken into account in fixing fair rent.

**Gross produce.** The term is not defined for the purposes of this section and therefore means the actual produce or outturn nothing being deducted on account of the cost of planting and maintaining such trees or vine as contemplated by sub-sect. (ii) & (iii) of sect. 15 of the Improvements Act. In the absence of any defining clause, the question may very well arise whether there is anything which prevents such cost from being taken into consideration in estimating the gross produce.

These three classes of garden produce are brought under two distinct divisions for purposes of fixing fair rent, (i) those trees and vine which belong to the tenant and should be paid for under the Improvements Act and (ii) and those which belong to the landlord and need not be so paid for. In the case of the former, the fair rent is naturally less, as the landlord has to pay the tenant before he becomes the owner of these improvements.

### Formula for fair rent.

Sect. 7. (2) *Coconut trees*

(1) *Tenant's trees*

Fair rent =  $\frac{1}{3}$  of  $\frac{1}{3}$  of the total gross produce of 3 years.

(ii) *The rest*

Fair rent =  $\frac{2}{5}$  of  $\frac{1}{3}$  of the total gross produce of 3 years.

Sect. 7. (3) *Areca nut trees and pepper vines.*

(i) *Tenant's*

Fair rent =  $\frac{1}{6}$  of  $\frac{1}{3}$  of the total gross produce of 3 years.

(ii) *The rest*

Fair rent =  $\frac{1}{3}$  of  $\frac{1}{3}$  of the total gross produce 3 years.

8. Fair rent in the case of dry lands shall be three times the assessment payable in respect thereof per annum.

Fair rent of  
dry lands

Under this section, fair rent can be determined only in the case of dry lands assessed to Government revenue, but it does not follow that the fact of assessment should appear from the settlement register. If unassessed dry lands are included in the cultivating Verumpattamdars' or Kanomdars' holdings, fair rent cannot be determined under this section.

9. (a) In the case of lands situated within the limits of any municipality and not built or planted upon, or on which no crop is grown, the fair rent shall be the rent paid or agreed to be paid in respect of similar lands, of the same extent, in the neighbourhood ;

Fair rent of  
lands within  
municipal limits

(b) In the case of other lands situated within the said limits, the fair rent shall be the fair rent determined under sections 5 to 8, or the fair rent determined under sub-section (a) of this section, whichever is higher.

This section deals with fair rent of lands situated within municipal limits. Cl. (a) deals with vacant plots of ground which are neither planted upon nor cultivated in the usual way. In their case fair rent is the rent usually paid for similar lands in the neighbourhood of such lands.

But suppose for such land a tenant is already paying a rent; then that course may be taken as fair rent.

Cl. (b) deals with lands (1) which have been built or (2) planted upon or (3) those on which crop is raised, (4) assessed dry lands and (5) unassessed dry lands. Of these, lands coming under (2), (3) and (4) have been provided for by sections 5 to 8; while there is no provision in the Act for determining fair rent of lands which have been built upon and of unassessed dry lands. The latter will not be many and may be ignored but the former are numerous and important and a formula should be found. Fair rent determined under sub-section (a) cannot apply as that applies only to vacant plots.

### CHAPTER III—CULTIVATING VERUMPATTEMDARS.

10. Notwithstanding any contract to the contrary entered into whether before or after the coming into force of this Act, every cultivating verumpattandar shall have fixity of tenure in respect of his holding as hereinafter provided, and shall not be evicted therefrom except as provided in this Act

Cultivating  
verumpat-  
tandar's right  
to fixity of  
tenure

This section may be rendered thus:—Every cultivating tenant holding under simple lease of lands fit for the cultivation of paddy shall, in spite of any contract to the contrary, have fixity of tenure in respect of his holding whether the same includes other kinds of land or not and no such tenant shall be evicted except on one or other of the grounds specified in this Act.

This is one of the most important provisions in the whole Act inasmuch as it confers new and valuable rights and privileges upon a most numerous class of agriculturists in Malabar—rights and privileges unexampled elsewhere. It effects a most drastic change in the existing law—a change which is one of the most revolutionary and confiscatory of all the many changes made by this extraordinary legislative enactment. It may be said to be the *magna charta* of the verumpattam tenant. Similar rights have been conferred upon occupiers of ryoti lands by the Bengal Tenancy

Act and the Madras Estates Land Act. But those rights existed independently of the Act. While the latter Act uses the expression "permanent right of occupancy," this Act uses "fixity of tenure". The meaning is the same, the change in the phraseology being due to the difference in tenure. The Estates Land Act applies chiefly to lands in which the tenant has a preexisting right which the State has, under the grant by which proprietary rights were conferred upon the landholder, taken power to protect by law. But in Malabar the State has no such power of interference. The Estates Land Act divides all cultivable land into two classes: (1) ryoti land in which two ~~district~~ interests always exist, namely the melvaram and kudiaram—the former is vested in the landlord, while the latter is in the ryot. The character of this land can under no circumstance be altered by the landlord and (2) private or homefarm lands in which the entire interest is vested in the landlord. The tenant of this class of land holds on such terms as may be agreed upon between the landlord and the tenant. It is to this kind of land, to take an analogy, that sect. 10 of the Act applies and it is therefore that the Act is said to be confiscatory in character. But a Malabar landlord has higher rights than a landholder coming under the Estates Land Act. In fact his position in respect of lands held on simple lease more resembles that of landlord in England with absolute proprietary rights in the land he owns.

While the Malabar Tenancy committee recommended only an optional form of fixity of tenure, requiring every tenant who claimed fixity to apply for it, the Select Committee of the Legislative council <sup>changed</sup> charged the clause by conferring the right absolutely upon every cultivating tenant without any formal application on his part.

But the tenant can get fixity only on certain conditions. The first is that he should be a cultivator in the strict sense of the term, it being opposed to the general policy of the Act to confer such rights upon middlemen. The second is the payment of fair rent as determined or revised under the Act and the third is that the tenant should not do any act which is prejudicial either to the interests of the landlord or to the land he cultivates. Although there are analogous conditions in the case of lands coming under the Estates Lands Act, they are not so many. For example, under the Estates Land Act, the landlord has no right of eviction in the case of denial of title. Similarly, although the landholder is given the right to bring a suit before the collector for the eviction of a ryot on

the ground that he has materially impaired the value of the land for ordinary agricultural purposes (S. 151), no decree for eviction can be passed if the damage is repairable or compensation would afford adequate remedy for the damage and the tenant repairs it or pays compensation as ordered by the Collector. That is the only case in which a landholder can bring a suit for eviction under the E. L. Act; while under this Act, the tenant can be evicted on many other grounds, one being that the landlord wants to cultivate the land himself.]

Agricultural tenancies are ordinarily untransferable but in Malabar custom has always allowed free transfer of leases coming under this section and the Transfer of Property Act expressly recognises such a right (Sect. 108 cl. (j) although that Act does not in terms apply to agricultural leases. The present Act also recognises such a right (S. 39). A question may however arise how far, if at all, subdivision of holdings is permitted under the Act, having regard to the definition of holding in (S. 3. cl (h) which contemplates the landlord's assent being given to the subdivision, but in the absence of an express prohibition, it is reasonable to suppose that the tenant has a right to transfer a portion of the holding as it does not offend the principle underlying sect. 39, unless the transfer leads to the fragmentation of the holding to such an extent as to impair the efficiency of cultivation in which case it will be invalid as against the landlord.

The same rule applies to the subdivision of holding effected by partition and to shares or interests that have devolved upon several heirs on the death of the original tenant. In the latter case, the landlord has less right to object because the law governing the parties allows the transmission of fractional shares and unless the special Act expressly prohibits such subdivision, it shall be deemed to have allowed it.

Subinfeudation being opposed to the policy of the Act, the question arises whether it is permissible and, if so, to what extent. The Act does not expressly prohibit sub-letting although sect. 3. cl (h) says that subdivision must have the assent of the landlord. If, however, the cultivating tenant sublets the entire holding to strangers whether they are cultivating tenants or not, the original tenant forthwith forfeits the fixity of tenure conferred by this section as he ceases to be a cultivating Verumpattomdar. The sublessee steps into the shoes of his immediate landlord and can claim fixity not only as against him but as against his landlord,

for this is a right conferred on him by a legislative enactment and not by contract. If, however, he sublets only a portion of the holding to a cultivating tenant, retaining the rest in his own possession, both the transferee and transferor will be entitled to the benefit of this section provided that the efficiency of cultivation is not thereby impaired. The question is not free from difficulty, there being no express provision on the point in the Act. In an analogous case governed by the Estates Land Act, the Privy Council left the point undecided. There, certain lessees who held lands under leases granted in their favour by a landlord sued for the issue of a pattah fixing fair rent in respect of the lands demised to them. It was found that the lessees had sub-let all the lands to cultivating tenants who held the holdings and cultivated the lands subject to the payment of a rent to their immediate landlords and that they acted purely as middlemen. The Privy Council held that as they had subject all the lands included in the holdings they were only middlemen and that as such they were not entitled to the benefits which were intended by the Act to be conferred upon cultivating tenants. As to the question whether, if they had sub-let only a portion of the holding, they would be altogether disentitled to the benefit of the Act the Privy Council thought that they were not called upon to express any opinion. Their Lordships say "Their Lordships have not to determine, if the statement of Napier, J. be accepted according to its ordinary meaning, whether, if the appellants had only sub-let to occupying and cultivating sub-tenants a substantial portion of their lands, they would be altogether disentitled to the relief they seek, or would only be entitled to that relief in relation to the portion of the demised lands which they had not sub-let, especially as this question was not raised or argued before their Lordships on the hearing of this appeal, and their Lordships must not be taken to have formed, much less to have expressed, any opinion upon them" (1)

An equally difficult question is as to the kind of lands in respect of which fixty of tenure can be claimed. If we are to go by the ordinary meaning of Verumpattamdar; his holding may include every kind of cultivable land wet, dry or garden. But having regard to the definition of the term in this Act 33 cl. (u), wet land as defined is a necessary part of the holding and no tenant can claim fixty of tenure who does not cultivate a plot of wet land however small that may be. But as to the extent of

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(1) *S. Burchy V. Raja Appa Row*, 41 M. L. S. 669 (P. C.)

other lands that may be included in the holding the Act is silent. The Malabar Tenancy Committee was of opinion that any fixty of tenure given to the cultivating tenant must be confined to wet lands and such dry or garden lands as are ordinarily necessary for the cultivation or enjoyment of such lands. But the Select Committee changed this. But the question still remains whether a tenant of a holding of which wet lands form only an insignificant portion is entitled to the benefit of this Act. It is hardly possible or reasonable to suppose that the legislature intended that a tenant whose holding consists of a small plot of wet lands, say three or four cents worth about ten or fifteen rupees but has at the same time forty or fifty acres of garden lands worth about a lakh of Rupees included in it should enjoy the valuable rights proposed to be given by this enactment. The principle of section 3 cl. (w) cannot be received in this sense. But the point is not clear.

“As herein after provided” means that the grant of fixty is subject to the provisions contained in sections 11 to 13 and “except as provided” means subject to the provisions in sections 14 and 15.

11. Any cultivating verumpattamdar or his immediate landlord may apply to the court in the form prescribed, for fixing the extent of the holding, the fair rent in respect of it, the instalments, if any in which it shall be payable and the date or dates when the fair rent or the instalments thereof shall be payable.

Application to court for fixing extent of holding, fair rent, etc.

The previous section having declared the substantive law regarding fixty of tenure, this and the next section describe the procedure to be followed in fixing the fair rent which is a necessary consequence of the grant of fixty and as the determination of the question is in the interests of both the landlord and the tenant, both are given the right to apply. Ordinarily, the time for the determination of fair rent comes only twelve years after the coming into force of this Act (sect 28). But where there is an intermediary whose tenure has to be renewed in the meantime, the twelve years rule will not apply. In such a case, fair rent will have to be

determined for the purposes of the renewal which will, if and when granted, make the cultivating tenant liable to pay the fair rent so fixed from the date of the renewal. The question arises whether fair rent can in such a case be determined under this section and if so, who are the parties that can apply. In the first place, the section as it stands is intended only to cover a case where fair rent has to be settled as between the cultivating tenant and his immediate landlord; that is clear not only from this section which contains provisions as to the dates when fair rent is payable but also from section 12 where no notice is expressly required to be given to the superior landlord or landlords whose presence is absolutely, necessary for fixing the fair rent for the purposes of renewal.

As the parties who can apply, there are still greater difficulties. The cultivating tenant cannot apply, for he is not directly interested in the renewal to which he will not ordinarily be a party; the superior landlord cannot also apply, for he is not the immediate landlord of the cultivating tenant who alone can apply under the section. The kanoundar seems to be a person who comes under the section if he happens to be the only intermediary; and if his petition is maintainable under this section, who are the necessary parties to such a petition? His landlord is a necessary party, for the fair rent determined under sect. 12 will have to be binding upon him for calculating the renewal fee; the cultivating tenant will also be a necessary party, for he will be liable to pay the fair rent so fixed if and when a renewal actually takes place.

It would, however, appear from the latter part of the proviso to sect. 28 that the renewal fee is to be calculated on the basis of the fair rent as fixed under this section. In fact that section seems to assume in some cases the determination of fair rent under section 12 before renewal. There is apparently no other express provision in the Act for fixing fair rent as such, for, while a kuzhikanomdar who applies for renewal under section 22 is bound to apply for fixing fair rent, there is no such duty cast upon the kanomdar who applies under similar circumstances. But although there is no express provision, the Court while determining fee under sect. 24 (1), can incidentally determine fair rent and if the cultivating tenant is made a party as he ought to, he will be bound by the fair rent so fixed, in spite of the wording of the proviso to section 28 which assumes the determination of fair rent under section 12 for purposes of renewal under Chapter IV.

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12. On the receipt of an application under section 11, the court shall issue notice to all the parties concerned and after enquiry determine by an order —

procedure on receipt of the application

- (i) the extent of the holding ;
- (ii) the fair rent that is payable in respect of it ;
- (iii) the instalments, if any, in which the fair rent shall be payable ; and
- (iv) the date or dates on which the said rent or instalments shall be payable.

Although section 11 says that every petition should be in the form prescribed, neither in that section nor in this is there any indication of the requisites of a proper petition or the mode of presentation of the same. As in ordinary suits instituted under the Code of Civil Procedure, it may be necessary for the Civil Courts to maintain a separate register of applications filed under the Malabar Tenancy Act, containing the particulars of the suit so far as they are applicable to these petitions.

Although this section says "on the receipt of an application" it really means in the language of the civil court which is set in motion "when a petition under section 11 has been duly presented and filed" the court shall issue notice etc.

The section says nothing about the persons who should be made parties. Naturally every person who will be directly affected by the order is a necessary party. Further, every other person who appears to the court to be interested in the controversy or in the subject-matter of the petition will be ordered to be made a party to avoid further litigation respecting it. The court will in the first instance issue notice to all persons who are made respondents by the petitioner. If it is the landlord's petition, his immediate tenant is a necessary party or if it is the cultivating tenant's petition, his immediate landlord is a necessary party. All intermediaries may also be brought on record. Similarly, a rival landholder will be a

necessary party when there is dispute as to the extent of the holding and he is actually or constructively in possession of any portion of it.

Similarly, the Act is reticent as to the nature of the inquiry that is to be conducted. Ordinarily the Court will issue a commission for estimating the produce and after the receipt of the Commissioner's report, it will receive such further evidence, oral and documentary, as the parties may desire to produce. As the order under this section is appealable, the procedure prescribed for the trial of suits under the code of Civil Procedure will be followed so far as the same is applicable (Sect. 50)

### **The Extent of the holding.**

Where the lease deed contains definite measurements and boundaries as is usually the case in Malabar the question of the extent of the holding cannot present any difficulty.

It may however happen that the tenant has made accessions to the property or that the property has during the tenancy received accessions in the natural way. In either case the presumption is that the tenant is entitled to the benefit of the accession so long as the tenancy subsists and that on its termination, the landlord is entitled to the entire benefit of the accession except in the case where it was made at the expense of the lessee in which case he will be entitled to its value in case of eviction. But the matter would be different if it clearly appeared by some act done by the tenant that he made the accession for his own benefit and that he had no intention to hold it as a part of the original holding. (1) Otherwise the tenant cannot acquire an adverse title as against his landlord in respect of the accessions. Likewise, the landlord also cannot oust the tenant or claim to hold the accession separately from the property demised, but can only claim a fair and equitable rent, "on the ground that the tenant pays less than his neighbours, or that the productive power of the land has increased, or that the quantity of the land held by the tenant is greater than that for which rent has been previously paid by him" (2)

(ii) Fair rent. This will have to be fixed as laid down in sections 5 to 9 according to the kind of land.

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(1) *Goordas V. Isurchunder*, 2 W. R. 246.

(2) *Gorrdas Issur chunder*, 22 W. R. 247 *Ramidhi V. Parbuti*, 5 Cal 823; *Braj V Wovendra* 8 Cal 706.

Fair rent of dry  
lands converted  
into wet by  
tenant's labour

13. (1) A landlord may, at any time, by notice in writing, call upon his cultivating verumpattamdar, at the latter's option

(a) to pay one year's fair rent of the holding in advance, or

(b) to furnish security for the said fair rent, or

(c) to pay a portion of the said fair rent in advance and furnish security for the balance :

(2) If, within a period of six months from the date of the service of notice upon him under sub-section (1), the cultivating verumpattamdar fails to pay the advance or furnish the security demanded by the landlord, the landlord may apply to the court, in the form prescribed, for an order to direct the cultivating verumpattamdar, at the latter's option

(a) to pay one year's fair rent of the holding in advance, or

(b) to furnish security for the said fair rent, or

(c) to pay a portion of the said fair rent in advance and furnish security for the balance.

(3) On the receipt of an application under sub-section (2), the court shall issue notice to the cultivating verumpattamdar and, if satisfied after inquiry that the tenant has not complied with any of the provisions of sub-section (2), order the cultivating verumpattamdar, at the latter's option,

(a) to pay one year's fair rent of the holding in advance, or

(b) to furnish security for the said fair rent, or

(c) to pay a portion of the said fair rent in advance and furnish security for the balance,

(4) Where the cultivating verumpattamdar has already paid a portion of one year's fair rent of the holding in advance, or furnished security for a portion of the said fair rent, the provisions of sub-sections (1) to (3) shall apply in respect of the balance of such fair rent.

(5) Any advance of fair rent paid by a cultivating verumpattamdar to his landlord, whether before or after a demand under sub-section (1) or deposited by him for such payment under clause (i) of sub-section (4) of section 15, shall bear interest at six per cent per annum from the date of payment or from the date of service of notice of such deposit through court, as the case may be.

Under this section the tenant is bound to pay one year's rent in advance or furnish sufficient security for the same if the landlord so requires, option being given to the tenant. If he fails to furnish security within six months of the receipt of notice issued by landlord, the latter can apply to the court for an order directing the tenant to do either and if he does not comply with that order, it is open to the landlord to file a suit for eviction under Sect. 14 cl (7). Even then the tenant can avoid the passing of a decree if he complies with the order of the court and deposits the amount or furnishes proper security.

There is a practice of taking security for one year's rent from simple lessees and the Act only recognises that custom, although in some cases it may work hardship thus frustrating the object of the enactment. But this matter of security was a bone of contention for a long time. The draft bill submitted by Raghavaya Committee contained a provision for

security which was expunged by the Select Committee on the ground that such a provision would deprive many a deserving tenant of the benefit of the Act. They however retained the provision for summary realisation of rent by distress which in their opinion was a sufficient safeguard. The bill was passed in that form and when it came up before His Excellency the Governor for his assent, he sent it back to the Council with a recommendation to delete the provision relating to summary procedure for recovery of rent by distress and to substitute the provision for security. The Governor's recommendation was accepted subject to the exemption in favour of tenants who could claim three years' possession. This proviso not having been received with favour the bill was again remitted to the council with a recommendation to delete the proviso which was accordingly done and the bill was passed as it stands.

(2) The tenant is given 6 months' time from the date of service of notice to furnish security. The time is clearly too long under the circumstances and even after that time, the landlord cannot file a suit for eviction because he has to apply to the court for an order for security and it is only after the time fixed in the order has expired that a suit for eviction can be filed. By that time one full year will have elapsed and the landlord will be left without a remedy if the tenant plays false. The object of the security being to protect the honest landlord against the dishonest tenant, that remedy is effective only if the remedy can be availed of before the mischief has been wrought. Two months' time is therefore sufficient.

Again it would appear that notice is required to be served personally upon the tenant. It is not possible to do this always as he may evade service as is easily done especially in villages where the postal service is not so regular as in urban parts or he may have gone abroad. In such cases, notice attempted to be served on him either by actual service on any adult member of the family or by leaving it at his last known residence must be deemed to be sufficient.

14. No suit for eviction of a cultivating verumpattamdar from his holding shall lie at the instance of his landlord except on the following grounds :

Grounds for  
eviction of  
cultivating  
verum-  
pattamdar

(1) that the tenant has wilfully denied the title of the landlord before the date of such suit ;

*Explanation*— A denial of the landlord's title under a *bona fide* mistake of fact is not wilful within the meaning of this clause ;

(2) that the tenant has intentionally and wilfully committed such acts of waste as are calculated to impair materially and permanently the value or utility of the holding for agricultural purposes ;

(3) that the tenant has not paid, within three months after the due date, the whole or any portion of the rent due in respect of the holding ;

(4) that the tenant has collusively allowed a stranger to encroach on the holding or part thereof adversely to the interests of the landlord ;

(5) that, at the end of an agricultural year, the landlord requires the holding *bona fide* for his own cultivation or for that of any member of his family or tarwad or tavazhi who has a proprietary and beneficial interest therein ;

(6) that, at the end of an agricultural year, the landlord requires the holding or part thereof *bona fide* for building purposes for himself or any member of his family or tarwad or tavazhi who has a proprietary and beneficial interest therein ;

(7) that the tenant has not complied with the order of the court under sub-section (3) of section 13.

Provided that in cases falling under clauses (4) and (6) where only a part of the holding has

been encroached upon or is required, as the case may be, the eviction shall be from such part of the holding only.

*Explanation.*— In the case of a landlord governed by a law other than the Marumakkattayam law, the wife or husband and the children of the landlord shall be deemed to be members of the landlord's family having a proprietary and beneficial interest in the holding.

This section enumerates the various grounds on which and on which alone a landlord may sue for eviction of a cultivating tenant. As fixity of tenure is granted only on certain conditions, the tenant must fulfil those conditions if he is to enjoy the benefit of the Act. Just as an ordinary lease may be forfeited in certain cases, fixity conferred upon the tenant by the Act can also be forfeited. The first condition is that the tenant should not only not do anything which is prejudicial to the interests of the landlord, but he should duly discharge every obligation imposed upon him by law or contract. Ground Nos. 1 to 4 and 7 belong to this class. Another principle is that where the interests of the landlord and the tenant conflict, the interests of the former should prevail as the owner of the property ground Nos. 5 and 6 belong to this class.]

Cl. (1) **Denial of title.** The rule embodied in this clause follows the Transfer of Property Act Sect. 111 cl (g) (2) which in its turn follows the English law. Neither under the Estates Land Act nor under the Bengal Tenancy Act is a suit for eviction maintainable on this ground. This is probably due to the difference in tenure.

It is after a matter of no small difficulty whether the renunciation complained of is sufficient in law to constitute a denial of title on which a suit for eviction may be based. Every thing depends upon the language used and the intention of the party. If the language used is unambiguous and unequivocal and would, if reasonably construed, amount to disclaimer,

the court would infer that the title was denied. (1) As held in an English case: "to constitute a disclaimer, there must be a direct repudiation of the relation of landlord and tenant, or a <sup>distinct</sup> claim to hold possession of the estate upon a ground wholly inconsistent with the existence of that relation, which by necessary implication is a repudiation of it." (2) Thus a claim by the tenant that he had acquired ownership by adverse possession was held sufficient denial causing forfeiture of the lease. (3)

Both under the general law and the Act, the disclaimer must be before suit and a denial made in the written statement cannot relate back to the institution of the suit. (4) Under the general law the landlord must prove not merely that his title was denied but that it came to his knowledge before the suit. (5) This principle will of course apply to the cases under the Act, for without such an allegation the suit will not be maintainable. But the repudiation must be of the tenancy and not merely of its terms. (6) A permanent tenancy can be forfeited by a denial of title, (7) although Mr. Justice Srinivasa Iyengar was of opinion that there can be no forfeiture of such a lease. But the question whether an anubhavam tenure can be forfeited by denial of title has not been finally decided, although Mr. Justice Coatts Trotter took the view that there had been previous decisions relating to service tenures which applied to all forms of permanent lease. (8) The denial of a derivative title, as that of an assignee, can work a forfeiture of the tenancy. (9)

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(1) *Prag Narain V. Kadur Baksh* 35 A. 145; *Sridharan V. Narayanan* 41 M. L. J. 525; *Kalangath Nair V. Mariyama* 43 M. 480.

(2) *Doc V. Stanyon* 1 M. & W. 495 followed [in *Mullick V. Makama* 9 C. W. N. 928; *Kiloth V. Kertheva* (1916) M. W. N. 11.

(3) *Raman Nair V. Mariyama* 43 M. 480.

(4) *Maha Raja of Jeypore V. Rukhmini*, 42 M. 589 (p. c.); *Peria V. Subramani*, 31 M. 261.

(5) *Tirumanessari Kottayil Sridharan Rajah V. Kandanath Namboodiripad*, 41 M. 525; *Kamilootti V. Kunhamed* 41 M. 629.

(6) *Forbes V. Mir. Mohamed* 13 M. I. A. 438; *Jeypore V. Rukhmini* 42 M. 589 (p. c.)

(7) *Kally V. Mantohini* 24 Cal 445; *K. Kutti V. Puliakathe* 41 M. 629; *Venkata V. Ranga*, 36 M. L. J. 532 Tirum.

(8) *T. Rajah V. Namboodiri* 41 M. L. J. 525. Ref. *Goswami V. Mandal* 36 Cal 1003.

(9) *Venkata V. Ranga* 36 M. L. J. 532.

The Act is silent as to the question whether notice is necessary before the landlord can take advantage of this provision and bring a suit in ejectment. Under the amended Transfer of Property Act of 1929 sect. 111 cl. (g). Notice is necessary to determine the lease and although that Act does not apply to agricultural leases, the principle will no doubt be followed.

Cl. (2) **Active waste.** This ground covers cases of active waste, i. e., acts which are destructive of or permanently injurious to the holding and render the same substantially unfit for agricultural purposes. With this, compare sect. 151 of the Estates Land Act which entitles a landlord to eject an occupancy ryot under similar circumstances; but under that Act no decree for ejectment can be passed if the ryot repairs the damage complained of or pays the compensation fixed by the Collector. There is no reason for refusing such a relief to the Malabar tenant, for no tenant will under ordinary circumstances do any act which is positively injurious to the property especially when fixity of tenure has now been conferred upon him.

The question as to what will constitute waste of such a character as will enable the landlord to maintain a suit in ejectment is rather a difficult one. It depends upon the property demised and the custom of the locality. It also depends upon the tenure. A lessee, like a mortgagee in possession, may use the property in the way that a prudent man uses his own property and is not answerable for any <sup>deterioration</sup> determination caused by fair and reasonable enjoyment. It is only active and extensive waste that will cause forfeiture under the Act and not what is known to English law as permissive waste which is due to negligence or omission on the part of the tenant. A lessee is not entitled to divert the property to a purpose which is inconsistent with, the one for which it was leased. But the landlord cannot either under English law or under the transfer of Property Act eject the tenant on that account. <sup>(10)</sup> His remedy is by way of injunction and damages. When land under cultivation was converted into a mango-grove, by the tenant the landlord was held entitled to have the young trees removed, the pits dug up, and generally to have the land

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(10) *Chundur V. Mourede* 8 B. L. R. 40, *Masser V. Rukun*, 9 c. 609.

restored to its former condition. (11) But the planting of the trees is not in itself objectionable and can be resorted to so long as the character of the holding is not materially changed. Thus when irrigable wet land was converted into a coconut garden, the Madras High Court held that there was no sufficient reason to eject the tenant. (12) It remains to be seen how far this decision will be followed in the cases under the present Act, although value of compensation is generally awarded to the tenant under the Improvements Act in cases of such conversion. But where a tenant dug a tank on land leased for agricultural purposes the landlord is entitled to have it filled up at the tenants' cost. (13) When a tenant holding under a permanent lease made excavations so as to damage the land, the Calcutta High Court held that he had no such right, although under the terms of the lease he was entitled to make excavations. (14) What is known to English law as "ameliorating waste", i. e., such waste as improves the land, will not work forfeiture under this Act. (15) An "act which is detrimental to the land" must be distinguished from one which "alters the character of the land", as, for instance, turning agricultural land to building land. (16)

The provisions of this clause may become inapplicable when an act which is alleged to be waste has been acquiesced in by the landlord. (17)

**Agricultural purpose.** The term "agriculture" is not defined but it includes horticulture.

cl. (3) **Nonpayment of rent.**

Under the equitable doctrine embodied in section 114 of the Transfer of the property Act, the courts regarded the provision for ejection on nonpayment of rent as penal and granted relief against forfeiture in most cases if the tenant paid the arrears at the hearing of the suit.

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(11) *Lakshmana V. Ramachandra*, 10 M. 351; *Bholai V. Rajah of Banssi*, 4 A. 174.

(12) *Venkaya V. Ramaswami* 22 M. 39.

(13) *Charan V. Debhay* 8 Bona L. R. Appx. 6).

(14) *Girish V. Chandra*, 9 C. W. N. 255.

(15) *Doherty V. Alman*.

(16) *Madh Lal V. Prasad* 12 A. 419.

(17) *Churn V. Pal*, 23 W. R. 298.

This principle has been followed here. "Any portion of the rent due" means the portion of the rent due and not any portion that the tenant may have paid.

cl. (4) **Encroachment.**

Under the Transfer of Property Act Sect. 108 cl. (n) the tenant is bound to give due notice to the landlord of any encroachment made upon the property leased. Being in actual possession of the property, he is in a better position to become aware of such encroachments and the law casts a liability on him and if he fails in his duty on this respect, he is liable in an action for damages. But under this Act, mere failure to give notice will not work forfeiture. There must be proof of active connivance on his part.

cl. (5) **Landlord's own Cultivation.**

This and the corresponding provision in Sec. 20. in the case of Kanomdars are the most contentious provisions in the whole Act and naturally as they in a way take away the benefits conferred by Sect. 10, 16, 17 and 18 and but for the insertion of the word 'bonafide' by the Select Committee, the effect of the Act would have been practically nullified. This is a discretionary relief and every thing depends upon the way in which the discretion is used by the Courts especially in construing the word 'bonafide' literally it means 'with good faith' and when a thing is done bonafide we mean that it is done honestly or in good faith, without fraud or deception. But the term is used here in a wider sense and includes every device or contrivance by which the end in view is gained. While a landlord who wants to take to cultivation or extend his cultivation has an undoubted right to recover possession of any land leased more or less as a temporary arrangement, the arbitrary exercise of that right, if allowed, may result in great hardship and even nullify the Act. Great care should therefore be used by the Courts in exercising the discretion vested in them by law.

The question as to what requirements of the landlord are bonafide must depend upon the facts of the case. What may be a bonafide requirement in the case of landlord x may be malafide in the case of landlord y. What may be equitable and proper in the case of tenant x may be unfair and harsh in the case of tenant y. But there must be some reasonable criterion which should, as far as possible, be followed and applied with uniformity. The matter may be looked at from the point of view of the

land sought to be recovered or the landlord who wants to evict and the tenant who is sought to be evicted. Ordinarily, a landlord must be presumed to be entitled to recover possession of homefarm land, i. e., land which a landlord has cultivated himself and intends to resume for cultivation by himself even when he happens to lease it for a season. All other land must be presumed to be irrecoverable until the contrary is shown. The application of this principle will put a stop to evictions from lands held under Devaswams, many Rajahs including ancient aristocratic Nayar families and most Nambudri Brahmins. But there can be no hard and fast rule in this matter. Ordinarily a landlord who seeks to evict will have to establish the following facts.

(1) That he belongs to a class of landholders who are ordinarily cultivating landholders. If not, he will have to establish that, owing to altered circumstances or the influence of new ideas, it has become necessary or desirable to take to cultivation.

(2) That the land being capable of substantial improvement, it is necessary to recover the property for effecting such improvement.

(3) That the property is situated in the neighbourhood of the evicting landlord's ordinary place of residence.

(4) That the landlord is not animated by any bad motive and has no personal ill-will towards the tenant who is sought to be evicted,

When all these conditions are fulfilled there may be cases still in which the court will have to refuse this relief on the ground that in the circumstances of the case unfair and inequitable.

While under cl. (5) the tenant is liable to surrender only the portion actually required, it would appear that under this clause he will have to surrender the whole of the property comprised in the holding including dry and garden lands, if any.

#### cl. (6) **Building purposes.**

This ground like the previous one is liable to be abused. The general principle is the same. But in this case the eviction need not be from the whole of the holding.

This clause applies only to holdings which include dry or garden lands as only such lands are fit for building purposes unless it be that the landlord is going to raise the level of wet lands and build upon the same

which will hardly be a bonafide requirement. When the holding includes dry or garden land, the tenant will not have to surrender the wet land.

This Act does not apply to noncultivating Verumpattamdars who can be freely evicted by their landlords. Although they can apply to fix fair rent due from their tenants, their own landlords cannot apply under Section 11. The question there arises how the conferment of fixity upon cultivating tenants can be worked out. Apparently all middlemen will be eliminated unless they are allowed to evict their tenants on the ground that they want to cultivate the lands themselves.

15. (1) In any case in which eviction has been obtained on the ground specified in clause (5) of section 14, subject to the provisions of section 43, if the landlord who has obtained such eviction transfers any of the lands to any person on any kind of lease or mortgage with possession or on kanam, kuzhikanam or verumpattam within six years of such eviction, the cultivating verumpattandar shall be entitled to sue for the restoration to him of the possession of all the lands from which he was evicted and to hold them with all the rights and subject to all the liabilities of a cultivating verumpattandar.

Tenant's  
right to sue for  
restoration of  
possession of  
land in certain  
cases

(2) In any case in which eviction has been obtained on the ground specified in clause (6) of section 14, the cultivating verumpattandar shall be entitled to the right of suit conferred by subsection (1) not only under the circumstances mentioned therein but also if the building for constructing which the eviction was obtained is not erected on the lands within six years of the eviction.

(3) In any suit in which eviction is claimed on the ground specified in clause (3) of section 14,

if the tenant deposits in court, for payment to the plaintiff in the suit, (i) the amount of rent due with interest thereon at the contract rate, if any, (ii) interest on the principal amount of the rent due at twelve per cent per annum from the date of suit up to the date of deposit, and (iii) the costs of the plaintiff up to that date, the court shall dismiss the suit.

(4) In any suit in which eviction is claimed on the ground specified in clause (7) of section 14, if the tenant—

(i) (a) deposits in court for payment to the plaintiff in the suit one year's fair rent of the holding in advance or furnishes security for the same or deposits in court for such payment a portion of such fair rent and furnishes security for the remainder, or

(b) where he has already paid a portion of the said fair rent or furnished security for a portion thereof, deposits in court for payment to the plaintiff the balance of the said fair rent or furnishes security for such balance or deposits in court for such payment a portion of such balance and furnishes security for the remainder; and

(ii) deposits in court for payment to the plaintiff the costs of the latter up to the date of deposit; the court shall dismiss the suit.

**Restoration.** (1) This sub-section gives a right of suit for restoration of possession to a tenant who is evicted by his landlord alleging that he required the holding for his own cultivation but afterwards transfers possession to a third person within six years of the eviction,

Although the principle of the section is sound, the remedy prescribed may prove illusory in many cases as the landlord may, without himself cultivating the land come to some secret understanding with a third person who will cultivate it for him though not openly for the short period of six years and pay a portion of the produce as rent. Even if the landlord plays false openly, it will be difficult for the poor tenant to bring a suit against the landlord and get back the property.

(2) Under this sub-section a landlord who ejects his tenant alleging that the land is required for his own building purposes is liable to give back possession to such tenant not only if he transfers possession to a third person but also if he does not erect a building thereon within six years. This provision also may prove illusory not only if the landlord puts a third person in possession of the property under some secret arrangement but causes some building to be put up in name which may even disappear within six years.

### Relief against forfeiture.

(3) Under this sub-section, forfeiture incurred by nonpayment of rent under sub-section (3) is relieved against on payment of arrears of rent and costs.

(4) Under this sub-section, forfeiture incurred by noncompliance with the order for payment of a year's rent in advance or furnishing security for the same is relieved against on payment of the said rent or furnishing security.

The marginal notes will not apply to sub-sections (2) and (3) where the suit is to be dismissed there being no necessity in such a case for a suit for restoration.

## CHAPTER IV.—RENEWALS.

16. A customary verumpattamdar shall on the expiry of the verumpattam lease under which he holds be entitled to claim and his immediate landlord shall be bound to grant a renewal, enuring for a period of twelve years, of the same, on

Customary verumpattamdar's right to claim renewal and the renewal fee to be paid by him

payment to him, as renewal fee, of three times the balance of the annual fair rent of the lands covered by the verumpattam lease after deducting both the annual rent payable under the previous lease and the annual Government revenue in cases where the revenue is payable by such customary verumpattamdar.

This section confers a substantive right getting a renewal upon a customary verumpattamdar whether he is a cultivating tenant or not, before the Act it was only a customary right which was granted at the option of the landlord. If not so granted, the tenant had no means of enforcing it in law. This section gives him a right of renewal on payment of three times the annual fair rent after deducting the rent payable and the Government revenue, if any, payable by him.]

If the landlord and tenant do not agree as to fair rent, it will have to be determined as laid down in sect. 5 to 9. The cultivating tenant if there is one will be a necessary party to such a proceeding.

A customary verumpattamdar of dry or garden lands alone will not, it would appear, be entitled to a renewal under this section as he is not a verumpattamdar as defined in this Act S. 3 cl. (w). The result is unfortunate as his position is similar to that of a kanomdar who is given this right under the next section.

### Formula for renewal fee.

Suppose the fair rent of a plot of wet land is 75 paras of paddy, the annual rent 5 paras and Government revenue Rs. 3; suppose also the average price of a para of paddy is As. 12.

$$\text{Renewal fee} = 3 [\text{Rs. } 56-4-0 \text{ (Fair rent)} - \text{Rs. } 3-12-0 \text{ (rent)} - \text{Rs. (3 Revenue.)}]$$

$$= 3 \times 49-8-0 = \text{Rs. } 148-8-0.$$

17. (a) A kanamdar shall on the expiry of the kanam under which he holds be entitled to claim and his immediate landlord shall be bound to grant a renewal, enuring for a period of twelve years, of the same on payment, as renewal fee, of two and one-fourth times the balance of the annual fair rent of the lands covered by the kanam after deducting (1) the annual revenue payable on the kanam property to the Government, if payable by the kanamdar under the kanam deed, (2) the annual interest on the kanartham, and (3) the annual michavaram payable under the previous kanam.

Kanamdar  
right to  
claim renewal  
and the  
renewal fee  
to be paid  
by him

(b) When neither the rate of interest nor the amount of interest per annum nor the sum total of the annual revenue payable on the kanam property to Government by the kanamdar and the amount of interest per annum, is specified in the kanam deed, interest shall, for the purposes of sub-section (a), be calculated

(1) In North Malabar—at five per cent per annum, and

(2) In other places—at twelve per cent per annum when the kanartham does not exceed one thousand rupees; at nine per cent per annum subject to a minimum of one hundred and twenty rupees per annum when it exceeds one thousand rupees but does not exceed three thousand rupees; and at six per cent per annum subject to a minimum of two hundred and seventy rupees if it exceeds three thousand rupees:

Provided that, when any usage governing kanam transactions fixes a rate of interest lower than what is provided for in this sub-section, the interest shall be calculated at such rate.

(c) Nothing in this section shall apply to a kanam

- (i) where the kanartham exceeds in South Malabar, sixty per cent, and in North Malabar, forty per cent, of the value of the janmi's rights in the holding, or
- (ii) where all the lands covered by the kanam are dry lands.

*Explanation I.*—For the purpose of subsections (b) and (c), 'North Malabar' means the taluks of Chirakkal, Kottayam, Kurumbranad and Wynaad; and 'South Malabar' means the other taluks in the district of Malabar.

*Explanation II.*—For the purpose of subsection (c), the janmi's rights in the holding shall be valued at twenty times the excess of the annual fair rent of the holding over the annual revenue payable thereon to Government —

(1) in the case of a kanam existing on the date of the commencement of this Act, on such date and

(2) in the case of a kanam created after the commencement of this Act, on the date of the kanam.

Under this section all kanomdars whether they are cultivating kanomdars or not except those coming under cl. (c) are entitled to renewal on payment of two and one-fourth times the annual fair rent after deducting the interest on the kanom amount, michavaram and Government revenue.]

**Formula.**

Suppose the estimated gross produce of a cocoanut garden is 5000 cocoanuts and all the trees belong to the tenant, suppose the price of thousand cocoanuts as notified under S. 51 (1) is Rs. 40, the kanom Rs. 50 michavaram Rs. 6 and Government revenue, Rs. 12 a year.

Fair rent (S. 7) =  $\frac{1}{5}$  of 5000 nuts = 1000 = Rs. 40 Renewal fee = Fair rent *minus* interest on kanom amount *minus* michavaram *minus* Government revenue, multiplied by  $2\frac{1}{4}$  = Rs.  $2\frac{1}{4}$  (Rs. 40—6—6—12) = Rs. 36. This amount may be said to be small but generally the rate of interest allowed is only 6 p. c. when the renewal fee will rise to something like Rs. 45, and this amount cannot be small when we remember that the landlord will have to pay between Rs. 1500 & Rs. 2000 as value of improvements if he is to reduce the property to actual possession. But as the principle of the legislation is that the landlord is entitled to some compensation for the right to obtain a renewal vested in the tenant, a proviso may be inserted that in case the renewal fee calculated under this section on the basis of the fair rent as ascertained under section 7, is less than Rs. 50. Per acre, the landlord shall be entitled to claim at this rate except where under the circumstances of the case such fee is unfair or inequitable. The landlord may also be allowed a miscellaneous fee not exceeding Rs. 5 in case of small renewal fees and Rs. 10 in other cases, to cover incidental expenses.

### Exceptions.

cl. (c.) (1) This exception is due to the fact that where the kanom amount exceeds a certain percentage of the value of the property, the kanom is scarcely distinguishable from an ordinary mortgage and the landlord who is treated as a mortgagor is allowed to redeem the mortgage. In such cases, the renewal fee will be proportionately reduced and may even be negligible if strictly calculated under this section. The Cochin Tenancy law as it exists now also exempts such kanoms but a bill has been introduced to amend the law so as to bring such tenures within the purview of the tenancy regulation. (ii) This exception relates to holdings which comprise only dry lands.

A question of some importance may arise as to the position of a cultivating tenant who holds under a kanomdar against whom his immediate landlord or the Janmi has filed a suit for redemption but who fails to apply for renewal under the provisions of the Act. Will it affect the fixity of tenure conferred upon him by section 10? Section 26 may not apply to such a case, for the cultivating tenant may not always be holding on a tenure which is subject to the incident of renewal. A cultivating tenant is entitled to fixity of tenure only as against his immediate

landlord (S. 14) But if there is fraud or collusion between him and the Jammi, he can claim the benefit of the Act either by applying for renewal under sect. 23 or claiming fixity under sect. 10.

Although section 18 provides for the case of intermediaries, this section does not specifically make mention of any intermediary.

Cultivating kuzhikanamdar's right to claim renewal and the renewal fee to be paid by him

18. (1) A cultivating kuzhikanamdar shall on the expiry of the kuzhikanam under which he holds be entitled to claim and his immediate landlord shall be bound to grant a renewal, enuring for a period of twelve years, of the same, on payment, as renewal fee, of the total of one-fourth of the annual gross produce of the fruit-bearing trees and pepper vines where pepper is not the principal crop in the holding, belonging to the cultivating kuzhikanamdar and one-half of the annual gross produce of the other fruit-bearing trees and pepper vines where pepper is not the principal crop in the holding.

Intermediary's right to claim renewal of kuzhikanam and the renewal fee to be paid by him

(2) Any intermediary of the kuzhikanam shall, on the expiry of the kuzhikanam under which he holds, be entitled to claim and his immediate landlord shall be bound to grant a renewal, enuring for twelve years, of the same, on payment, as renewal fee, of the total of one-fourth of the annual gross produce of the fruit-bearing trees and pepper vines where pepper is not the principal crop in the holding, belonging to the intermediary and all the tenants below him including the cultivating kuzhikanamdar and one-half of the annual gross produce of the other fruit-bearing trees and pepper vines where pepper is not the principal crop in the holding.

*Explanation.* — For the purpose of this section, the annual gross produce shall be deemed to be equivalent to a third of the total nuts, fruits and pepper produced during the immediately preceding three years, and where a cocoanut tree has been let for tapping its produce of nuts for the purposes of this section shall be deemed to be the same as the produce of nuts of a tree of a similar description and with similar advantages in the neighbourhood which has not been so let.

The benefit of this section is confined only to cultivating kuzhikanomdars while there is no such restriction in cases coming under sects 16 & 17. Such kuzhikanomdars can claim renewal on payment of one-fourth of the annual gross produce of the tenant's trees and one-half of the remaining trees.

For the purpose of renewal under this section, the produce of all fruit-bearing trees including jack, mango and other trees which are fruit-bearing should be taken into account. Other timber trees however valuable will not therefore be taken into account.

As in cases of kanom, the Janmis may complain that the renewal fee payable under this section is less than the fee that is generally levied now and the complaint seems to be well-founded.

19. Subject to the provisions hereinafter contained, the renewal fee fixed under sections 16 to 18 shall be payable as follows :—

Time within  
which renewal  
fee is payable

(a) In case the tenant is not a cultivating kuzhikanamdar, two-thirds of the renewal fee in the year next after the termination of the expiring transaction and one-third in the next following year ;

(b) in case he is a cultivating kuzhikanamdar, one-third of the renewal fee in the year next

after the termination of the expiring kuzhikanam and the rest in five equal consecutive annual instalments in the years following the said year.

The cultivating kuzhikanamdar is specially favoured under the Act. Not only does he enjoy special concession rates of renewal fee, but he can also make very easy payments. There is no justification for allowing such easy payments in the matter of renewal fee especially when the amount is small. There will be many practical difficulties if renewal fee is allowed to be paid by annual instalments.

It would appear from cl. (b) of subsection (1), Section 24 and proviso to that section that a separate petition will lie under this section for determining the renewal fee.

Grounds for  
eviction of  
customary  
verumpattam-  
dar, kuzhi-  
kanamdar or  
kanamdar

20. No suit for eviction of a customary verumpattamdar, kuzhikanamdar or kanamdar shall lie at the instance of his landlord except on the following grounds:—

(1) that the tenant has wilfully denied the title of the landlord before the date of such suit.

*Explanation.*—A denial of the landlord's title under a *bona fide* mistake of fact is not wilful within the meaning of this clause;

(2) that the tenant has intentionally and wilfully committed such acts of waste as are calculated to impair materially and permanently the value or utility of the holding for agricultural purposes;

(3) that the period of the verumpattam, kuzhikanam or kanam, as the case may be, has expired and no renewal has been obtained;

(4) that the tenant has collusively allowed a stranger to encroach on the holding or part thereof adversely to the interests of the landlord;

(5) that the period of the verumpattam, kanam or kuzhikanam, as the case may be, has expired and there has been no renewal and the landlord requires the holding *bona fide* for his own cultivation or for that of any member of his family or tarwad or tavazhi who has a proprietary and beneficial interest therein ;

(6) that the period of the verumpattam, kanam or kuzhikanam, as the case may be, has expired and there has been no renewal and the landlord requires the holding or part thereof *bona fide* for building purposes for himself or any member of his family or tavazhi who has a proprietary and beneficial interest therein :

Provided that in cases falling under clauses (4) and (6) where only a part of the holding has been encroached upon or is required, as the case may be, the eviction shall be from such part of the holding only.

*Explanation.*—In the case of a landlord governed by a law other than the Marumakkattayam law, the wife or husband and the children of the landlord shall be deemed to be members of the landlord's family having a proprietary and beneficial interest in the holding.

This section may be treated as an exception to sections 16 to 18 and the right to claim renewal under those sections can be exercised only subject to the conditions contained in this. The principle is the same as that of section 14, the grounds enumerated being almost identical. The Legislature has apparently drawn no distinction between the two tenures in this respect. (Vide Introduction) but the courts will decree eviction only in fewer cases owing to the better tenure in this case. For example,

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if the ground alleged is waste, more extensive waste will have to be proved in this case than under section 14. Similarly, if it is the landlord's own use and purpose that is alleged, better necessity will have to be proved in this case. The question as to the exact circumstances in which the courts will grant the prayer of landlords for the eviction of kanam tenants is not one capable of a general and inflexible answer, but the courts will be naturally reluctant to disturb tenancies of old date the origin of which may even be unknown.

Tenant's right  
to sue for  
restoration  
of possession  
of land in  
certain cases

21. (1) In any case in which eviction is obtained on the ground specified in clause (5) of section 20, subject to the provisions of section 43 if the landlord who obtains such eviction transfers any of the lands to any person on any kind of lease or mortgage with possession or on kanam, kuzhikanam or verumpattam within six years of such eviction, the tenant, shall be entitled to sue for the restoration to him of the possession of all the lands from which he was evicted and to hold them with all the rights and subject to all the liabilities of a tenant.

(2) In any case in which eviction has been obtained on the ground specified in clause (6) of section 20, the tenant shall be entitled to the right of suit conferred by sub-section (1) not only under the circumstances mentioned therein but also if the building for constructing which the eviction was obtained is not erected on the lands within six years of such eviction.

The principle of this section is the same as that of section 14, the object being to restore the tenant to the *statuquoante*, if the landlord plays false.

22. (1) Notwithstanding any contract to the contrary (whether made before or after the commencement of this Act), a customary verumpattandar, kanamdar or kuzhikanamdar shall be entitled to apply to the court in the form prescribed for the execution of a renewal deed.

Tenant's right to apply to court for execution of renewal deed

(2) On the receipt of an application under sub section (1) notice thereof shall be sent to the landlord from whom such renewal is claimed, fixing a date for the trial of the application.

23. (a) On the date fixed under sub-section (2) of section 22 the court shall call upon the said landlord to state in writing whether he desires to evict the tenant on any of the grounds referred to in section 20 except ground (3) and take the holding: and if the landlord expresses his intention to do so the application shall be dismissed.

Dismissal of application if landlord desires to evict the tenant on certain grounds

(b) If the landlord sues to evict the tenant on ground (3) referred to in section 20, the tenant shall be entitled to make an application or a fresh application under sub-section (1) of section 22 and the suit shall abide and follow the result of such application.

24. If the application is not dismissed under sub-section (a) of section 23, the court shall

Procedure on application under section 22

(1) determine

(a) the amount to be paid as renewal fee under sections 16, 17 or 18,

(b) the amount of each instalment under section 19, and

(c) the date on which each instalment was or will become due; and

Order to deposit  
renewal fee,  
etc.

(2) make an order for the deposit, within a time to be fixed in the said order, of

(a) the instalment or instalments due on or before the date of the order,

(b) interest at 12 per cent per annum on each such instalment from the date on which it became due or from the date of the commencement of this Act, whichever is later, and

(c) all arrears of rent with interest thereon at the contract rate, if any, found due up to the date of the order if the landlord claims that any arrears of rent are due:

Provided that no such interest on a renewal fee or a portion thereof shall be payable if the landlord has refused a valid tender of the renewal fee payable under section 19 or if an application under sub-section (1) of section 22 has been dismissed under section 23 (a).

Effect of failure  
to deposit  
renewal fee,  
etc.

25. (1) If the deposit ordered under clause (ii) of section 24 is not made within the time fixed thereunder, the court shall dismiss the application, and such dismissal shall bar any subsequent application under section 22 by the tenant or those claiming under him.

(2) If the said deposit is made within the time fixed, the court shall

Execution of  
renewal deed  
by court

(i) execute a renewal deed containing such terms as it determines to be the terms of the expiring transaction and as are in accordance with law,

(ii) pass, where necessary, an order directing the person entitled to the renewal deed to pay the landlord a further instalment or instalments of the renewal fee in accordance with section 19 with interest at six per cent per annum on each instalment from the due date to the date of payment, and

(iii) make such order as to costs of the proceedings before it as it may deem fit.

(3) A renewal deed executed by the court under sub-section (2) shall have the same effect as if it was executed by the landlord himself, and shall entitle the tenant to enjoy the holding for twelve years from the date of the termination of the previous lease, kanam or kuzhikanam,

Legal effect  
of renewal  
deed executed  
by court

Sections 22 to 25 which describe the mode of enforcing the substantive right of renewal conferred upon the tenant by sections 16 to 18 are perhaps the most absurdly worded sections in the whole Act and although they appear to have been framed with a certain amount of artistic skill and logical correctness, we are constrained to say that it is doubtful whether they fully carry out the intentions of the distinguished authors of the Act.

S. 22. To begin with section 22, that section says that the tenants mentioned in sections 16 to 18 may apply to the court for a renewal deed and the court shall issue notice to the landlord.

S. 23. The landlord appears in pursuance of the notice and is asked whether he is going to evict the tenant on any of the grounds mentioned in section 20 except ground No. 3 which entitles him to evict the tenant on the sole ground that on the expiry of the term of the demise the tenant has failed to obtain a renewal. If the landlord expresses his intention to evict the tenant on one or other of those special grounds, the petition for renewal is forthwith dismissed. If the landlord sues to evict the tenant on the simple ground that he has failed to get a renewal, the tenant shall be entitled to apply for renewal if he has not already applied or apply

again if a previous application<sup>1</sup> has been dismissed and the result of the suit will depend upon the result of the petition.

S. 24. If the petition is not dismissed under subsection (a) of section 23 i. e., on the ground that the landlord has expressed his intention to eject the tenant either because he wants the land for his own use or the tenant has misbehaved the court shall determine the renewal fee and order the renewal fee so fixed to be deposited in court and, on the deposit being made, execute a renewal deed for the landlord.

Now sect. 22 clearly contemplates a case where the tenant applies for renewal before suit although as it stands it may mean the general right to claim renewal. If in such a case the landlord wants to evict the tenant on one or other of the special grounds mentioned in section 20, the petition for renewal shall be summarily dismissed. The court cannot make any inquiry. The procedure prescribed is just like that prescribed in cases of deposit of the mortgage amount under the Transfer of property Act. If the landlord is willing, a renewal will be granted otherwise, the petition will be dismissed. Everything is clear up to this. The difficulty begins only with cl. (6) where it is said that the tenant may renew his application for renewal when a previous application has been dismissed for the reason that he wants to eject the tenant. While any landlord bring a suit on ground No. 3 alone when he has once said that he is going to evict the tenant, the suit be maintainable on that ground alone when he wants to recover the property for himself? Then again the section says that the suit shall be held up till the petition is heard and disposed of. What are the points to be considered in the petition? Suppose the suit is leased on grounds other than No. 3 in section 20. Shall the validity of those grounds be decided in the suit or petition? Certainly in the suit. But the Act is silent about suits based on those grounds. Again, section 24 refers only to a single case in which the court can determine the renewal fee and that apparently is where the tenant has filed a petition before the landlord's suit, for if a suit is pending why should the petition be dismissed on the mere expression of an intention on the part of the landlord that he wants the property for himself or on the ground that the tenant is not inquiry entitled to a renewal. Again the first part of sect. 24 says. "If the application is not dismissed under sub-section (a) of section 23" while the proviso says "interest shall not be payable if such a petition is dismissed." Is it not self-contradictory?

We would respectfully make a suggestion to amend the first part of section 24 in some such way as this "If the application is not dismissed under subsection (a) of section 23, or if, in a suit instituted by the landlord on any of the grounds except ground no 3 referred to in section 20, the plaintiff fails, or if in a suit instituted by the landlord on ground no 3, the tenant has made an application for the execution of a renewal deed, the court shall (1) determine" the renewal fee etc., etc.

Again, suppose the landlord does not appear in pursuance of the notice. Shall the court presume that he is not willing to grant a renewal and dismiss the petition?

S. 24 (1) (a) "Fee under sections 16, 17 or 18" means sections 16, 17 or 18 as the case may be.

(b) From this it would appear that the renewal fee is an amount certain in every case and can be determined without the help of the court. As a matter of fact, it is in most cases an uncertain amount and depends upon the gross produce which must be estimated by the court if the parties do not agree and this can be done only as incident to a renewal effected through the court.

(c) "If the landlord claims arrears of rent" means "if the landlord is found to be entitled to any arrears."

(2) (1) It is not necessary nor is it desirable that the court should execute the renewal deed in the first instance. It is only if the landlord fails to comply with the order of the court that the tenant should invoke the aid of the court. In such a case the tenant may prepare a draft of the kanom document in accordance with the terms of the order of the court and the procedure prescribed in rule 34 of order 21 of the Civil Procedure Code in decrees for the execution of documents may be followed so far as it is applicable to the case.

(3) Lease obviously means customary verumpattom though the word is not defined in the Act.

26. (i) In case there are one or more intermediaries between the janmi and the tenant in actual possession of the holding and a renewal has been granted by an intermediary (hereinafter refer-

red to in this section as the grantor) after this Act comes into force or by the court on his behalf under sub-section (2) of section 25, if the grantor on his own part does not obtain renewal for any reason, the person to whom such renewal has been granted (hereinafter referred to as the grantee) shall be deemed to have contracted with the intermediary or the janmi who is the landlord next above the grantor, for the period of the renewal given to the grantee, on the terms on which the grantee had contracted with the grantor or on the terms on which the grantor had contracted with such next landlord, at such landlord's choice, and there shall be deemed to be privity of contract between the grantee and such landlord subject to the right of the janmi or the landlord to evict the tenant on the grounds specified in section 20 other than the ground of non-payment of renewal fee.

(2) The intermediary or the janmi who is the landlord next above the grantor shall be entitled to sue the grantor for the proportionate share of any renewal fee which he might have obtained from the grantee for the period between the termination of such grantee's interest in the land and that of the period for which he had given renewal.

*Illustrations.*—*A*, a janmi, grants a kuzhikanam to *B* in 1928. *B* grants a sub-kuzhikanam to *C* in 1932. In 1940 *B* gets a renewal from *A* and in 1944 he grants a renewal to *C*. In 1952 *B* does not take a renewal. *C* shall be deemed to have contracted with *A* on the terms of his own renewal of 1944 or on the terms of *B*'s renewal of 1940 at *A*'s option, and *A* will not be entitled to evict *C* till 1956.

Effect of  
renewal on the  
rights of land-  
lord's landlord

If in the above illustration, *B* had taken a renewal fee of Rs. 120 from *C* when granting the renewal in 1944, *B* shall be liable to pay *A* one-third of Rs. 120 for the period between 1952, when his interest ends and 1956 up to which *C* is entitled to stay on the land.

This section which provides for the case of one or more intermediaries is perhaps new inasmuch as under the existing law a renewal granted in favour of tenant by an intermediary will not usually be binding upon the superior landlord. Under this section a tenant who is holding not directly from a Janmi but under a person holding directly or indirectly from a Janmi and who has obtained a renewal from his immediate landlord will be entitled to hold the land for the full period of his renewed demise even if his immediate landlord fails to obtain a renewal on the expiry of his own demise, but he will be liable to perform during the remaining period of his renewed demise all the terms of the demise under which his own landlord was holding the property if the superior landlord chooses to hold him so liable and it is not open to him to plead want of privity of contract between himself and the superior landlord. But the superior landlord can claim from the intermediary who has granted such renewal a proportionate share of the renewal fee which he has received from his tenant

“shall be deemed to have contracted with the intermediary or the Janmi” means “shall be deemed to have contracted with the Janmi or every intermediary including the grantor” and “for the period of the renewal given to the grantee” means “the remaining period.”

(2) “Any renewal fee” is a vague term and probably means the fee payable under the Act as any other fee cannot be ascertained.

27. Where in respect of any customary verumpattam, kanam or kuzhikanam holding for which a renewal deed has been executed under the provisions of this chapter, if (a) no application is filed under sub-section (1) of section 22 or (b) within six months after the termination of the

Right of landlord to sue for renewal fee in certain cases

period for which the said renewal deed enures and of every period of twelve years succeeding such period, the tenant does not secure a renewal on such terms as may be agreed to between him and the landlord, he may be deemed at the option of such landlord to have agreed to a renewal on the terms of the said deed for twelve years from the date of the termination of each of the said periods, and the said landlord shall be entitled to sue the said tenant for the renewal fee specified in sections 16, 17 or 18.

The provisions of this section are cumbrous, but the principle seems to be that when once a renewal has taken place under the provisions of this Act, the landlord may afterwards bring a suit for renewal fees. This assumes that the amount is certain, while the renewal fee specified in sections 16 to 18 is an uncertain amount which will have to be determined in each case on the basis of fair rent or estimated produce. It would have been otherwise if the section had stated "the renewal fee determined for the purposes of the first renewal or shown in the kanom deed as provided in section 46 cl. (f)". Again, the section gives to the landlord an option in this matter. What is his other remedy? He may bring a suit for eviction on the ground that the period has expired and there has been no renewal. If he brings such a suit, the tenant can apply for renewal under cl. (C) of section 23, in which case the renewal fee will have to be determined by the court. It comes to the same thing then. Again, the section says that the landlord may sue for renewal fee if no application is filed for renewal under S. 22. If an application is filed under that section, the court will have to determine the renewal fee.

Another objection to the principle of the section as worded is that the tenant seems to be bound to pay renewal fees whether he is willing to take a renewal or not. He must obtain a renewal. If not, he will be sued for the renewal fee. There seems to be no other course open to him. If he surrenders, he will have to forego the kanam amount and value of improvements, if any, due to him. (S. 44)

The right to sue for renewal fee though sound in principle may sometimes deprive the tenant of his right to purchase the kudiyruppu, for under section 33 he can make the offer to purchase the landlord's rights only if a suit for eviction is instituted against him, so that if he is notable to purchase it at the first renewal, his right will be imperilled altogether.

### CHAPTER V.—RENTS.

28. Every cultivating verumpattandar shall be bound to pay to his immediate landlord, fair rent as fixed under section 12 :

Cultivating verumpattandar's liability to pay fair rent

Provided that in the case of a cultivating verumpattandar's holding existing at the date on which this Act comes into force, the rent payable on such holding shall be deemed to be fair rent for a period of twelve years from such date; unless the rent fixed under section 12 has been taken into account for the purpose of calculating the renewal fee under Chapter IV and there has been a renewal, in which case, such rent shall be payable by the cultivating verumpattandar from the date of renewal.

Under the existing law the principle of which is embodied in the Transfer of Property Act, Section 108 clauses (c) & (l), every tenant who is holding under an express engagement is liable to pay the rent he has agreed to pay under it. A cultivating tenant is however liable only to pay the fair rent fixed under the Act, but as the operation of this part of the Act has been postponed for twelve years, he will have to pay the present rent for twelve years except where there is an intermediary who has to take a renewal in the meantime in which case he will be liable to pay the fair rent fixed for the purposes of the renewal. There are many tenants whose rents are too exorbitant to be paid without considerable

self-sacrifice and to them fixity of tenure is practically unavailing for a very long period.

The section speaks only of tenants who were in the holding on the date of the commencement of the Act. But in the case of new tenants admitted after the Act, there can be an application for fixing fair rent twelve years after the commencement of the Act and not necessarily after the date of the lease.

Under the Act (S. 41) the arrears of rent are a charge on the property and will have priority over all other charges except Government revenue.

This section does not apply to intermediaries whose rents will continue to be controlled by contract.

Now that fixity of tenure has been conferred on the tenant an important question will arise whether a tenant who has transferred his holding and given notice of the transfer to the landlord is liable for the rent that has accrued after the transfer. The common law of India is that a tenant who transfers his interest in the holding and gives notice to the landlord ceases to be liable for rent provided that the tenancy is not one created by contract. But in Malabar the relations of landlord and tenant especially the verumpattom tenant arise out of contract and the principle of the law stated above will not be applicable unless the landlord consents to the transfer; but the character of the tenancy has been changed by the Act and although the origin of the tenancy is by contract a new form of tenancy which is expressly made alienable by Act (S. 39) has been created by the Act and such a tenant will not ordinarily be liable for rent after he has transferred the holding and given notice to the landlord.

Liability for  
revenue as  
between  
landlord and  
cultivating  
verumpattam-  
dar

29. (1). As between any landlord and a cultivating verumpattamdar, the latter shall be liable for (a) the revenue payable to the Government as also the local cesses, on any land on which no rent is payable under this Act, and (b) any special charges leviable by the Government for special or additional crops raised on the wet lands.

(2) In the case of lands (within the limits of a municipality) in respect of which the landlord has obtained fair rent as ascertained under section 9, he shall bear the tax levied by the municipality for such land to the extent such rent is higher than what is payable therefore under sections 5 to 8; but otherwise the landlord and the tenant shall bear such tax in equal shares.

Liability for  
municipal tax

This section provides for two kinds of lands: (1) Lands for which no rent is payable under the Act and (2) Lands situated within municipal limits. As regards the former, the section provides that public dues should be paid by the tenant because the landlord gets no benefit out of it. It is difficult to understand what is meant by rent in this section. If it is synonymous with fair rent, the provision is equitable; otherwise rent may be payable under special contract between landlord and tenant which will not be affected by the Act. In such a case the imposition of an extra charge may be a source of hardship to the tenant. The matter is of however no great importance as such lands are negligible.

As regards the latter, the section provides that where the landlord gets additional rent on account of the situation of the land, the landlord shall pay the tax to the extent of the increase and where there is no such increase the tax shall be borne by the landlord and tenant in equal moiety.

30. (1) At any time after the expiry of twenty years from the date of an order fixing the fair rent in respect of a holding or from the date of the last confirmation or revision of such order under this section, the cultivating verumpattamdar or his immediate landlord shall be entitled to apply, in the form prescribed, to the court for the revision of such order so far as the fair rent is concerned,

Revision of  
rent

(2) On the receipt of such an application, the court shall, after notice to the landlord or the cultivating verumpattamdar, as the case may be, determine the fair rent and confirm or revise the order.

(3) If the order is revised, the cultivating verumpattamdar shall be bound to pay rent according to the revised order from the beginning of the agricultural year next after the date of such revision.

This section provides for the periodical revision of the order, the period being twenty years—a period which may be unreasonably long in some cases. The Act is silent as to the grounds on which the order may be revised. When the order is revised, the rent may be enhanced or reduced. The possible grounds of enhancement are (1) the rise in average prices during the currency of the existing rent (2) the increase in the productivity of the soil (3) Improvements effected by the landlord and (4) an additional area found to be included in the holding. The following are some of the grounds for the reduction of rent (1) a fall in prices (2) Deterioration of the soil owing to no fault of the tenant and (3) decrease in the area by erosion or other causes of a like nature. There is a provision in the Estates Land Act that any enhancement which under the circumstances of the case is unfair and inequitable should not be made.

There is no particular reason why the order passed so long as twenty years ago should be revised. It would seem enough to have said that the rent is liable to be revised every twenty years. As twenty years is a big span in a man's life, the hard and fast rule of that period may work considerable hardship in some cases. We presume that this section is inapplicable to cases where the land is, by the Act of God, put in such a state that the tenant cannot enjoy the same. Where, for example, any portion of the land is, by Act of God, washed away, the tenant will be clearly entitled to an abatement of rent unless the lease expressly

precludes him from claiming such abatement (1) and in such a case he need not wait for twenty years but claim abatement in the suit brought by the landlord for arrears of rent. (2)

Similarly, if a portion of the demised land became unfit for paddy cultivation owing to inundation by sea-water, the tenant could, as a defence to a suit for rent, successfully plead that he is entitled to a proportionate reduction of rent and it is not necessary that he should throw up the lease altogether, the principle of S. 108 B (e) being inapplicable to agricultural leases. (3)

31. (1) A cultivating kuzhikanamdar shall, when making an application under section 22, or the landlord may, when answering such an application, apply to the court dealing with the application to determine the fair rent payable in respect of the holding to which the application relates, and the court shall make an order determining the same before disposing of the said application, and for the period for which the renewal deed executed on the said application enures, the parties thereto shall be bound to pay and receive rent so determined by the court.

Application to court to fix fair rent in case of kuzhikanam.

(2) Nothing in this section shall, in respect of the trees which had begun to bear fruits at or before the time of the execution of the deed referred to in clause (i) hereunder,

(i) entitle the landlord to claim or compel the tenant to pay, for a period of twelve years from the commencement of this Act, more than the rent specified in the latest kuzhikanam deed, original or

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(1) *Sheik V. Sheik, Sp. W. R., Act X., 48.*

(2) *Afruddin V. Bala Debi, Marsh. 558.*

(3) *S. Patter V. K. Rama, 37 M. L. J. 654.*

renewed, executed before the commencement of this Act, or

(ii) authorise any claim for an enhancement at the time of each renewal by more than twelve and a half per cent of such rent.

There are only two specific cases of determination of fair rent under the Act (1) in the case of cultivating verumpattamdars under section 12, which can occur only twelve years after the commencement of the Act except in case of any intervening renewal (2) in the case of cultivating kuzhikanomdar in which it is incidental to any renewal that may take place at any time after the commencement of the Act although the effect is practically nullified by the explanation that the existing rent is not liable to be increased for a period of twelve years from the commencement of the Act.

There seems to be no particular necessity for the words in subsection 2 "in respect of the trees which had.....hereunder" and we are not sure whether plural number for "fruits" in that subsection is idiomatically correct.

32. Notwithstanding any contract to the contrary, express or implied, whether entered into before or after the coming into force of this Act, no cultivating verumpattamdar shall be liable to pay to his landlord anything more or anything else than the fair rent and no tenant who is entitled to claim a renewal under this Act shall for the purpose of obtaining the renewal be liable to pay as renewal fee anything more or anything else than the renewal fee provided by this Act.

Invalidity of claim for dues other than fair rent and renewal fee fixed under Act

This section declares once for all that any demand made by a landlord of a cultivating verumpattamdar of anything more than the fair

rent fixed under the Act and any demand made of a tenant entitled to claim a renewal for anything more than the renewal fee fixed under it are unculturised and illegal and that the tenant is not bound to pay the same.

The object of this section is to put a stop to sundry items of rent claimed, and various customary dues in the shape of occasional presents and contributions exacted generally by landlords on some pretext or other during the currency of the lease or demise.

If this provision is intended to abolish such customary presents as bunches of plantain which are an indispensable item of rent and which every tenant is expected to make and usually makes to his landlord, the result cannot but be regarded as unfortunate.

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## CHAPTER VI.—KUDIYIRUPPUS.

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33. In any suit for eviction relating wholly or in part to a kudiyruppu, which has been in the continuous occupation of a tenant or the members of his family for ten years on the date of the institution of the said suit, such tenant shall be entitled to offer to purchase the rights in the kudiyruppu, of the landlord who seeks to evict him, at the market price on the said date.

Tenant's right to offer to purchase landlord's right in kudiyruppu

This section makes provision for the purchase of homesteads by occupying tenants who have continuously remained in the holding for not less than ten years on the date of the suit for eviction. The right can be exercised only by tenants, for only in suits for eviction can an offer to purchase be made and since eviction means dispossession of a tenant by judicial process Sect. 3 cl. (c) the tenant must have had a continuous occupation of not less than ten years as such either in himself or any person under whom he claims to entitle him to make the offer. The offer is limited to the tenant's house with the grounds and other buildings immediately contiguous and any easement annexed thereto. It is also limited to the rights of the evicting landlord and if he happens to be an intermediary

it is only his rights that can be purchased. Similarly, if it is the holder of a melcharth that seeks to evict him it is only his rights that can be transferred and the market price will be the usual renewal fee that is payable in such cases, although the section does not specifically mention the case of a melcharth, but it is clear that the word "landlord" for the purposes of this section includes the holder of a melcharth; otherwise there will be this anomaly that while a tenant is entitled to purchase the rights of his landlord if he brings a suit to evict him, he can be easily defeated by a landlord who executes a melcharth with or without consideration and if the holding consists of dry lands alone, he cannot claim renewal. It will be otherwise if the landlord is or is made a party in which case the tenant can offer to purchase the entire right including that of the melcharth-holder.

**Market price.** There is nothing in the Act which shows the basis of price, but the price has to be determined according to the market-value of the landlord's interests in the land with "all other interests which the landlord can convey under any power." If there are no interests paramount to those of the evicting landlord, the basis of price may be the net rental for the year ending the date of the suit or any suitable average rental and twenty years purchase, with certain exceptions. If the followed, landlord is a middleman, the following principles of valuation may be followed, <sup>followed</sup> the assistance of the court in fixing that value, the matter must be referred to some suitable person. The principle of the valuation in such a case will be to ascertain the market-value of the plaintiff's interest in the land as on the date of the order, that is today. In arriving at that market-value, he will have to take a reasonable rent from the day of the expiration of the notice quit until to-day, and then to capitalize the value of the rent for the remainder of the plaintiff's term, less, of course, the amount of rent for the balance of the term which the plaintiff had to pay to his superior landlord and which will now become payable by the tenants. He will take into account any enforceable power to renew that the plaintiff may have. (1)

It is not necessary that every part of the kudiyruppu should be included in the suit for eviction. It is enough if a necessary part of it is so included.

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(1) *Kanapa Chettiar V. Ramachandra Iyer*, 46 M. L. J. 407.

34. (1) An offer under section 33 shall be in writing and shall contain the particulars prescribed.

Procedure to enforce the offer

(2) Notice of such offer, with a copy thereof, shall be served on the landlord at the expense of the tenant, fixing a date for the landlord to accept or decline the offer.

(3) After such notice has been served on the landlord,

Points to be determined by court on the offer

(a) if the landlord unconditionally accepts the offer, the court shall record such acceptance and order the tenant to deposit in court the price specified in his offer together with the arrears, if any, of rent, michavaram, the revenue payable to the Government by the tenant and the local cesses payable by the tenant in respect of such kudiyruppu and on such deposit the landlord shall be paid the amount deposited; and the suit, in so far as it relates to the eviction from the kudiyruppu, shall be dismissed; and

(b) if the landlord, for any reason, does not unconditionally accept the offer, the court shall decide whether the kudiyruppu is a separate or separable kudiyruppu.

(4) If the decision under clause (b) of sub-section (3) is that the kudiyruppu is separate or separable, the court shall proceed further and determine the market price of the landlord's rights as it stood on the date fixed for acceptance of the offer by the landlord and shall call upon the tenant to deposit the market price so settled together with the arrears referred to in clause (a) of sub-section (3), if any, on or before a date fixed by it in writing.

Order to deposit market price, etc.

Payment of  
market price by  
instalments

(5) Notwithstanding anything contained in sub-section (4), the court, if it is satisfied that the tenant is too poor to pay the market price in a lump sum, may dispense with the deposit of the market price and order that the said price be paid to the landlord, with interest at six per cent per annum, in as many annual instalments not exceeding twelve as the court may fix having regard to the means of the tenant, on condition that sufficient security is furnished by the tenant for the regular payment of such instalments.

Effect of failure  
to deposit  
market price,  
etc.

35. If the decision under sub-section (3) of section 34 is that the kudiyruppu is neither separate nor separable, or if the deposit called for under sub-section (4) of the said section is not made or if the security called for under sub-section (5) of that section is not given on or before the date so fixed, the court shall dispose of the suit for eviction referred to in section 33 as if no such offer had been made.

Procedure on  
deposit of  
market  
price, etc.

36. Upon the tenant making such deposit under sub-section (4) of section 34 or on security being given under sub-section (5) of that section together with the deposit of the arrears referred to in clause (a) of sub-section (3) of that section the suit referred to in section 33 in so far as it relates to the kudiyruppu, shall be dismissed.

Sections 34 to 36 lay down the procedure to be followed when the tenant offers to purchase the kudiyruppu. If the landlord accepts the offer, the tenant must deposit the amount specified in the offer together

with any arrears of rent be payable in respect of kudiyruppu, and on such deposit being made the suit in respect of kudiyruppu will have to be dismissed. If the kudiyruppu is not separate but separable, the rent or michavaram in respect of it will have to be apportioned, but if the same person is in possession of the remaining property comprised in the holding and is liable to pay the dues in respect of it, the matter will not be difficult. The tenant may also claim fixity in respect of the remaining property under sections 10 or 16 to 18, as the case may be and that question will have to be determined by an order of the court. If the kudiyruppu is the only property in the holding, the decision under sub-sect. (4) of section 34 is easy unless the holding is unusually large or the price offered is disputed in which case those questions will have to be decided after inquiry. If the kudiyruppu is only a portion of the property comprised in the holding, the question of its severance will arise and will have to be determined with reference to the facts and circumstances of the case. The most important point for decision will be as to what other portion is necessary for the convenient enjoyment of the house in which the tenant lives. Among other things the status of the tenant will have to be considered. For an ordinary middle class family, the sites of the residential house together with the sites of other buildings necessary for the enjoyment of the residential building and contiguous gardens ordinarily about half an acre will be sufficient in rural areas.<sup>(1)</sup> But there can be no hard and fast rule in this matter, as everything depends upon the circumstances of the case. If the tenure is kanom and the land has been long in the possession of the tenant who has been using it as his kudiyruppu, the court will be inclined to hold that any additional portion which is not absolutely necessary for the enjoyment of the kudiyruppu forms a necessary part of it and that the tenant is entitled to purchase it especially as he has a right to get a renewal in respect of the remaining portion of the holding.

#### **Payment of market-price by instalment.**

This is sure to be attended with many practical difficulties.

(a) "On such deposit the landlord shall be paid the amount deposited." A question will often arise as to "who is the landlord meant

(1) *The (English) Agricultural Rates Act excludes cottage gardens less than one quarter of an acre from the definition of "agricultural land."* This was quoted with approval by the Madras High Court in *E. V. Allan, 12 M. L. J. 393.*

here. If it is only the plaintiff who has brought the eviction suit, there will be immense difficulty in ordering the payment to be made to him alone; because in most cases the plaintiff in such suits will be either the karnavan of a Malabar tarwad with only powers of management without any disposing power or a Stani with only a life-interest or the uralan of a temple with even less powers.

Investment  
of money  
deposited at  
the instance  
of persons  
interested  
therein

37. The court in which a deposit is made under this chapter may in its discretion at the instance of any person interested in the sum deposited order that such deposit be invested in the manner referred to in section 32 of the Land Acquisition Act, 1894.

This section provides for certain contingencies in which the court is given power to invest the money either in the purchase of other lands or in approved securities instead of paying it to the person who owned or held the land which was purchased under the foregoing sections. Where the person to whom the land belonged is not competent to transfer as when he is a minor or a lunatic or if competent to transfer, can transfer it only under certain circumstances or where there are several persons interested in the money and there is a valid dispute as to the title to receive the money or as to its apportionment the court may, in exercise of the power vested in it under this section, order it to be invested in the manner prescribed in section 32 of the Land Acquisition Act. It is however doubtful whether the rule applies to the case of a Marumakkathayam family; where the land belonging to a Marumakkathayam family was acquired by the Government under the Land Acquisition Act and claims were preferred to the compensation money the High Court held that section 32 of the Land Acquisition Act did not apply as the tarward had power to alienate the land (1). Under this section, the court seems to have wider power. But the section does not specify the exact circumstances under which the power may be exercised, but presumably it is subject to the conditions similar to those mentioned in section 31 of the

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(1) 26 M. 287.

Land Acquisition Act. It is therefore doubtful whether the court can exercise this power in the case of a Marumakkathayam family. The section is not happily worded, as it says that the investment may be ordered at the instance of any person interested, which cannot be the case when the owner is labouring under a legal disability. In cases of disputed title, a separate suit will lie to establish the right if the same cannot be conveniently determined in the eviction proceedings. For example, a karanavan alone may sue for eviction but he will not be entitled to draw the purchase money alone, as his powers are essentially powers of management and do not extend to outright disposal of the farward property for which the express consent of the other members is necessary. Similarly no Stanior uralan of a Devasuam can under ordinary circumstances alienate the *corpus* of the Stanom or Devasuam property. If so, such limited owners cannot receive the money into which the property belonging to the estate or trust has been converted.

38. The order or decree under section 36 shall operate as a sale to the tenant of the landlord's rights in the kudiyruppu subject to the condition that in the event of any sale of the kudiyruppu, subsequent to the said order or decree by the tenant, his heirs, executors, representatives in interest or assigns, or in execution of a decree against them, or by a receiver in insolvency, the person who, but for the provisions of this section, would be entitled to the landlord's rights in the said property at the time of such subsequent sale, shall be entitled to claim pre-emption.

Effect of  
order or  
decree under  
section 36.

This section provides that the order dismissing the suit passed under section 36 will have the force of a sale and it follows that no formal registered document is necessary to convey the landlords' interests in the land to the new owner. The section however says only that the order passed under section 36 will operate as a sale and section 36 applies only to an order of dismissal following a deposit under sub-section (4) of section

34 and not one under (a) of sub-section (3) of that section. Is intended that when the deposit is made under the order recording the landlord's unconditional acceptance of the offer under cl. (a) such order will not operate as a sale? It can hardly be supposed that such was the intention, for there is no conceivable reason why the latter order should have less force than the former.

Besides the purchase money the other advantage given to the evicting landlord is the option in any subsequent sale of the land, voluntary or involuntary, to repurchase it at the highest price offered by intending purchasers and this right can be exercised by the original owner, and when he is dead, by his heirs. This right is regulated by the general law as to pre-emption and will be subject to the ordinary rule of limitation.

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## CHAPTER VII.—MISCELLANEOUS.

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Tenant's rights  
to be heritable  
and alienable

39. Subject to the provisions of this Act, all rights which a tenant has in his holding shall be heritable and alienable.

This section enacts the existing law by which the interests of the tenant of every description are heritable and transferable. Such a right was recognised by the custom of Malabar even before the Transfer of Property came into force although that Act is not in terms applicable to agricultural leases.

Tenant's rights  
to avail him-  
self of the  
provisions of  
Chapter III  
or IV in  
certain Cases

40. (1) Any tenant whose holding has been granted on melcharth may when sued for eviction avail himself of the provisions of Chapter III or Chapter IV.

(2) No holder of a melcharth can when suing for eviction claim possession on grounds (5) and (6) of section 14 or on grounds (5) and (6) of section 20 as the case may be.

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This section does not, either expressly or by implication, make melcharth invalid in any case. On the other hand, the holder of a melcharth is entitled to succeed in a suit for eviction except when it is sought to eject the tenant on grounds No. (5) & (6) in sections 14 & 20. In such cases he will be entitled to a decree for arrears of rent and renewal fee where the same is payable.

41. Renewal fees and arrears of mischavaram or rent due to the landlord together with interest, if any, payable on the same shall be a charge on the interest of the person from whom they are due in the holding in respect of which they are due as at the time of the creation of such interest, and such charge shall have priority over all other charges on the same except the charge for the revenue and any dues thereon payable to Government or to a local authority and made a charge thereon by any law for the time being in force.

Renewal fees and arrears of mischavaram and rent to be a first charge on holding after revenue

This section makes not only arrears of rent and michavaram but also renewal fees a charge on the property having priority over all other charges except the public dues. Under the Estates Land Act, rent is a first charge not only on the holding but also on the produce of the holding. This provision so far as it relates to rent and michavaram is new and, as to renewal fees, absolutely novel. In cases of kanam, landlord had a charge for michavaram only if he brought a suit for redemption and recovery of the property. Otherwise, he will obtain only a money decree unless the document expressly creates a charge. Under the Act, the landlord who has obtained a rent decree will be able to sell the property free of encumbrance. In simple sales, the tenants' interest, in the holding including fixity of tenure conferred by the Act is liable to be sold in execution of the rent decree and any mortgage, whether prior or subsequent, will be extinguished, the mortgagee having only a lien over the surplus sale proceeds. As to renewal fees, it is difficult to see how the amount can be said to be due from the tenant in the sense that its payment can be

enforced by a suit except when a renewal has taken place under the provisions of this Act and even then the liability will arise only under certain conditions. The other thing is that the renewal fee is not due for past enjoyment but for the future and it is only when a renewal is actually executed that the liability to pay the fee arises. Moreover, it is an uncertain amount which will have to be determined in each case and it cannot form such charge on the holding as would preclude the holder for the time being from encumbering or even alienating it for necessary purposes. The section so far as it relates to renewal fees can be interpreted only in the sense that when a renewal has been executed without the prescribed renewal fees being paid, the landlord will have a charge on the holding. It is sometimes difficult also to give effect to this charge as it is not such a lien upon the holding as to be binding upon *bonafide* purchasers for value without notice of the claim. In the hands of such persons, it cannot be ordinarily subject to anything which is not already a specific charge or which does not contain all the elements necessary to its ripening into a specific charge.

“As at the time of the creation of such interest” means as at the time of the lease or demise or, where there is a renewal, at the time of such renewal. It practically means that the debt will be a first charge on the holding.

42. (1) A landlord who has obtained a decree for eviction in respect of a kuzhikanam, shall, in execution of such decree, be entitled to apply for the sale of the holding specified therein and of the improvements in respect of which compensation is awarded under the said decree and for the payment to him of the balance of the sale price after deducting the amount of the said compensation.

Right of holder  
of decree for  
eviction of  
Kuzhikanam-  
dar to apply for  
sale of holding

(2) In the case such an application is made by a landlord and a sale is held in pursuance of such application, the person to whom the said compensation has to be paid, shall be entitled to bid at the sale and set off the said compensation towards the sale price, and no deposit need be

Right of tenant  
to bid at such  
sale

made by him at the sale except in so far as the price offered by him exceeds the said compensation.

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This section provides that a landlord who has obtained a decree for eviction against a kuzhikanomdar may, instead of applying for delivery of property as provided in the decree, apply for the sale of the holding itself including the improvements and payment to him of the surplus-sale proceeds after deducting the value of improvements awarded by the decree. This section gives an alternative remedy to a landlord who having obtained a decree for ejection against a kuzhikanom tenant finds that he is unable to execute the same owing either to paucity of funds or to the unprofitable character of the transaction. In such a case he can try to realise the fruits of the decree by applying for the sale of the holding when the tenant will have a first charge upon the sale-proceeds after deducting any arrears of rent decreed in the suit and probably costs including costs incidental to the sale. This remedy may prove ineffective in most cases as a landlord who cannot find a purchaser with power to execute the decree after depositing the value of improvements can hardly expect to realise anything out of the sale-proceeds in court sale after deducting the value of improvements which should be paid first and expenses of the sale which may come to a large amount. It has been held by the Madras High Court that this right is available to a decree holder in kanom redemption suits when the decree orders the sale of the property on plaintiff's failing to deposit the kanom amount and the value of improvements as provided in the decree and there is no particular reason why special provision should be made in the case of kuzhikanom when in most kanoms all the improvements belong to the tenants.

If in any such sale the property is purchased by the tenant-defendant or by a third person there is nothing to prevent the landlord at whose instance the sale was held from applying to have the sale set aside on his depositing the amount of the value of improvements as that for the recovery of which the sale was held and fulfilling the other conditions laid down in the code of Civil Procedure if in the meantime he can provide funds for the purpose.

Limitation for  
suits for  
restoration  
under sections  
15 and 21

43. (1) (a) A suit for restoration under sub-section (1) of section 15 or under sub-section (1) of section 21 shall be instituted within one year from the date of the transfer by the landlord.

(b) A suit for restoration under sub-section (2) of section 15 or under sub-section (2) of section 21 shall be instituted within one year from the expiry of the six years after the eviction.

Persons  
entitled to  
restoration

(2) If there are intermediaries between the landlord who has obtained the eviction and the person who cultivates the land, all persons whose interests in the holding are terminated by the eviction, shall be entitled to be restored to the respective interests they had at the time of the eviction as is there had been no eviction, and in case any one of them does not claim restoration the tenant next below him shall be entitled to claim such restoration and hold the land,

(a) on the terms on which the person not claiming the land held it, if he and the claimant belonged to the same class, or

(b) on the terms on which the claimant held it if he and the person who did not claim the land belonged to different classes ;

provided always that, if the landlord obtaining eviction had paid any value for improvements to any one whose interests were so terminated, the person claiming restoration shall, before such restoration is effected, be bound to return to the landlord the value so paid in respect of the improvements existing at the time of the restoration together with the kañartham, if any, and also the

value of the improvements, if any, effected *bona fide* by the landlord between the date of eviction and the date of suit

*Explanation.*—For the purpose of this section, a kanamdar, an intermediary in respect of a kuzhikanam, a cultivating kuzhikanamdar, a verumpattamdar and a customary verumpattamdar belong each to a different class. A cultivating kanamdar, a non-cultivating kanamdar and a kanamdar under a kanamdar belong to the same class ; and a cultivating verumpattamdar and a non-cultivating verumpattamdar belong to the same class.

*Illustration.*—If *A* is the janmi, *B* and *C* are kanamdar and sub-kanamdar and *D*, verumpattamdar cultivating the land, if *A* the janmi exercises his power to take the land for his own use and then inducts some other tenant into it within six years, *B* shall be entitled to claim as against *A* to be restored to his previous rights. But on *B* getting such restoration, *C* shall be entitled to claim as against *B* to step in as sub-kanamdar, and *D* shall be entitled to claim the verumpattamdar's rights as against *C*. If, however, *B* does not want to claim restoration, *C* shall be entitled to claim as against *A* to be put in the position of *B* the kanamdar, and *D* shall be entitled to claim as against *C* to be treated as his cultivating verumpattamdar. If both *B* and *C* do not claim restoration, *D* shall be entitled to claim as against *A* to be a verumpattamdar on the terms on which he held the land under *C*.

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This section prescribes the period of limitation for suits for restoration by tenants who have been evicted by their landlords under sections

14 and 20 on the ground that the holdings were required for their own use or purposes. Sections 15 and 20 provide that, in cases of such eviction, if the landlord, in contravention to the allegations in the plaint, transfers the land for cultivation to a third person, the evicted tenant may, subject to the provisions of this section, sue for the restoration of possession of the lands from which he was evicted; and this section subject to the provisions of which the tenant is given the right of suit prescribes for suits under sub-section (1) of 15 or section 21, a period of one year from the date of the transfer by the landlord and for suits under sub-section (2) of section 15 or 21, a similar period of one year from the expiry of the full six years' time allowed to the landlord under those sections for building the house for which the tenant was evicted.

As the object of the provision is to restore the parties to *status quo ante*, the section further provides that the evicted tenants of every gradation are entitled to be restored to their original position and where any tenant does not claim restoration, the one below him is entitled to take his place provided their tenures belong to the same category.

The proviso makes provision for the repayment of the value of improvements deposited by the landlord under the decree for eviction and the tenant who claims restoration is bound to refund it. There will be many practical difficulties in the working of this provision as the interests of many persons are likely to be affected by the eviction.

The section further provides that any fresh improvements made bonafide by the landlord should be paid for, but it will be difficult for the landlord to prove his bonafides when he has acted against the express provisions of the Act.

**Explanation.** It is difficult to understand the principle of the classification in the first part of the explanation. For example there is practically very little difference between a kanomdar and a customary verumpattamdar, but they are brought under different categories here.

Surrender  
of  
holdings

44. A kanamdar or kuzhikanamdar or customary verumpattamdar who has obtained a renewal or a cultivating verumpattamdar may, at the end of any agricultural year, surrender his holding to his immediate landlord, by a registered document.

Such a landlord shall not be bound to accept the surrender unless notice has been given in writing to him by the tenant of his intention to do so three months prior to the date of the expiry of the agricultural year, and unless it be in respect of the entire holding, and the whole of the arrears of the michavaram or rent is also tendered at the time of the surrender. Nor shall the landlord be bound to refund the kanartham or to pay the value of the improvements which he would have been otherwise bound to pay under the Improvements Act.

This section provides that a tenant may surrender his holding by executing a registered document to take effect from the end of an agricultural year, i. e. 14th March. The following conditions should be fulfilled if the surrender is to be binding upon the landlord: (1) Three months' notice expiring with the end of agricultural year should be given of the intended surrender to the landlord. (2) The surrender must be of the entire holding and (3) the whole michavaram or rent due should be tendered at the time of the surrender. The disabilities of the tenant are that he cannot claim either the kanom amount or the value of improvements if either or both are due to him.

If this section is interpreted as providing that a valid surrender under the Act can be effected only by means of a registered document, it is a clear departure from the existing law. If we apply the principle of the Transfer of Property Act which is not expressly applicable to agricultural leases, we see that surrender may be either express or implied (section 111). Any agreement by which a tenant yields up his interest in the land and the landlord resumes possession of it is an express surrender, while anything which amounts to such an agreement mutually effected amounts to an implied surrender. But certain local Acts require a valid surrender of agricultural holdings to be made in writing. Thus under the Madras Rent Recovery Act (now repealed) the tenants are allowed to relinquish their lands by a writing to be signed by them in the presence of witnesses. But this provision was interpreted as not having

had the effect of making a surrender actually effected otherwise wholly void or inoperative (1). This provision has been, however, done away with in the new Estates Land Act which prescribes no formality whatever for a valid surrender. The Privy Council has laid down that to make a valid surrender no formal deed is necessary (2). Nor is any particular form essential provided that the intention is clearly and unequivocally expressed (3). An implied surrender may arise from various circumstances. Thus the acceptance by the landlord of a new lease in substitution of the existing one operates as a surrender of the first, for the landlord by accepting the new lease, has been party to an act the validity of which he is afterwards estopped from disputing (4). Surrender may also take place where the tenant relinquishes and the landlord takes possession of the land. Similarly, where the tenant sublets the land and the sublessee is accepted by the landlord as his tenant, such acceptance on his part necessarily operates as a surrender of the original lease (5). Again, when a tenant in Bengal vacates the holding by going away altogether without giving notice and makes no proper arrangement for cultivating the land or paying rent, the landlord is justified in inferring that there has been a relinquishment and the tenant has no right afterwards to be reinstated (6).

Under the Act, although surrender by a registered document is the prescribed mode, any surrender actually effected will not be invalid, for the section says that "a tenant may surrender by a registered document" and not that "a surrender can be made only by a registered document" and it can hardly have been the intention of the Legislature that in every case, even where the lease is made orally, the surrender must be by a registered instrument. It is only one of the modes by which it is evidenced though the others are less easily proved; but they will be as effective as a registered document provided it is obtained *bona fide*, i. e., it must be an actual surrender and not a colourable one made for the purpose of defeating the rights of other persons.

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(1) *Narsima V. Lakshmana*, 13 Mad. 124.

(2) *Imambandi V. Kamalesuuri*, 14 Cal. 109.

(3) *Butia V. Ambo*, 13 Bom. 294; *Nickels V. Anther*, 10 Q.B. 944

(4) *Woodfall*, "Landlord and Tenant"

(5) *Naba V. Behari*, 34 C. 902.

(6) *Ram V. Gora*, 24 W. R. 344.

Although a registered document or any document is not necessary to evidence a surrender, if there is a writing, the Registration Act will apply and registration will be compulsory in cases falling under section 17 of that Act.

Similarly, although the section says that the tenant may surrender at the end of an agricultural year it does not follow that a surrender made at any other time will be inoperative or invalid. The principle of the rule is that the time of the surrender must be suitable to the landlord in order to make some other arrangement for the agricultural operations of the succeeding year, having regard to the local customs as to sowing and letting land and if the surrender is untimely, the tenant will be liable to indemnify the landlord against any loss of rent occasioned by inopportune surrender. The Estates Land Act makes an express provision to that effect. (S. 149)

### (1) Notice of surrender.

As in the case of actual surrender, three months' previous notice is necessary to enable the landlord to make arrangement for cultivating the land himself or letting it to a suitable person. If notice falls short of the required period, it will not be invalidated merely on that account but the tenant will be liable to the landlord for any loss of rent due to non-compliance with this provision.

**Requisites of a valid notice.** Notice must be in writing, signed by or on behalf of the tenant giving it and delivered to the landlord or his agent. It must be clear and unambiguous and must expire with the agricultural year. The notice may be served personally upon the landlord or it may be sent by registered or unregistered post.

(2) The surrender must be of the entire holding. The principle of the provision requiring the surrender of the whole holding is that it may be difficult or unprofitable to cultivate a small portion owing to the inaccessibility of it or other circumstances which are against good husbandry. But as a holding as defined in this Act S. 3 cl. (h) may consist of several parcels of land situated in different places and even different villages, the necessity for this strict rule is not clear. Under the Estates Land Act, a part of a holding not less than a revenue field may be surrendered, but under that Act, the several parcels, if there be more than one, must be all situated in one village.

This rule will not apply if the landlord himself has divided the holding or transferred it in part to others when the tenant can surrender a part to the person to whose share it has fallen or who has obtained a part by way of transfer.

But he cannot eject the tenant from a part only of the holding, as has been decided by the Privy Council in *H. Banerji V. R. Ray* <sup>(7)</sup>. But an assignee of a part only of the reversion can eject the lessee from that part of the holding and this it has been held he has a right to do even in cases coming under the Malabar Tenants' Improvements Act <sup>(8)</sup>. Conversely, the assignee of a part of the lessee's interests in the holding can surrender that part unless the assignment is opposed to the principle underlying the definition of "holding" in S. 3 cl (h)

"Who has obtained a renewal" does not mean that a tenant who has not obtained a renewal cannot surrender. Apparently that qualifying expression seems to be unnecessary.

**Effect of surrender on under-lease.** Under section 115 of the Transfer of Property Act, the surrender of a lease does not affect an under-lease, but the rent payable by, and the contracts binding upon, the under-lessee, shall be respectively payable to and enforceable by the lessor and the same principle will hold good in the case of a surrender under this Act as the rule enacted in the Transfer of Property Act was followed in cases decided before the Act and being a principle of equity will be applicable here. Otherwise there will arise collusive surrenders made with the intention of defrauding sublessees whose tenures may at any time become precarious although they may have paid considerable sum of money by way of premium for acquiring them. But surrender must be distinguished from forfeiture. Where forfeiture is incurred, the tenancy is ordinarily determined and the sub-lease also comes to an end unless forfeiture was collusively and fraudulently brought about in which case the sub-lease will remain unaffected. But there are cases of apparent forfeiture which are really cases of surrender. If the tenancy is terminated by the operation of law, then ordinarily it is a case of forfeiture.

A sub-lease being in law an assignment of the rights of the lessee to a certain extent, the sub-lessee obtains both as against the lessor and

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<sup>(7)</sup> *Banerji V. Ray*, 35 M. L. J. 707.

<sup>(8)</sup> *Banduvan V. Alikutti*, 37 M. L. J. 707.

the lessee rights which he can claim as against both and of which he cannot be deprived without good cause. Therefore, if the lessee is not entitled to eject the sub-lessee, no more can the lessor eject him by virtue of the surrender which does not and cannot ordinarily give him higher rights.

45. If (1) a cultivating kanamdar who consents to be redeemed or (2) a cultivating customary verumpattamdar who gives up his rights as such, desires to continue on the holding as a cultivating verumpattamdar, the provisions of this Act shall apply to him as if he were a cultivating verumpattamdar.

Applicability  
of Act to  
redeemed  
kanamdara,  
etc.

This section which is inelegantly worded seems, strictly speaking, to be unnecessary as it is clear that when a kanam is redeemed there is a surrender which, if accepted, will determine the old tenancy and when a new tenancy is afterwards created, it will necessarily be subject to the provisions of this Act.

46. Every deed by which a lease kanam or kuzhikanam is created or renewed and its counterpart shall contain

Contents of  
lease,  
kanam or  
kuzhikanam  
deeds

(a) the name, if any, and description and extent of the holding ;

(b) the government revenue and local cesses, if any, payable in respect of the holding ;

(c) the amount of rent or michavaram payable in respect of the holding ;

(d) the relation that any *para* or other measure according to which the rent or michavaram has to be paid, bears to the capacity of the Macleod seer ;

- (e) if it is a kanam deed,
  - (i) the kanartham ;
  - (ii) the rate or amount of interest payable in respect of the said kanartham ; and
- (f) the renewal fee, if any, levied and in case no such fee was levied, a statement to that effect.

This section is not exhaustive of the contents of the deed. For example, the names of the parties, the period or date at which rent or michavaram is to be paid and any other lawful terms by which it is intended that the parties should be bound are not specifically mentioned. Most of the particulars mentioned here are contained in ordinary documents.

“Lease” is not defined in the Act but means “Verumpattom” which is negatively defined in S. 3 cl. (w). It means the tenure other than kanom or kuzhikanom of a person who holds land of another person to whom he is ordinarily liable to pay rent and includes the tenure of (1) cultivating verumpattomdar as defined in cl. (w) (2) and (2) customary verumpattomdar as defined in cl. (w) (3). It is difficult to understand why the word ‘lease’ is used in this connection and not “verumpattom” as the Act applies only to verumpattom which as defined has a technical meaning inasmuch as it must include wet lands.

Tenant's right to obtain receipts and forms of such receipts

47. (1) Every tenant paying any rent or michavaram shall be entitled to receive and the landlord shall be bound to grant a receipt specifying
- (a) a description of the holding in respect of which it was paid ;
  - (b) the date of payment ;
  - (c) the amount paid ;
  - (d) the period to which the amount paid relates ; and
  - (e) the arrears, if any, remaining due from the tenant after the said payment.

A reference to the date and registration number of the document under which the holding is held and also the name of the sub-registration district in which the said holding is situate, shall be deemed to be a sufficient description of the holding for the purpose of this sub-section.

(2) In the absence of the particulars specified in clause (e) of sub-section (1), the burden of proving that the tenant is bound to pay any arrears of rent or michavaram which had accrued previous to the date of the receipt, shall be on the person claiming such arrears.

(3) If any landlord fails to grant a receipt as provided under sub-section (1), the tenant shall be entitled to send by money order, after deducting the charges for doing so,

(i) the money, if the rent or michavaram is payable in money, and

(ii) the money value of the rent or michavaram, if it is payable in kind.

48. The stamp and registration charges for any lease or kanam or kuzhikanam deed and for the counterpart of such lease, kanam or kuzhikanam shall be borne by the tenant.

Stamp and  
registration  
fees to be paid  
by the tenant

49. The provisions of the Improvements Act shall apply in all cases of eviction to which this Act applies.

Improvements  
Act to apply  
to evictions  
under Act

Code of Civil  
Procedure  
1908 to apply  
to proceedings  
under Act

50. (1) The procedure provided as regards suits in the Code of Civil Procedure, 1908, including Orders XXXVIII, XXXIX and XL of the first Schedule, shall be followed as far as it can be made applicable in all proceedings relating to applications under this Act.

Appeals

(2) Appeals shall lie from orders made under sections 12, 23, 25, 30, 31, 34, 35 and 36 as if they were decrees in suits.

(2) This subsection is not happily worded. It does not say that appeals shall lie from the following orders and no other. While appeals are allowed from mere formal orders as apparently those passed under sect. 23 (a) and section (25), no appeal is allowed against important orders as those passed under section 24 and many other sections. Obviously no appeal can lie against an order passed under section 23 (a), and no order is expressly mentioned in (b) of that section. Appeals necessarily and obviously lie against decrees passed in suits coming under sections 14 and 20.

Collector  
to publish list  
of prices

51. (1) The Collector of the district shall in the month of April of every year publish in the *Malabar District Gazette* the average market price of paddy, coconut, arecanut and pepper, at each taluk headquarters, for the twelve complete months preceding the date of publication.

(2) Where any rent, michavaram or renewal fee payable under this Act is paid or is to be paid in money, in whole or in part, paddy, coconuts, arecanuts and pepper, shall be valued, for the purpose of determining the sum due, at the average market price of the previous five years as published under sub-section (1).

It has been often found that the prices published in the gazette are incorrect owing to the careless way in which the statistics on which they are based is collected. It must therefore be provided that the court may presume that the prices shown in the Gazette are correct unless and until it is proved that they are incorrect.

52. Where the rent is payable in kind, it shall, in the absence of a contract to the contrary, be delivered at the landlord's granary in the village in which the holding is situated ; or at such other granary within three miles of the village as may provided in that behalf by the landlord.

Place of  
delivery of  
rent payable  
in kind

53. Nothing in this Act shall affect the right of a janmi in any of his holdings —

Savings

- (1) to make irrigation channels, foot-paths, roads and ways into adjacent and other holdings,
- (2) to work laterite and other quarries, and
- (3) to cut and remove the trees or enjoy the usufruct of trees and pepper vines belonging to him

Provided that the tenant shall be entitled to a proportionate reduction of michavaram or rent if by the exercise of such right his profits are decreased.

54. (1) The Local government may make rules to carry out all or any of the purposes of this Act.

Power to  
make rules

(2) In particular and without prejudice to the generality of the foregoing power, they may

make rules regulating all or any of the following matters:—

(a) The investing of courts of original jurisdiction with powers to try summarily suits for the recovery of rent or michavaram and the procedure to be followed in such suits ;

(b) the period of limitation for applications under this Act for which no period is specifically fixed therein.

(3) All rules made under this section shall be placed on the table of the Legislative Council while it is in session for a period of not less than three months before they come into force.

## APPENDIX A.

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### STATEMENTS OF OBJECTS AND REASONS.

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Questions connected with the relation of landlord and tenant in Malabar have been agitating the public mind for many years. The demand of kanamdars and cultivating tenants for securing fixity of tenure have long been the subject of anxious consideration by the Government. Several special inquiries have been directed and held with a view to ascertain how far the claims put forward by and on behalf of the tenants were reasonable and what legislation was necessary to remedy the disabilities which they suffered from. Attempts were also made from time to time to deal with their demands. Madras Act 1 of 1887 was passed for awarding compensation for improvements to the tenants. This Act was repealed and re-enacted with additions and modifications in Madras Act 1 of 1900.

2. In 1924, Diwan Bahadur (now Hon'ble) M. Krishnan Nayar Avargal introduced a Bill which focussed the several claims made on behalf of the tenants. The main remedy suggested by the Bill was the grant of permanent occupancy rights to nearly all tenants in Malabar subject to certain reservations. This aroused considerable opposition on the part of the jannies. The Government, in pursuance of their settled policy in the matter, afforded every facility to the tenants to put forward their case before the Legislative Council and they further tried to improve those portions of the Bill, which were opposed to what the Government considered was just and equitable, by moving amendments. This

attempt of the Government met with little success. The Bill as finally passed could not be accepted as a just and proper solution of the problem and His Excellency the Governor felt bound to withhold his assent under section 81 (1) of the Government of India Act. While doing so, His Excellency stated that he intended "to ask his Government to re-examine the whole question to take such steps as in their opinion were most likely to result in further legislative proposals being framed with due regard to the considerations with induced His Excellency to withhold his assent." To give effect to this intention, a committee under the presidency of Diwan Bahadur Raghavayya Pantulu Garu C. S. I., and consisting of prominent representatives of the landlords and tenants of Malabar was constituted in 1927, with instructions to re-examine the whole question and submit such proposals as they deemed necessary to improve the relationship between landlords and tenants in Malabar. In the order laying down the terms of reference to the committee, the Government expressed themselves as follows:—

"The Government's position on this question, as clearly indicated during the course of the discussion on Mr. Krishnan Nayar's Bill, has been that it is not profitable or just to go behind decisions of courts ranging over three—quarters of a century, which have recognized the full proprietary rights of the janmi. The Government are therefore of opinion that any future attempt at legislation should take that right as a settled fact and proceed on the basis thereof. As a corollary to that proposition, they think that any attempt to take away the rights of the jannies in any substantial way, whether it be by the grant of permanent occupancy rights or otherwise, should be accompanied by adequate provision for reasonable compensation being paid to the janmi. While this has to be conceded to the janmi, the Government are also of opinion that in the

case of homesteads at least there is urgent necessity for creating security of tenure that the claim of the actual cultivator of the soil for fixity of tenure and security from arbitrary evictions must be viewed with considerable sympathy and that every possible attempt should be made to secure this to him in so far as it can be reasonably done without injustice to the jannies."

3. The Raghavayya Committee submitted its report in the middle of the year 1928. The principal recommendations of the committee were (1) that any legislation undertaken to remedy the grievances of the tenants should be optional, (2) that cultivating verumpattamdars should be enabled to obtain fixity of tenure on certain conditions, (3) that customary verumpattamdars (both cultivating and non-cultivating) such as kozhu tenants and kovilagam lessees, kanamdars (both cultivating and non-cultivating) and cultivating kuzhikanamdars and intermediaries in kuzhikanam should be entitled to obtain renewal in certain circumstances, (4) that the landlords should have the right to take the lands back for cultivation by them or by any members of their families subject to safeguards to prevent abuse of this right, (5) that the tenants should have the right to purchase the landlord's rights in kudiyiruppus in the event of a suit for eviction, and (6) that melcharths should be valid only under certain conditions. The committee was against the grant of permanent occupancy rights.

4. In the beginning of this year, the Government convened a conference of representative jannies' and tenants of Malabar and discussed the recommendations of the Raghavayya Committee. The Government have again carefully examined the whole question and given their best consideration to the views put forward by the members of the conference on behalf of the landlords and the tenants of

Malabar. They have accepted the recommendations of the Raghavayya Committee with some variations and the Bill embodies the conclusions arrived at by them. It is hoped that the provisions contained in the Bill will materially improve the condition of the tenants without prejudicing the inherent rights of the landlords and bring about better relationship between them. The appended notes on clauses explain in detail the more important provisions of the Bill.

2nd July 1929

A. Y. G. CAMPBELL.

## APPENDIX B.

### FORMS.

FORMS A & B ARE UNNECESSARY.

FORM C. [See section 17 (2) of the Bill.]

[Form for Renewal. — See S. 22 of New Act.]

1. Name of the applicant.
2. Extent and description of the lands in respect of which the application is made. (Separate particulars to be given of the several classes of land, wet, dry and garden )
3. The name of the janmi and the intermediaries interested therein and the name of the person from whom he claims renewal.
4. A. (a) In case the applicant is customary verumpattandar the customary period for which he is entitled to have possession of the land and the date on which such period expired or will expire ;  
(b) the annual rent that the applicant has been paying under the expiring verumpattam ;

(c) if he is not a cultivating verumpattamdar

(i) the amount that he received annually from the cultivating tenant during the previous twelve years and

(ii) the fair annual rent due for the land.

B — In the case of kanams.

(a) the date on which the previous kanam expired or will expire;

(b) the fair rent of the land;

(c) the amount of assessment;

(d) the interest of kanartham; and

(e) the michavaram he has been paying under the expiring kanam.

C — In the case of cultivating kuzhikanamdar

(a) the date on which the previous kuzhikanam expired or will expire;

(b) the average gross yield for the past three years; and

(c) the rent under the expiring kuzhikanam.

D — In the case of intermediary kuzhikanam

(a) the date on which the transaction sought to be renewed, ceased or will cease;

(b) the amount of profits, rent and renewal fee received by the applicant, by direct cultivation or from the tenant below during the period of that transaction; and

(c) the amount of rent paid to the intermediary or Janmi above.

5. The amount of renewal fee payable under section with details as to how the figure was arrived at.

6. Whether he applied to the landlord for the renewal, and if so, on what date, and what reply he got thereto.

## FORM D.

Application under section 25 (1) of the Malabar  
Tenancy Bill, 1929.

[Form for revision of rent — Sec. S. 30 of New Act.]

1. Name of the applicant.
2. Is he the certificate-holder or the landlord?
3. The amount of rent that is being paid on the date of the application.
4. The total gross yield for each of the three years preceding the application.
5. The number of crops raised in each year.
6. The quantity of seed required for each crop.
7. What, according to the applicant, is the fair rent, with details showing how he calculates the same.

## FORM E. [Section 29 (1) of the Bill.]

[For offer to purchase kudiyruppu. — See S. 34 of New Act.]

1. Number of the suit.
  2. Description of the kudiyruppu :—  
(Particulars to be given as to the width and length of the sites built upon, the number and description of the buildings thereon, and the length and width of the entire land. Easements should be specified separately. In case of dispute, the court may call for a plan.)
  3. Nature and estimate of the market value of the plaintiff's rights therein.
  4. Whether the applicant is willing to deposit the market price or wishes to pay it in instalments.
  5. An offer that the applicant is willing to purchase the plaintiff's right at the price so specified or at the price to be fixed by the court.
-

The following draft rules which the Governor in Council proposes to make under sub-section (1) of section 54 of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930), are laid on the table:—

### Draft Rules.

#### RULES MADE UNDER THE MALABAR TENANCY ACT, 1929.

1. These rules may be called "The Malabar Tenancy Rules, 1930."
2. In these rules, "the Act" means the Malabar Tenancy Act, 1929.
3. Every application under section 11 of the Act shall be in Form I annexed to these rules with such variations as circumstances may require.
4. Every application under sub-section (2) of section 13 of the Act shall be in Form II annexed to these rules with such variations as circumstances may require.
5. Every application under sub-section (1) of section 22 of the Act shall be in Form III-A, III-B, III-C or III-D annexed to these rules, according as the applicant is a customary verumpattandar, a kanamdar, a kuzhikanamdar or an intermediary in kuzhikanam, with such variations as circumstances may require.
6. Every application under sub-section (1) of section 30 of the Act shall be in Form IV annexed to these rules with such variations as circumstances may require.
7. (1) Every offer by a tenant under section 33 to purchase the rights in the kudiyruppu of the landlord who sues to evict him shall contain the following particulars, namely:—
  - (i) the number of the suit, in which the application is made;
  - (ii) the survey and subdivision numbers, extent, description and boundaries of the kudiyruppu, the amsam, desam and taluk within which it is situated, the assessment, if any, payable to the Government in respect thereof, the length and width of the site built upon, the number and description of the buildings thereon, the length and width of the entire holding and the easements, if any;
  - (iii) the total period for which the kudiyruppu has been in the continuous occupation of the tenant or the members of his family on the date of the institution of the suit, with full details;

- (iv) the arrears, if any, due by the tenant, of
- (a) rent or michavaran,
  - (b) revenue payable to the Government where such revenue is payable by the tenant, and
  - (c) local cesses if such cesses are payable by the tenant ;
- (v) the nature and estimate of the market value according to the tenant of the rights in the kudiyiruppu of the landlord who seeks to evict him ;
- (vi) whether the tenant is willing to deposit the market price of the kudiyiruppu or wishes to pay it in instalments and, if so, in how many instalments and the amount of each instalment ; and
- (vii) whether the tenant is willing to purchase the plaintiff's right at the price so specified or at the price to be fixed by the Court.

(2) If any dispute arises regarding the correctness of the description of the kudiyiruppu given in any such offer, the Court may call upon the parties to furnish within such time as it may fix plans of the kudiyiruppu.

## FORM I.

(See Rule 3.)

## IN THE COURT OF THE

APPLICATION NO. OF 19

*Between*

A. B.

Applicant

*and*

C. D and

other

Respondents.

*Application of A. B. under section 11 of the Malabar Tenancy Act. 1929.*

The abovenamed applicant states as follows :—

1. A. B., the applicant, is the cultivating verumpattamdar of the holding described  
immediate landlord of C. D., the first respondent,  
 in paragraph \_\_\_\_\_ under C. D. the first respondent \_\_\_\_\_ and resides  
 at \_\_\_\_\_  
 a cultivating verumpattamdar of the holding described in paragraph \_\_\_\_\_

The address of the applicant for service of all notices and processes

is

2. C. D., the first respondent, resides at

E. F., the second respondent, is the janmi of the said holding and resides at

G. H. the third respondent, is the kanamdar of the said holding under the said E. F. the janmi, and resides at

3. The holding comprises the following lands, namely :—

[Here set out the survey and subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the assessments payable to the Government in respect thereof, and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands ]

4. (a) Of the wet lands comprised in the holding, the following items were converted from dry lands into wet by the  $\frac{\text{applicant's}}{\text{first respondent's}}$  labour :—

(b) The years in which the first wet crop was raised, the annual gross paddy produce, the expense of reaping it and the quantity of seed customarily deemed to be required for an agricultural year in the case of each of the said items are as follows :—

(c) The annual fair rent payable in respect of each of the items of wet land included in this paragraph is as follows :—

[Cases falling under clause (a) of section 5 of the Act should be mentioned together].

5. (a) Of the other wet lands comprised in the holding (that is to say, of lands not converted from dry into wet by the tenant's labour), are registered in the registers of the Government as single crop lands and as double crop lands.

(b) The annual gross paddy produce and the expense of reaping it in the case of each of the items of single crop lands for each of the three years immediately previous to the date of this application are

In the years                      no crop at all was raised on items  
and in the years                      only dry crop was raised on item

The produce given above for the said years in respect of the said items is the estimated produce of a single paddy crop as required by proviso (i) to section 6 of the Act.

The quantity of seed customarily deemed to be required for each of the said items is

(c) The annual gross paddy produce and the expense of reaping it in the case of each of the items of double crop lands for each of the said three years are as mentioned below :—

Account has been taken as though two paddy crops have been harvested, irrespective of the number and the kind of the crops raised and

of the fact that no crop whatever was raised in particular years—vide proviso (ii) of section 6.

(Here give details of all cases of departure from the normal rule of two paddy crops every year)

The quantity of seed customarily deemed to be required for each of the said items is

(d) The annual fair rent payable in respect of each of the items of wet land (single and double crop) included in this paragraph is as follows:—

6. In the case of the garden lands included in the holding—

(a) (i) the  $\frac{\text{first respondent}}{\text{applicant}}$  is bound to pay compensation under the Improvements Act in case of eviction for coconut trees ;

(ii) of these trees, trees have been let for tapping. The gross produce of nuts of trees of a similar description and with similar advantages in the neighbourhood for each of the three years immediately previous to the date of this application is estimated to be . Consequently, the gross produce of nuts of the trees let for tapping for each of the said three years is deemed to be under the proviso to sub-section (2) of section 7 of the Act ;

(iii) the gross produce of nuts of the other coconut trees specified in sub-clause (i) for each of the said three years is ; and

(iv) the total gross produce of nuts of all the coconut trees specified in sub-clause (i) for the said three years is consequently and the annual fair rent payable in respect of them is

(b) (i) the  $\frac{\text{first respondent}}{\text{applicant}}$  is not bound to pay compensation under the Improvements Act in case of eviction for coconut trees ;

(i) of these trees, trees [have been let for tapping. The gross produce of nuts of trees of a similar description and with similar advantages in the neighbourhood for the three years immediately previous to the date of this application is estimated to be . Consequently, the gross produce of nuts of the trees let for tapping for the said three years is deemed to be under the proviso to sub-section (2) of section 7 of the Act ;

(iii) the gross produce of nuts of the other coconut trees specified in sub-clause (i) for the said three years is ; and

(iv) the total gross produce of nuts of all the coconut trees specified in sub-clause (i) for the said three years is consequently ;  
and the annual fair rent payable in respect of them is ;

(c) the  $\frac{\text{first respondent}}{\text{applicant}}$  is bound to pay compensation under the Improvements Act in case of eviction for areca trees and the gross produce of nuts of the said trees for each of the three years immediately previous to the date of this application is

The annual fair rent payable in respect of these areca trees is ;

(d) the  $\frac{\text{first respondent}}{\text{applicant}}$  is not bound to pay compensation under the Improvements Act in case of eviction for areca trees and the gross produce of nuts of the said trees for each of the three years immediately previous to the date of this application is

The annual fair rent payable in respect of these areca trees is ;

(e) the gross produce of pepper vines in respect of which the  $\frac{\text{first respondent}}{\text{applicant}}$  is bound to pay compensation under the Improvements Act in case of eviction for each of the three years immediately previous to the date of this application is

The annual fair rent payable in respect of these vines is ;

(f) the gross produce of pepper vines in respect of which the  $\frac{\text{first respondent}}{\text{applicant}}$  is not bound to pay compensation under the Improvements Act in case of eviction for each three years immediately previous to the date of this application is

The annual fair rent payable in respect of these vines is ;

7. The annual fair rent (three times the assessment per annum) payable in respect of each of the items of dry lands included in the holding is

8. The following items of land are situated within the limits of the municipality of

The rents paid (agreed to be paid) in respect of (give details) being similar lands of the same extent in the neighbourhood are ;

Items have not been built or planted upon and no crop has been grown on them. The annual fair rent payable in respect of each of these items of land is

Items have been built or planted upon and crops have been grown on items . In respect of each of these items, the fair

rent as calculated in paragraphs 4 to 7 is which  $\frac{\text{exceeds}}{\text{does not exceed}}$  the fair rent as calculated in this paragraph. Consequently, the annual

fair rent payable in respect of these items of land is the higher of the two amounts of fair rent mentioned above, namely:—

9. The aggregate amount of annual fair rent payable in respect of all the lands included in the holding is therefore

10. The applicant therefore prays that the Court may be pleased by order to fix—

- (a) the extent of the holding,
  - (b) the annual fair rent that is payable in respect thereof,
  - (c) the instalments, if any, in which the fair rent shall be payable,
- and
- (d) the date (or dates) on which the said rent (or instalments) shall be payable.

I declare that what is stated in paragraphs \_\_\_\_\_ is true to my knowledge and what is stated in paragraphs \_\_\_\_\_ is stated on information and belief and I believe the same to be true.

(Signed) A. B.

FORM II.

(See Rule 4.)

IN THE COURT OF THE

APPLICATION No. \_\_\_\_\_ OF 19 \_\_\_\_\_

Between

A. B. ... .. Applicant

and

C. D. ... .. Respondent.

*Application of A. B. under sub-section (2) of section 13 of the Malabar Tenancy Act, 1929.*

The abovenamed applicant states as follows:—

1. The respondent is the cultivating verumpattandar of the holding described in paragraph \_\_\_\_\_ and the applicant A. B. is his immediate landlord and resides at \_\_\_\_\_

The address of the applicant for service of all notices and processes is \_\_\_\_\_

2. C. D. the respondent, resides at \_\_\_\_\_

3. The holding comprises the following lands, namely:—

[Here set out the Survey and Subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the assessments payable to the Government in \_\_\_\_\_

respect thereof and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands.]

4. The annual fair rent payable in respect of the lands included in the holding is

5. The applicant called upon the respondent on \_\_\_\_\_ by notice in writing at the latter's option—

(a) to pay one year's fair rent of the holding in advance, or

(b) to furnish security for the said fair rent, or

(c) to pay a portion of the said fair rent in advance and furnish security for the balance,

or

5. (a) The respondent has on \_\_\_\_\_ paid \_\_\_\_\_ as advance and on \_\_\_\_\_ has furnished security for \_\_\_\_\_. In respect of the balance of one year's fair rent, viz., \_\_\_\_\_ he has neither paid in advance nor furnished security.

(b) The applicant called upon the respondent on \_\_\_\_\_ by notice in writing at the latter's option—

(i) to pay the said balance of one year's fair rent of the holding in advance, or

(ii) to furnish security for the said balance of fair rent, or

(iii) to pay a portion of the said balance of fair rent in advance and furnish security for the remainder.

6. (Here state in what respect the notice has not been complied with.)

7. The period of six months for compliance with the notice referred to in paragraph 5 expired on \_\_\_\_\_

8. The applicant prays that the Court may be pleased to order the respondent, at the option of the respondent—

(a) to pay  $\frac{\text{one year's fair rent}}{\text{the balance of one year's fair rent}}$ , viz., \_\_\_\_\_ in advance,

(b) to furnish security for the said  $\frac{\text{fair rent}}{\text{balance}}$ , or

(c) to pay a portion of the said  $\frac{\text{fair rent}}{\text{balance}}$  in advance and furnish security for the remainder.

I declare that what is stated in paragraphs \_\_\_\_\_ is true to my knowledge and what is stated in paragraphs \_\_\_\_\_ is stated on information and belief and I believe the same to be true.

(Sd.) A. B.

## FORM III-A.

(See Rule 5.)

## IN THE COURT OF THE

APPLICATION NO. OF 19 . . .

Between

A. B. ... .. Applicant

and

C. D. ... .. Respondent.

(Here enter the cause title of the suit, if any, in which the application is made.)

*Application of A. B. under sub-section (1) of section 22 [read with sub-section (b) of section 23] of the Malabar Tenancy Act, 1929.*

The abovenamed applicant states as follows :—

1. A. B., the applicant, is a customary verumpattamdar under the respondent in respect of the holding in paragraph and resides at

The address of the applicant for service of all notices and processes is

2. C. D., the respondent, resides at . . . . .

3. The holding comprises the following lands, namely :—

[Here set out survey and subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the annual Government revenue payable in respect thereof and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands.]

4. The  $\frac{\text{previous verumpattam expired}}{\text{current verumpattam will expire}}$  on 19 and its material terms are as follows :—

5. The annual fair rent payable in respect of the lands included in the holding is

(State how the figure is arrived at.)

6. The applicant was paying under the expiring verumpattam as the annual rent.

7. The amount of annual Government revenue which is payable by the applicant in respect of the lands included in holding is

8. The renewal fee payable is (state how the figure is fixed).

9. The first instalment of (here enter two-thirds of the renewal fee)  $\frac{\text{was}}{\text{will be}}$  payable in and the balance  $\frac{\text{was}}{\text{will be}}$

payable as a second instalment in accordance with the provisions of clause (a) of section 19 of the Act.

10. The applicant filed an application under sub-section (1) of section 22 of the Act in respect of the holding (Application No. on the file of the Court of ) and that application was dismissed under section 23 (a) of the Act.

11. The applicant made a valid tender of the renewal fee payable under section 19 of the Act on and such tender was refused by the landlord.

12. The applicant prays that the Court may be pleased—

(i) to determine the renewal fee, the amount of each instalment thereof under section 19 of the Act and the date on or before which each instalment was, or will become, due ;

(ii) to order a deposit of the instalment or instalments of the renewal fee due on or before the date of such order (with interest at twelve per cent per annum from the date on which each instalment became due the date of the commencement of this Act ); and

(iii) on such deposit being made to

(a) execute a renewal deed containing such terms as the Court determines to be the terms of the expiring transaction and as are in accordance with law, and

(b) pass an order directing the applicant to pay the landlord a further instalment (or instalments) of the renewal fee (here enter the amount of instalment) in accordance with section 19 of the Act with interest at six per cent per annum on such instalment (or instalments) from the due date to the date of payment.

I declare that what is stated in paragraphs is true, to my knowledge and what is stated in paragraphs is stated on information and belief and I believe the same to be true.

(Signed) A. B.

FORM III-B.

(See Rule 5.)

IN THE COURT OF THE

APPLICATION No. OF 19

Between

A. B. ... Applicant:

and

C. D. ... Respondent.

(Here enter the cause title of the suit, if any, in which the application is made)

*Application of A. B. under sub-section (1) of sect'on 22 [read with sub-section (b) of section 23] of the Malabar Tenancy Act, 1929.*

The abovenamed applicant states as follows:—

1. A. B., the applicant, is a kanamdar under the respondent in respect of the holding described in paragraph \_\_\_\_\_ and resides at \_\_\_\_\_

The address of the applicant for service of all notices and processes is \_\_\_\_\_

2. C. D., the respondent, resides at \_\_\_\_\_

3. The holding comprises the following lands, namely:—

[Here set out the survey and subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the annual Government revenue payable in respect thereof and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands.]

4. The  $\frac{\text{previous}}{\text{current}}$  kanam  $\frac{\text{expired}}{\text{will expire}}$  on \_\_\_\_\_ 19 \_\_\_\_\_ and its material terms are as follows:—

5. The annual fair rent payable in respect of the lands included in the holding is \_\_\_\_\_

(State how the figure is fixed.)

6. The amount of annual Government revenue which under the kanam deed is payable by the applicant in respect of the lands included in the holding is \_\_\_\_\_

7. The kanartham is \_\_\_\_\_ and the annual interest payable thereon is \_\_\_\_\_ calculated at the rate of \_\_\_\_\_ specified in the kanam deed [at the rate of \_\_\_\_\_ in accordance with the provisions of section 17 (b) of the Act.]

8. The applicant has been paying \_\_\_\_\_ as michavaram under the  $\frac{\text{previous}}{\text{current}}$  kanam above referred to \_\_\_\_\_

9. The renewal fee payable is \_\_\_\_\_ (state how the figure is fixed).

10. The first instalment of \_\_\_\_\_ (here enter two-thirds of the renewal fee  $\frac{\text{was}}{\text{will be}}$  payable in \_\_\_\_\_ and the balance of  $\frac{\text{was}}{\text{will be}}$  payable as a second instalment in \_\_\_\_\_ in accordance with the provisions of clause (a) of section 19 of the Act.

11. The applicant filed an application under sub-section (1) of section 22 of the Act in respect of the holding (Application No. ... on the file of the Court of ...) and that application was dismissed on ... under sub-section (a) of section 23 of the Act.

12. The applicant made a valid tender of the renewal fee payable under section 19 of the Act on ... and such tender was refused by the landlord.

13 The applicant prays that the Court may be pleased—

(i) to determine the renewal fee, the amount of each instalment thereof under section 19 of the Act and the date on or before which each instalment was, or will become, due;

(ii) to order a deposit of the instalment or instalments of the renewal fee due on or before the date of such order (with interest at twelve per cent per annum from the date on which each instalment became due); and  
the date of the commencement of the Act); and

(iii) on such deposit being made to—

(a) execute a renewal deed containing such terms as the Court determines to be the terms of the expiring transaction and as are in accordance with law, and

(b) pass an order directing the applicant to pay the landlord a further instalment (or instalments) of the renewal fee (here enter the amount of instalment) in accordance with section 19 of the Act with interest at six per cent per annum on such instalment (or instalments) from the due date to the date of payment.

I declare that what is stated in paragraphs ... is true to my knowledge and what is stated in paragraphs ... is stated on information and belief and I believe the same to be true.

(Signed) A. B.

FORM III-C.

(See Rule 5)

IN THE COURT OF THE

APPLICATION No. ...

OF 19 ..

Between

A. B. ... Applicant

and

C. D. ... Respondent,

(Here enter the cause title of the suit, if any, in which the application is made.)

*Application of A. B. under sub-section (1) of section 22 [read with sub-section (c) of section 23] of the Malabar Tenancy Act, 1929.*

The abovenamed applicant states as follows :—

1. A. B., the applicant, is a kuzhikanamdar under the respondent in respect of the holding described in paragraph and resides at .

The address of the applicant for service of all notices and processes is .

2. C. D., the respondent, resides at

3. The holding comprises the following lands, namely :—

[Here set out the survey and subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the assessments payable to the Government in respect thereof and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands.]

4. the  $\frac{\text{previous}}{\text{current}}$  kuzhikanam  $\frac{\text{expired}}{\text{will expire}}$  on 19 and its material terms are as follows :—

5. The renewal fee payable is

(State how the figure is fixed.)

6. The first instalment of (here specify one-third of the renewal fee) is payable in and the balance in five equal consecutive annual instalments of each in the years in accordance with the provisions of clause (b) of section 19 of the Act.

7. The applicant filed an application under sub-section (1) of section 22 of the Act in respect of the holding (Application No. on the file of the Court of ) and that application was dismissed on under sub-section (a) of section 23 of the Act.

8. The applicant made a valid tender of the renewal fee payable under section 19 of the Act on and such tender was refused by the landlord.

9. The annual fair rent payable in respect of the lands included in the holding is

(State how the figure is fixed.)

10. The applicant prays that the Court may be pleased—

(i) to determine the renewal fee, the amount of each instalment thereof under section 19 of the act and the date on or before which each instalment was, or will become, due;

(ii) to order a deposit of the instalment or instalments of the renewal fee due on or before the date of such order (with interest at twelve per cent per annum from <sup>the date on which each instalment became due</sup> <sub>the date of the commencement of the Act</sub>);

(iii) on such deposit being made to

(a) execute a renewal deed containing such terms as the Court determines to be the terms of the expiring transaction and as are in accordance with law, and

(b) pass an order directing the applicant to pay the landlord a further instalment (or instalments) of the renewal fee (here enter the amount of instalment) in accordance with section 19 of the Act with interest at six per cent per annum on such instalment (or instalments) from the due date to the date of payment; and

(iv) by order to fix the annual fair rent that is payable in respect of the holding.

I declare that what is stated in paragraphs is true to my knowledge and what is stated in paragraphs is stated on information and belief and I believe the same to be true.

(Signed) A. B.

FORM III-D.

(See Rule 5.)

IN THE COURT OF THE

APPLICATION No. OF 19 .

Between

A. B. ... .. Applicant

and

C. D. ... .. Respondent.

(Here enter the cause title of the suit, if any, in which the application is made.)

*Application of A. B. under sub-section (1) of section 22 [read with sub-section (b) of section 23] of the Malabar Tenancy Act, 1929.*

The abovenamed applicant states as follows:—

1. A. B., the applicant, is an intermediary in kuzhikanam under the respondent in respect of the holding described in paragraph and resides at

The address of the applicant for service of all notices and processes is

2. C. D., the respondent, resides at

3. The holding comprises the following lands, namely:—

[Here set out the survey and subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the assessments payable to the Government in respect thereof and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands ]

4. The  $\frac{\text{previous}}{\text{current}}$  kuzhikanam  $\frac{\text{expired}}{\text{will expire}}$  on 19 and its material terms are as follows:—

5. The renewal fee payable is  
(State how the figure is fixed.)

6. The first instalment of (here enter two-thirds of the renewal fee)  $\frac{\text{was}}{\text{will be}}$  payable in and the balance of  $\frac{\text{was}}{\text{will be}}$  payable as a second instalment in in accordance with the provisions of clause (a) of section 19 of the Malabar Tenancy Act, 1929.

7. The applicant filed an application under sub-section (1) of section 22 of the Act in respect of the holding (Application No. on the file of the Court of ) and that application was dismissed on under sub-section (a) of section 23.

8. The applicant made a valid tender of the renewal fee payable under section 19 of the Act on and such tender was refused by the landlord.

9. The applicant prays that the Court may be pleased—

(i) to determine the renewal fee, the amount of each instalment thereof under section 19 and the date on or before which each instalment was, or will become, due;

(ii) to order a deposit of the instalment or instalments of the renewal fee due on or before the date of such order (with interest at twelve per cent per annum from  $\frac{\text{the date on which each instalment became due}}{\text{the date of the commencement of this Act}}$ ); and

(iii) on such deposit being made to

(a) execute a renewal deed containing such terms as the Court determines to be the terms of the expiring transaction and as are in accordance with law, and

(b) pass an order directing the applicant to pay the landlord a further instalment (or instalments) of the renewal fee (here enter the amount of instalment) in accordance with section 19 of the Act with

interest at six per cent per annum on such instalment (or instalments) from the due date to the date of payment.

I declare that what is stated in paragraphs \_\_\_\_\_ is true to my knowledge and what is stated in paragraphs \_\_\_\_\_ is stated on information and belief and I believe the same to be true.

(Signed) A. B.

## FORM IV.

(See Rule 6)

## IN THE COURT OF THE

APPLICATION NO. \_\_\_\_\_ OF 19 \_\_\_\_\_

*Between*

A. B. ... .. Applicant

*and*

C. D. ... .. Respondent

*Application of A. B. under sub-section (1) of section 30 of the Malabar Tenancy Act, 1929.*

The abovenamed applicant states as follows:—

1. A. B., the applicant, is the cultivating verumpattandar of the holding described immediate landlord of C. D. the respondent, a cultivating verumpattandar of the holding described in paragraph 4 under C. D., the respondent and resides at \_\_\_\_\_

The address of the applicant for service of all notices and processes is \_\_\_\_\_

2. C. D., the respondent resides at \_\_\_\_\_

3. The holding comprises the following lands, namely:—

[Here set out the survey and subdivision numbers, extent, description and boundaries of all the lands included in the holding in respect of which the application is made, the assessments payable to the Government in respect thereof and the amsam, desam and taluk in which the lands are situated. Particulars should be given separately of (a) wet lands, (b) garden lands and (c) dry lands.]

4. (a) Of the wet lands comprised in the holding, the following items were converted from dry lands into wet by the applicant's labour:—  
respondent's

(b) The years in which the first wet crop was raised, the annual gross paddy produce, the expense of reaping it and the quantity of seed customarily deemed to be required for an agricultural year in the case of each of the said items are as follows:—

(c) The annual fair rent payable in respect of each of the items of wet land included in this paragraph is as follows:—

[Cases falling under clause (a) of section 5 of the Act should be mentioned together.]

5. (a) Of the other wet lands comprised in the holding (that is to say, of lands not converted from dry into wet by the tenant's labour), are registered in the registers of the Government as single crop lands and as double-crop lands.

(b) The annual gross paddy produce and the expense of reaping it in the case of each of the items of single crop lands for each of the three years immediately previous to the date of this application are

In the years no crop at all was raised on items and only a dry crop was raised on items. The produce given above for the said years in respect of the said items is the estimated produce of a single-paddy crop as required by proviso (i) to section 6 of the Act.

The quantity of seed customarily deemed to be required for each of the said items is

(c) The annual gross paddy produce and the expense of reaping it in the case of each of the items of double crop lands for each of the said three years are as mentioned below. Account has been taken as though two paddy crops have been harvested, irrespective of the number and the kind of the crops raised and of the fact that no crop whatever was raised in particular years.

(Here give details of all cases of departure from the normal rule of two paddy crops every year.)

The quantity of seed customarily deemed to be required for each of the said items is

(d) The annual fair rent payable in respect of each of the items of wet land (single and double crop) included in this paragraph is as follows:—

6. In the case of garden lands included in the holding—

(a) (i) the <sup>respondent</sup> <sub>applicant</sub> is bound to pay compensation under the improvements Act in case of eviction for coconut trees;

(ii) of these trees, trees have been let for tapping. The gross produce of nuts of trees of a similar description and with similar advantages in the neighbourhood for each of the three years immediately previous to the date of this application is estimated to be. Consequently, the gross produce of nuts of the trees let for tapping for each of

the said three years is deemed to be \_\_\_\_\_ under the proviso to sub-section (2) of section 7 of the Act ;

(iii) the gross produce of nuts of the other coconut trees specified in sub-clause (i) for each of the said three years is \_\_\_\_\_ ; and

(iv) the total gross produce of nuts of all the coconut trees specified in sub-clause (i) for the said three years is consequently \_\_\_\_\_ and the annual fair rent payable in respect of them is \_\_\_\_\_ ;

(b) (i) the  $\frac{\text{respondent}}{\text{applicant}}$  is not bound to pay compensation under the Improvements Act in case of eviction for \_\_\_\_\_ coconut trees ;

(ii) of these trees, \_\_\_\_\_ trees have been let for topping. The gross produce of nuts of trees of a similar description and with similar advantages in the neighbourhood for the three years immediately previous to the date of this application is estimated to be \_\_\_\_\_. Consequently, the gross produce of nuts of the trees let for tapping for the said years is deemed to be \_\_\_\_\_ under the proviso to sub-section (2) of section 7 of the Act ;

(iii) the gross produce of nuts of the other coconut trees specified in sub-clause (i) for the said three years is \_\_\_\_\_ ; and

(iv) the total gross produce of nuts of all the coconut trees specified in sub-clause (i) for the said three years is consequently \_\_\_\_\_ and the annual fair rent payable in respect of them is \_\_\_\_\_ ;

(c) the  $\frac{\text{respondent}}{\text{applicant}}$  is bound to pay compensation under the Improvements Act in case of eviction for \_\_\_\_\_ areca trees and the gross produce of nuts of the said trees for each of the three years immediately previous to the date of this application is \_\_\_\_\_

The annual fair rent payable in respect of these areca trees is \_\_\_\_\_ ;

(d) the  $\frac{\text{respondent}}{\text{applicant}}$  is not bound to pay compensation under the Improvements Act in case of eviction for \_\_\_\_\_ areca trees and the gross produce of nuts of the said trees for each of the three years immediately previous to the date of this application is \_\_\_\_\_

The annual fair rent payable in respect of these areca trees is \_\_\_\_\_ ;

(e) the gross produce of pepper vines in respect of which the  $\frac{\text{respondent}}{\text{applicant}}$  is bound to pay compensation under the Improvements Act in case of eviction for each of the three years immediately previous to the date of this application is \_\_\_\_\_

The annual fair rent payable in respect of these vines is \_\_\_\_\_ ; and

(f) the gross produce of pepper vines in respect of which the  $\frac{\text{respondent}}{\text{applicant}}$  is not bound to pay compensation under the Improvements Act in case of eviction for each of the three years immediately previous to the date of this application is \_\_\_\_\_

The annual fair rent payable in respect of these vines is.

7. The annual fair rent (three times the assessment per annum) payable in respect of each of the items of dry lands included in the holding is

8. The following items of land are situated within the limits of the municipality of :—

The rents paid (agreed to be paid) in respect of (give details) being similar lands of the same extent in the neighbourhood are

Items have not been built or planted upon and no crop has been grown on them. The annual fair rent payable in respect of each of these items of land is

Items have been built or planted upon. Crops have been grown on items . In respect of each of these items, the fair rent as calculated in paragraphs 4 to 7 is which <sup>exceeds</sup> does not exceed the fair rent as calculated in this paragraph. Consequently, the annual fair rent payable in respect of these items of land is the higher of the two amounts of fair rent mentioned above, namely :—

9. The aggregate amount of annual fair rent payable in respect of all the lands included in the holding is therefore

10. On the Court last fixed the fair rent for the said holding at payable as follows :—

(Here give details)

and more than twenty years have elapsed since.

Or

On the 19 the Court last <sup>confirmed</sup> <sub>revised</sub> the fair rent existing on the said date in respect of the said holding <sup>thereby fixing</sup> <sub>and fixed</sub> it at payable as follows :—

(Here give details)

and more than twenty years have elapsed since.

11. The applicant therefore prays that the Court may be pleased by order to fix—

(a) the annual fair rent that is payable in respect of the holding ;

(b) the instalments, if any, in which the fair rent shall be payable ;

and

(c) the date (or dates) on which the said rent (or instalments) shall be payable.

I declare that what is stated in paragraphs is true to my knowledge and what is stated in paragraphs is stated on information and belief and I believe the same to be true.

(Signed) A. B.

U. RAMA RAO—9-1-31.

Confirmed  
Revised

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