



BILL OF 1937.

**THE MADRAS ESTATES LAND
(ORISSA AMENDMENT) BILL,
1937.**

A

BILL

TO AMEND THE MADRAS ESTATES LAND
(AMENDMENT) ACT, 1934, IN ITS APPLI-
CATION TO ORISSA.

WHEREAS it is expedient to amend
the Madras Estates Land (Amend-
ment) Act, 1934, in its application to Orissa Madras Act
VIII of 1934.
for the purpose hereinafter appearing;

It is hereby enacted as follows:—

Short title and
commencement.

1. (1) This Act may be called the
Madras Estates Land (Orissa Amendment)
Act, 1937.

• (2) It shall come into force at once.

Amendment of
section 127,
Madras Act VIII of
1934.

2. In sub-section (2) of section 127
of the Madras Estates Land (Amendment)
Act, 1934, for the expression "1st day of
October 1937" in both the places where it
occurs the expression "1st day of March
1938" shall be substituted and shall be
deemed always to have been substituted. Madras Act
VIII of 1934.

STATEMENT OF OBJECTS AND REASONS.

Section 127 of Madras Act VIII of 1934 prohibits eviction of tenants in whole Inam villages which are not estates and directs stay of proceedings in ejectment of any such tenants and all proceedings involving a decision whether or not the Inamdar has the kudivaram right in such land until first day of November 1935.

The prohibition and stay contained in section 127 were extended by Madras Act I of 1936 to 1st day of May 1936 and were further extended in Madras to 1st day of November 1936 by Madras Act XIII of 1936. In its application to Orissa the moratorium contained in section 127 of Madras Act VIII of 1934 was extended to 1st October 1937 by Regulation VII of 1937 issued by the Viceroy and Governor General of India on the 1st February 1937.

2. The object of the moratorium was that tenants in whole Inam villages which were not estates within the meaning of section 3 (2) (d) should continue in possession of their holding until a Bill which was intended to be introduced definitely declared their rights of occupancy. For the like reason proceedings in courts which might result in their eviction were stayed. Madras Bill no. 10 of 1934 was accordingly introduced and passed by the Madras legislature and was assented to by the Governor of Madras. The enactment was however vetoed by the Governor General. Thereupon Bill no. 11 of 1936 was introduced on 26th March 1936 and was passed by the legislature and received the assent of the Governor of Madras and the Governor General and culminated in Madras Act XVIII of 1936 which came into force in October 1936 long after the formation of the province of Orissa. The said Act does not therefore apply to portions of Orissa which before 1st April 1936 formed part of the Madras Presidency. But it being essential that the occupancy right of ryots in whole Inam villages in the districts of Ganjam and Koraput should be protected as in Madras a Bill is going to be introduced in the Orissa Assembly on the lines of Madras Act XVIII of 1936 which if the province of Orissa had not been constituted until 1st November 1936 would have applied to the districts of Ganjam and Koraput.

Until the Bill is finally disposed of by the Orissa Assembly it is necessary that the provisions of section 127 of Madras Act VIII of 1934 should be further extended. The extension is sought to be made till the 1st March 1938. Before that the main Bill is likely to be disposed of. In case however the Bill is disposed of earlier there will be no difficulty as the moratorium as provided under clause 12 of the main Bill shall cease to operate on the main Bill becoming law.

BERHAMPUR: }
The 21st July 1937. }

M. G. PATNAIK,
Member-in-charge.

C. G. NAIR,
Secretary, Law and Commerce Department.

Published by order of His Excellency the Governor.

C. G. NAIR,
Secretary, Law and Commerce Department.

THE MADRAS ESTATES LAND
(ORISSA AMENDMENT) BILL,
1937.

A
BILL

FURTHER TO AMEND THE MADRAS ESTATES
LAND ACT, 1908, AND TO AMEND THE
MADRAS ESTATES LAND (AMENDMENT)
ACT, 1934, IN THEIR APPLICATION TO
THE PROVINCE OF ORISSA

Madras Act I of
1908.
Madras Act VIII
of 1934.

WHEREAS it is expedient further to
amend the Madras Estates Land Act,
1908, and to amend the Madras Estates
Land (Amendment) Act, 1934, in their
application to the Province of Orissa
for the purposes hereinafter appearing;

It is hereby enacted as follows:—

Short title and
commencement.

1. (1) This Act may be called the
Madras Estates Land (Orissa Amendment)
Act, 1937.

(2) It shall come into force on such
date as the Provincial Government may by
notification in the *Orissa Gazette* direct.

Amendment of
section 3, Madras
Act I of 1908.

2. In section 3 of the Madras Estates
Land Act, 1908 (hereinafter referred to as
the said Act),—

Madras Act
I of 1908.

(i) for sub-clause (d) of clause (2),
the following sub-clause shall be
substituted, namely:—

“(d) any inam village of which
the grant has been made, confirmed
or recognized by the British
Government, notwithstanding
that subsequent to the grant, the
village has been partitioned
among the grantees or the suc-
cessors in title of the grantees or
the successors in title of the
grantee or grantees.

Explanation (1).—Where an inam village is resumed by the Government, it shall cease to be an estate; but, if any village so resumed is subsequently re-granted by the Government as an inam, it shall, from the date of such re-grant be regarded as an estate.

Explanation (2).—Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently re-granted by the Government as an inam, such portion or part, shall, from the date of such re-grant, be regarded as forming part of the inam village for the purposes of this sub-clause;” and

(ii) for clause (10), the following clause shall be substituted, namely :—

“ Private land.”

“(10) ‘ Private land ’—

(a) in the case of an estate within the meaning of sub-clauses (a), (b), (c) or (e) of clause (2), means the domain or homefarm land of the landholder by whatever designation known, such as *kambattam*, *khas*, *sir* or *pannai*, and includes all land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the commencement of this Act; and

(b) in the case of an estate within the meaning of sub-clause (d) of clause (2), means—

(i) the domain or homefarm land of the landholder, by whatever designation known, such as *kambattam*, *khas*, *sir* or *pannai*; or

(ii) land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of July 1908 provided that the landholder has retained the *kudivaram* ever since and has not converted the land into *ryoti* land; or

(iii) land which is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of November 1933, provided that the landholder has retained the *kudivaram* ever since and has not converted the land into *ryoti* land; or

(iv) land the entire *kudivaram* in which was acquired by the landholder before the first day of November 1933 for valuable consideration from a person owning the *kudivaram* but not the *melvaram*, provided that the landholder has retained the *kudivaram* ever since and has not converted the land into *ryoti* land, and provided further that, where the *kudivaram* was acquired at a sale for arrears of

rent, the land shall not be deemed to be private land unless it is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years since the acquisition of the land and before the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937."

Amendment of section 6, Madras Act I of 1908.

3. Explanation (2) to sub-section (1) of section 6 of the said Act shall be renumbered as Explanation (3) and the following shall be inserted as Explanation (2), namely:—

"*Explanation (2).*—In relation to any inam village which was not an estate before the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, but became an estate by virtue of that Act, or in relation to any land in an inam village which ceased to be part of an estate before the commencement of that Act, the expressions 'now' and 'commencement of this Act' in this sub-section and Explanation (1) shall be construed as meaning the thirtieth day of June 1931, and the expression 'hereafter' in this sub-section shall be construed as meaning the period after the thirtieth day of June 1934."

Amendment of section 8, Madras Act I of 1908.

4. In section 8 of the said Act—

- (i) the proviso to sub-section (1) shall be omitted;
- (ii) in sub-section (3), the words, figure and brackets 'except in the case referred to in the proviso to sub-section (1)' shall be omitted; and
- (iii) after sub-section (4), the following sub-section shall be added, namely:—

"(5) If before the first day of November 1933, the landholder

has obtained in respect of any land in an estate within the meaning of sub-clause (d) of clause (2) of section 3 a final decree or order of a competent Civil Court establishing that the tenant has no occupancy right in such land, and no tenant has acquired any occupancy right in such land before the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, the landholder shall, if the land is not private land within the meaning of this Act, have the right, notwithstanding anything contained in this Act, for a period of twelve years from the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, of admitting any person to the possession of such land on such terms as may be agreed upon between them :

Provided that nothing contained in this sub-section shall be deemed during the said period of twelve years or any part thereof to affect the validity of any agreement between the landholder and the tenant subsisting at the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937."

Provided further that if the tenant in occupation tenders as compensation to the landholder a sum equal to one year's rent payable in respect of the land occupied by the tenant, the landholder shall confer upon the tenant a permanent right of occupancy in such land and that if the landholder fails to accept the tender and confer the said right of occupancy within one month of the date of tender or if there is any dispute as to the amount of the said

compensation the procedure laid down in section 185-B shall apply mutatis mutandis.

Insertion of new section 23 in Madras Act I of 1908.

5. After section 22 of the said Act, the following section shall be inserted, namely:—

Presumption that inam villages are estates.

“23. Where in any suit or proceeding it becomes necessary to determine whether an inam village or a separated part of an inam village was or was not an estate within the meaning of this Act as it stood before the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, it shall be presumed, until the contrary is shown, that such village or part was an estate.”

Amendment of section 28, Madras Act I of 1908.

6. To section 28 of the said Act, the following proviso shall be added, namely:—

“Provided that in the case of an estate within the meaning of sub-clause (d) of clause (2) of section 3, the rent or rate of rent lawfully payable by a ryot or tenant on the first day of November 1933 shall be presumed to be fair and equitable at the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, until the contrary is proved.”

Amendment of section 163-A, Madras Act I of 1908.

7. In clause (a) of sub-section (1) of section 163-A of the said Act, for the word, figure and brackets “Explanation (2)” the word, figure and brackets “Explanation (3)” shall be substituted.

Substitution of new section for section 185, Madras Act I of 1908.

8. For section 185 of the said Act, the following section shall be substituted, namely:—

Presumption that land in inam villages is not private land.

“185. When in any suit or proceeding it becomes necessary to determine whether any land is the landholder’s private land, regard shall be had—

(1) to local custom,

(2) in the case of an estate within the meaning of sub-clauses (a), (b), (c), or (e)

of clause (2) of section 3, to the question whether the land was before the first day of July 1898, specifically let as private land, and

(3) to any other evidence that may be produced:

Provided that the land shall be presumed not to be private land until the contrary is proved:

Provided further that in the case of an estate within the meaning of sub-clause (d) of clause (2) of section 3—

(i) any expression in a lease, patta or the like, executed or issued on or after the first day of July 1918, to the effect or implying that a tenant has no right of occupancy or that his right of occupancy is limited or restricted in any manner, shall not be admissible in evidence for the purpose of proving that the land concerned was private land at the commencement of the tenancy: and

(ii) any such expression in a lease, patta or the like, executed or issued before the first day of July 1918, shall not by itself be sufficient for the purpose of proving that the land concerned was private land at the commencement of the tenancy."

Insertion of
new sections
185-A and
185-B in Madras
Act-I of 1908.
Declaration of
kudivaram
interest of
inamdar.

9. After section 185 of the said Act, the following sections shall be inserted, namely:—

"185-A (1) In the case of an inam village which was not an estate before the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, but became an estate by virtue of that Act, in respect of any land which does not fall under any of the categories referred to in paragraphs (i) to (iv) of sub-clause (b) of

clause (10) of section 3 or under the category referred to in sub-section (4) or sub-section (5) of section 8, the landholder may within two years of the date of the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, lodge an application, in such manner as may be notified by the Provincial Government, for a declaration by a special Tribunal constituted as hereinafter provided, that the kudivaram in such land was vested in him on the 1st day of November 1933 and that he has retained it ever since.

(2) (a) A special Tribunal or special Tribunals shall, from time to time, as occasion may arise, be constituted to hear and dispose of applications of the nature specified in sub-section (1).

(b) Every such Tribunal shall consist of three members chosen by the Governor exercising his individual judgment, one of whom shall be a Judicial officer eligible for appointment as a Judge of the High Court and another shall be an experienced Revenue officer. The Governor exercising his individual judgment shall appoint one of the members of the Tribunal as the President thereof.

(c) Clauses (i) and (ii) of the second proviso to section 185 shall apply to proceedings under this section.

(d) Any order under this sub-section passed by a special Tribunal or by a majority of the members thereof shall be final and shall not be liable to be questioned in any court of law.

Acquisition of occupancy right in land in which kudivaram is declared to be in inamdar.

185-B. (1) Any land in respect of which the kudivaram is declared under section 185-A to have vested in the landholder on the 1st day of November 1933 and to have been retained by him ever since shall be ryoti land.

(2) In respect of any land referred to in sub-section (1), the landholder shall, on the

application of the tenant and on the tender by him as compensation of an amount equal to the annual rent payable in respect of the land as may have been agreed to by the landholder together with the cost of preparing any instrument required for the purpose, confer upon the tenant a permanent right of occupancy in respect of the said land :

Provided that in the case of a dispute as to the amount payable as compensation, the tenant or the landholder may apply to the Collector to fix the same and the Collector may determine an amount equal to the annual rent payable in respect of the land as the amount payable as compensation.

(3) If a landholder to whom an application and tender have been made by a tenant fails for a period of one month to confer a permanent right of occupancy, the tenant may deposit the amount payable as compensation together with the cost of preparing any instrument required for the purpose in the Collector's office and apply to the Collector to confer on him a permanent right of occupancy in respect of that land.

(4) The Collector shall thereupon give notice of the application to the landholder and after hearing him if he appears and making such inquiry as he thinks necessary, may execute any instrument required for conferring a permanent right of occupancy upon the tenant in respect of the land and such execution shall have the same effect as an execution by the landholder.

(5) Notwithstanding anything contained in section 151 or in any other provisions of this Act, where the tenant—

(a) fails within a period of one year from the date of the declaration referred to in sub-section (1) to

make an application and tender to the landholder under the first paragraph of sub-section (2), or
 (b) in the case of a dispute as to the amount payable as compensation, fails to tender the amount fixed as compensation by the Collector under the proviso to sub-section (2) within a period of one year from the date of such determination,

the tenant shall, on the application of the landholder to the Collector, be liable to be ejected:

Provided that in the event of an appeal to the District Collector regarding the amount of compensation, the period of one year referred to in clause (b) shall be computed from the date of the disposal of the appeal."

Amendment of section 192, Madras Act I of 1908.

10. In sub-section (1) of section 192 of the said Act, after the words 'or to any specified classes of such suits, applications, appeals or proceedings', the words 'or to applications or other proceedings before the Tribunal constituted under section 185-A' shall be inserted.

Amendment of Schedule, Madras Act I of 1908.

11. In Part B of the Schedule to the said Act, after item 43 relating to section 163, 2nd paragraph, the following item shall be added, namely:—

"44. 185-B (2) For determining None. None. District
 Proviso. the amount of the amount of District
 read with sec- compensation. Collector".
tion 8 (5) 2nd
Proviso.

Amendment of section 127, Madras Act VII of 1934.

12. In sub-section (2) of section 127 of the Madras Estates Land (Amendment) Act, 1934, for the words and figures 'the 1st day of October 1937' in both the places where they occur, the words, figures and brackets 'the date of the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937' shall be substituted. Madras Act VIII of 1934.

Disposal of
proceedings stayed
by Madras Act
VIII of 1934.

13. All proceedings stayed under sub-section (2) of section 127 of the Madras Estates Land (Amendment) Act, 1934, shall be disposed of as if the Madras Estates Land Act, 1908, as amended by the Madras Estates Land (Amendment) Act, 1934, and by this Act, had been in force at the time of the institution of the said proceedings in the court of first instance.

Madras Act
VIII of
1934.

Madras Act
I of 1908.

Madras Act
VIII of
1934.

Computation of
period of
limitation in
certain cases.

14. In computing the period of limitation prescribed for any suit or application for the ejectment of the tenant or for any proceeding involving a decision whether or not the inamdar has the kudivaram right in any land in an inam village, the period between the date on which the Madras Estates Land (Amendment) Act, 1934, came into force and the date on which this Act comes into force shall be excluded in cases to which sub-section (2) of section 127 of the Madras Estates Land (Amendment) Act, 1934, applies.

Madras Act
VIII of
1934.

Madras Act
VIII of
1934.

STATEMENT OF OBJECTS AND REASONS.

The Madras Estates Land Act, 1908, and the Madras Estates Land (Amendment) Act, 1934, which were in force in the ex-Madras areas of the Province of Orissa, continued to apply to those areas even after the formation of this province on 1st April 1936, by virtue of the provisions of the Government of India (Constitution of Orissa) Order, 1936. The Madras Estates Land (Third Amendment) Act, 1936 (Madras Act XVIII of 1936), which amended certain provisions of those two Acts did not, however, apply to the said areas, as it became law only in October 1936 (after the formation of the Province of Orissa), although the Bill on which it was based was before the Legislative Council of Madras in March 1936. The object of the present Bill is to pass a law on the lines of the Madras Estates Land (Third Amendment) Act, 1936, for the ex-Madras areas of the province.

As this Bill is based on the Madras Estates Land (Third Amendment) Act, 1936, it is unnecessary to set out in detail the reasons in support of it. The law relating to inam tenure, which governs the rights of landholders and ryots, is really the same in the ex-Madras areas as in the province of Madras and it is but proper that legislative recognition should be given to the rights which the ryots in those areas would have enjoyed if they had continued to remain in the province of Madras. The present Bill is designed to adjust this accidental difference between the law in force in the province of Madras and the law now applicable to the ex-Madras areas in this province.

In July 1918, contrary to previous decisions, the Privy Council held, in the case reported in I. L. R., 41 Madras, 1012, that the burden of proof as to whether the inamdar had the kudivaram right in any land did not lie either on the inamdar or the tenant but that each case should be decided on its own merits. This ruling operated heavily in favour of the inamdars and enabled them to acquire rights not conferred on them by grants, as the ryots usually had no documents to support their claims and were not in a position to meet the cost of the litigation. It had always been the policy of the Madras Government to recognise the occupancy right of the ryot so long as he paid the revenue to government or the rent to the intermediary, on whom the right to collect the rent had been conferred. The Madras Estates Land (Third Amendment) Act, 1936, was, therefore, passed to protect the rights of the occupancy ryots. It applied to inam villages the system which had been successfully applied to zamindars and threw on the inamdar, as in the case of the zamindar, the burden of proving that any land, in which he claimed that the tenant did not have the occupancy right, was his private land. Provision was also made to enable tenants of inamdars who are prov'd to have no occupancy right to acquire occupancy rights on payment of compensation to the inamdars. The Madras Act further laid down the principle to be followed in determining whether any particular land was the landholder's private land and also provided for the constitution of a Special Tribunal to authoritatively decide whether the kudivaram in any specified land vested in the landholder or not.

The present Bill is substantially in accordance with the Madras Estates Land (Third Amendment) Act, 1936. Provision has also been inserted in it for enabling the tenant to acquire the occupancy right in the land in cases where the Civil Courts had decreed that the tenant had no occupancy right in the land, on payment of compensation equal to one year's rent of the land, on the lines of section 185 B introduced by the Madras Estates Land (Third Amendment) Act, 1936. There is no reason why the tenant should not be allowed to acquire a permanent right of occupancy in such cases also on condition of payment of compensation.

The notes on Clauses explain the changes made by the Bill.

NOTES ON CLAUSES.

Clause 1.—This is the same as section 1 of Madras Act XVIII of 1936 (hereinafter referred to as the Act) subject to necessary verbal changes as to the year of the Act and its name which make it clear that the amendment applies only to Orissa. A commencement clause has also been added.

Clause 2(i).—The definition of "estate" brings within its scope all whole inam villages. The Explanations to the definition provide for the cases where an inam village or part is resumed and regranted. This clause is in accordance with section 2(i) of the Act.

Clause 2(ii).—This follows section 2(ii) of the Act. Clause (a) of the definition of "private land" applies to estates other than inam villages and is only a reproduction of the provisions defining "private land" in the Act of 1908. Clause (b) applies to inam estates.

Clause 3.—This follows section 3 of the Act with necessary changes in the name of the amending Act referred to therein. The *Explanation* introduced by this clause is necessary to define the expressions "now" and "commencement of this Act" occurring in section 6(1) and *Explanation* (1) thereto and the expression "hereafter" occurring in section 6(1).

Clause 4(i).—This is identical with section 4(i) of the Act. The proviso to section 8 of the Act is rendered unnecessary in view of the provisions of the Bill.

Clause 4(ii).—This is consequential on clause 4(i) and is the same as section 4(ii) of the Act.

Clause 4(iii).—In cases where the kudivaram in any land is vested in the landholder before the 1st November 1933 by a final decree or order of a competent civil court but the landholder is unable to satisfy the requirements of the definition of "private land", he is given a right to enjoy the land as he pleases for a period of 12 years subject to the tenant getting right of occupancy on payment of one year's rent as compensation. This clause is similar to section 4(iii) of the Act except that verbal changes have been introduced in the name of the amending Act consistent with clause 1. A provision has been inserted for the acquisition of occupancy rights on payment of compensation even in cases where the courts had finally decreed that the tenant had no occupancy right, on the lines of section 185-B introduced by section 9 of the Act.

Clause 5.—This is the same as section 5 of the Act with the verbal changes as to the name of the amending Act referred to therein. The new section 23 lays down a presumption which is capable of being upset when the contrary is proved. The presumption is essential as a guide to courts when the question arises whether an inam village became an estate under the Act of 1908 or under this Bill.

Clause 6.—This is the same as section 6 of the Act with necessary changes as to the name of the amending Act referred to therein. The object of the proviso to section 28 is to make it clear that the presumption laid down in that section applies to the rent or rate of rent payable by tenants in inam villages on the date when this Bill comes into operation.

Clause 7.—This corresponds to section 7 of the Madras Act. It is consequential on the renumbering of Explanation (2) to section 6 (1) as Explanation (3) by clause 3 of the Bill.

Clause 8.—This is the same as section 8 of the Act. It prescribes the principles to be followed in determining whether any land is the landholder's private land. The existing section 185 has been amplified and lands referred to in clause 2 (1) of the Bill have been brought within the scope of the new section. The presumption that the land in question is not private land until the contrary is proved, will, therefore, arise in the case of inam estates also.

Clause 9.—This is the same as section 9 of the Act with necessary changes as to the name of the amending Act referred to therein and adaptations in accordance with the Government of India (Adaptation of Indian Laws) Order, 1937. New section 185-A provides for landholder applying to the Special Tribunal for a declaration that the kudivaram in any specified land vested in him before the 1st November 1933. Such an application can be made only in respect of certain categories of land. New section 185-B provides for acquisition of occupancy rights by a tenant in respect of any land referred to in section 185-A only on payment of compensation to the inamdar.

Clause 10.—This is identical with section 10 of the Act. The amendment proposed makes the provision of section 192 applicable to the proceedings before a Special Tribunal.

Clause 11.—This is the same as section 11 of the Act with necessary changes in consequence of the second proviso introduced by clause 4 (iii) making the procedure laid down in new section 185-B to the land mentioned in clause 4 (iii). New item 44 introduced by clause 11 provides a right of appeal to the District Collector determining the amount of compensation payable under new section 185-B read with the second proviso to section 8 (5).

Clause 12.—This is based on section 12 of the Act except that the name of the amending Act has been changed in accordance with clause 1 and the "1st day of October 1937" has been substituted for the "1st day of November 1936", in view of the fact that the stay of legal proceedings directed by section 127 (2) of the amendment Act of 1934

has been extended to 1st of October 1937 by Regulation no. VII of 1937 in Orissa. Clause 12 provides that the stay of proceedings will cease on the date of the coming into operation of this Bill.

Clause 13.—This corresponds to section 13 of the Act. It provides for the disposal of all proceedings stayed by section 127 (2) of the Amendment Act of 1934 and for the disposal of all such proceedings in accordance with the provisions of the Act as proposed to be amended by this Bill.

Clause 14.—This is the same as section 14 of the Act. As section 127 (2) of the Amendment Act of 1934 bars all suits and applications in ejectment, it is necessary to exclude in computing the period of limitation for such suits and applications the period during which section 127 (2) was in operation. Provision has accordingly been made to that effect.

M. G. PATNAIK,

CUTTACK: *The 19th June 1937.*

Member-in-charge.

C. G. NAIR,
Secretary to Government.

Published by order of His Excellency the Governor.

C. G. NAIR,
Secretary, Law Department.

**THE MADRAS ESTATES LAND
(ORISSA SECOND AMENDMENT)
BILL, 1937.**

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**A
BILL**

FURTHER TO AMEND THE MADRAS ESTATES
LAND ACT, 1908, AS AMENDED BY
MADRAS ACT VIII OF 1934 AND
THE MADRAS ESTATES LAND (AMEND-
MENT) ACT, 1936, IN ITS APPLI-
CATION TO THE PROVINCE OF ORISSA.

Preamble.

WHEREAS it is expedient further to amend the Madras Estates Land Act, 1908, as amended by Madras Act VIII of 1934 and the Madras Estates Land (Amendment) Act, 1936, in its application to the Province of Orissa for the purposes hereinafter appearing;

It is hereby enacted as follows:—

**Short title
and commence-
ment.**

1. (1) This Act may be called the Madras Estates Land (Orissa Second Amendment) Act, 1937.

(2) It shall come into force on such date as the Provincial Government may, by notification in the *Orissa Gazette*, direct.

**Amendment of
section 39-A of
Madras Act I of
1908.**

2. *Section 39-A.*—(a) In sub-section (1) substitute 'December' for 'March' and '12½' for '18¼'.

(b) In sub-section (2) substitute 'December' for 'March'.

(c) In sub-section (9) substitute 'local official' for 'district' before 'Gazette'.

**Amendment of
section 3 of
Madras Act VI
of 1936 and
section 39-A of
Madras Act I of
1908.**

3. Delete the amendments introduced by section 3 of Madras Act VI of 1936 and add the following as sub-sections (10) and (11) of section 39-A:—

“(10) In preparing the lists of average market prices directed to be published under sub-section (2) (9) of this section the procedure hereinafter laid down shall be followed :—

(a) The District Collector shall prepare monthly or at shorter intervals periodical lists of wholesale market prices of staple food crops grown in the taluk or zamindari division in terms of measures or weights prevalent in such areas and shall submit them to the Revenue Commissioner for approval or revision.

(b) The District Collector shall, one month before submitting a price list to the Revenue Commissioner under this section, publish it in the local official gazette and otherwise in the manner prescribed by the Provincial Government and if any landholder or raiyat within the said period of one month presents to him in writing any objection to the list, he shall submit the same to the Revenue Commissioner with the list.

(c) The price list shall, when approved or revised by the Revenue Commissioner, be published in the local official gazette and any manifest error in any such list discovered after its publication may be corrected by the District Collector with the sanction of the Revenue Commissioner.

(d) The Provincial Government shall make rules for the guidance of officers preparing price lists under this section.

Application by
raiylats collectively.

(11) (a) An application for remission may be made by any number of raiylats collectively provided that all such raiylats are raiylats of the same landholder and that the grounds for remission are the same :

Provided also that if the application cannot be conveniently disposed of jointly, the Collector may, at any time before the

first hearing of his own motion or on the application of any of the parties or at any subsequent stage if the parties agree, order separate trials of the application or make such other order as may be necessary or expedient.

(b) The order shall specify the extent to which each of the raiyats is affected thereby.

4. Add the following to the Act as new sections 153 and 154:—

“153. If the subject matter of the suit referred to in the last preceding sections is a dwelling house or other structure constructed for the purpose of dwelling of the raiyat or his family or servants or for the use of his cattle or for storing the produce of the holding on which it stands or some other holding belonging to the raiyat, the suit shall be dismissed even if the structure is found too big for purposes of agriculture for the holding on which it stands but the landholder shall be awarded his costs of the suit if the raiyat did not apply for the permission of the landholder before the house or other structure was put up. An appeal may be preferred to the District Court against the decree or order of the Collector within thirty days of the date of the decree or order of the Collector :

Provided also that the right of the landholder to enhance rent on the holding shall not be affected by the construction and that such enhancement shall be determined as if the house or other structure had not been put up or with reference to the rates of rent payable for similar lands with similar advantages in the neighbourhood :

Provided futher that the raiyat for the time being of the holding on which the

house or other structure stands may acquire the landholder's interest on payment of reasonable compensation to be fixed by the Collector on application made for the purpose by the raiyat. On such compensation being paid the portion of the holding for which such compensation was paid shall cease to be raiyati land.

“154. If the aforesaid house or other structure is however put up for purposes which are not agricultural the Collector shall value the land on which the house or other structure with its premises stands in accordance with the provisions of the Land Acquisition Act, 1894, and award to the landholder the value so fixed together with the compensation payable for compulsory acquisition under the said Act and shall also award the costs of the suit. But no other relief shall be granted. An appeal may be preferred to the District Court against the decree or order of the Collector within thirty days of the decree or order of the Collector. I of 1894.

On payment of the amounts mentioned herein within one month of the date of the final order or decree or within such further time as may be granted the portion of the holding for which such payment is made shall cease to be raiyati land. On default of such payment the suit shall be decreed.”

Amendment of
Part A of the
Schedule to Madras
Act I of 1908.

5. Add the following to Part A of the Schedule to Madras Estates Land Act, 1908, in the second column, namely:—

“Section 153 and section 154.”

6. Add the following to Madras Estates Land Act, 1908, namely:—

Amendment of
Madras Estates
Land Act of I of
1908.

“216. (1) The Provincial Government may on being satisfied that exercise of the powers hereinafter mentioned is necessary in the interests of

Power to authorise special settlement in special cases.

public order or of the local welfare or that the rates of rent payable in money or in kind whether commuted, settled or otherwise fixed are grossly unfair or inequitable, invest a Revenue Officer with the following powers or either of them, namely:—

- (a) power to settle all rents,
- (b) power, when settling rents, to reduce rents, if in the opinion of the officer the maintenance of existing rents would on any ground whether specified in this Act or not be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified case or class of cases.

(3) In settling rents under this section the procedure laid down in Chapter XI of this Act shall be followed *mutatis mutandis* and as far as possible. When the Provincial Government takes any action under this section the settlement record prepared by the Revenue Officer shall not take effect until it has been finally confirmed by the Provincial Government and the revision, by direction of any competent authority under this Act of a record-of-rights or any portion of a record-of-rights prepared under this section, shall be subject to confirmation by the Provincial Government."

STATEMENT OF OBJECTS AND REASONS.

1. This Bill proposes amendments to section 39 (A) and to insert new sections, namely, sections 153, 154 and 216.

2. In section 39 (A) the condition of a fall of 18½ mentioned in sub-section (1) as a condition precedent to the maintenance of an application for remission is unfair. It is proposed to reduce it to 12½ per cent.

Section 46 of the Orissa Tenancy Act contains clear provision for preparation of price list subject to approval or revision by the Revenue Commissioner in the light of objections which raiyats or landholders may make to the price list prepared by the District Collector. The latter has under that section to give one month's notice so that landholders or raiyats may file objections. Then the Revenue Commissioner has to pass orders. All that may not be done before 1st April. Therefore in sub-section (1) of section 39 (A) ~~'March' is altered to 'December'~~ as a new clause based upon section 46 of the Orissa Tenancy Act is added to section 39 (A) so that there may be enough time for the procedure prescribed in the new clause being followed.

The power given to Government to make rules under Madras Act VI of 1936 has not been exercised till now. New sub-clause (11) based upon section 193 of the Madras Estates Land Act, 1908, is added to section 39 (A) so that raiyats subject to certain limitations may file a joint application. The clause dealing with the rule-making power is deleted as it is no longer necessary.

3. Section 151 of the Madras Estates Land Act, 1908, provides for a suit in ejectment being instituted against a raiyat from his holding on the ground that the raiyat has materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes. It is not easy to decide whether the erection of buildings on a holding would be always an improvement within the meaning of section 3 (4) of the Act. It is therefore desirable to provide that the erection of building on a holding for the use of a raiyat, his family or servants or for storing the produce of the holding or of other holdings or for keeping his cattle shall not render the raiyat liable to eviction even though the building is too big for the holding on which it stands. Such provision is made in new section 153.

It is, however, considered desirable that previous notice of the intended construction should be given to the landholder. If that is not done and a suit is filed, the landholder, it is provided, shall get the costs of the suit as a penalty for failure to give previous notice even though the landholder's suit is dismissed.

The right of the landholder to claim enhancement will remain intact in spite of the fact that buildings are put up on the holding for

the purposes mentioned above. But provision is made to enable the raiyat to acquire the landholder's interest in the holding on payment of reasonable compensation to be determined by the Collector on application made by the raiyat so that the ground on which the building stands may be excluded from the category of raiyati land and may be exempted from the liabilities incidental to such a tenure.

Section 151 practically prohibits erection of buildings on a holding for non-agricultural purposes. There is no reason why the raiyat should not acquire the landholder's interest in his holding for non-agricultural purposes such as religious, educational, industrial or charitable purposes. Under section 186 the landholder is entitled to acquire raiyati land for such non-agricultural purposes. Industrial improvement may be hampered if the existing law remains unaltered. When the landholder's interest is sufficiently protected, there is no reason why the raiyat should not be allowed to use his holding for non-agricultural purposes. Provision is therefore made in new section 154 to enable the raiyat to acquire in effect under the Land Acquisition Act, 1894, the landholder's interest in his holding for such non-agricultural purposes.

4. New section 216 substantially follows section 143 of the Orissa Tenancy Act, 1913. In the circumstances mentioned in the new section the Provincial Government may appoint a Revenue Officer to settle or to resettle rates of rents payable in money or in kind whether commuted, settled or otherwise fixed so that such rates may be reduced with a view to giving relief to raiyats. It is necessary that such provision should form part of the Madras Estates Land Act, 1908, so as to enable the Provincial Government to grant relief to raiyats in the estates of South Orissa where rack-renting of the worst type is legalised.

CUTTACK :
The 27th July 1937.

M. G. PATNAIK,
Member-in charge.

C. G. NAIR,
Secretary, Orissa Legislative Assembly.

[CONFIDENTIAL.]

**Report of the Select Committee on the Madras Estates Land
(Orissa Amendment) Bill, 1937.**

We, the undersigned members of the Select Committee, to which the Madras Estates Land (Orissa Amendment) Bill, 1937, was referred, have considered the Bill and have the honour to submit this our report with a copy of the Bill, as amended by us, annexed.

The Committee held its first meeting on 8th November 1937. It was decided to hear the evidence of about 12 witnesses and to substitute a Sub-Committee of the Select Committee to take such evidence. A Sub-Committee consisting of Hon'ble Mr. B. N. Das, Raja Bahadur of Khallikote, Sriman M. G. Patnaik, Srijut Dibakar Patnaik, Srijut Bichitrnanda Das and Srijut Naba-krushna Chowdhury was accordingly constituted to take evidence at Berhampur, the Raja Bahadur of Khallikote undertaking to see to the representation of the landholders and Srijut Dibakar Patnaik to the representation of the tenants.

The Sub-Committee examined Sriman Judhishtar Panda and V. Sitharamayya on behalf of the zamindari raiyats (at the instance of Dibakar Patnaik), Mr. A. S. N. Murty (a witness who offered to give evidence), Messrs. Madhusudan Panigrahi, Balakrishna Ratho, Venkateswarulu and Chakravarthy, on behalf of the Ganjam landholders (at the instance of Raja Bahadur of Khallikote), Srijut Ananta Padhana (produced by the Raja Bahadur of Khallikote), Mr. Dayanidhi Das (at the instance of the Raja of Bodokhimedi) and Mr. S. C. Banerjee (Settlement Officer) on behalf of the Government on 16th, 17th and 18th November 1937.

The Select Committee met again on 22nd November, 3rd, 4th, 7th and 8th December and examined the provisions of the Bill, clause by clause. After giving its best consideration to the evidence adduced before it, the opinions and petitions placed before it and the provisions in the clauses of the Bill, the Committee approved the Bill, subject to the alterations stated and explained in the following notes :—

Long title.—The words "and to amend the Madras Estates Land (Amendment) Act, 1934" have been omitted and the word "its" substituted for the word "their". These are purely drafting changes. An amending Act is not expressly referred to as it gets incorporated in the parent Act.

Clause 2.—To give wider discretion to the Revenue Officers fixing rent, we considered it necessary to remove the restriction that the raiyatwari area, with reference to which the rent had to be fixed under this clause, should be in the same district. We have, therefore, omitted the words “in the district” occurring in this clause. We considered it fair and proper to allow an increase of raiyatwari rent up to a maximum limit of two annas in the rupee. We thought it desirable to make it clear that, in case of dispute as to the rate of rent or area, it should be decided by the Collector on application made to him by the parties and that, if the rate was not ascertainable, it should be such rate as the Collector considered fair and equitable having regard to the principles governing the fixing of rent in raiyatwari areas. To give effect to this decision we have suitably amended this clause.

As the expression “unless otherwise provided” is vague and may give rise to difficulties in interpretation, we have made it clear that the presumption as to fair rate of rent laid down in section 28 would apply only to the proceedings prior to the determination of rent under this amending measure.

Clause 4.—As the basic principle underlying the Bill is the adoption in proprietary estates of rates of rent prevailing in similar raiyatwari areas we considered it not helpful to allow any such consideration as the average value of the rent accrued or received during any specified period to be reckoned as a determining factor in the commutation of rent under section 40 of the Act. We, therefore, omitted clause (a) of section 40 instead of amending it in the manner proposed in the Bill. We have also omitted the words “in the district” for the reasons mentioned in respect of clause 2.

Clause 5.—The words “in the district” have been omitted in the proviso added by this clause for the reasons mentioned under clause 2.

Clause 6.—In order that the tenant may avail himself of the benefit of the provision enabling him to get the rent, already settled or commuted, revised on the basis of the raiyatwari rents, it is essential that he should have opportunity to do so at any time when a case for such revision arose. It is undesirable to fix any particular period for making the application for revision. We also considered it necessary that an express provision should be made to the effect that, when the rate of rent in a raiyatwari area, with reference to which commuted and settled rents were revised under the new section 180-A, is enhanced or reduced, it should be possible for the landlord or the raiyat to apply for a corresponding enhancement or reduction of the revised rent. Such a provision has also the merit of mutuality. We have accordingly omitted the provision fixing a period of three years from the commencement of

this Act for preferring applications for revision of rent under the new section 180-A and also inserted a proviso enabling the landlord and the tenant to apply for proportionate enhancement or reduction of the revised rent when the concerned rents in raiyatwari areas are enhanced or reduced. As the rate of rent fixed under section 25, after the commencement of this Act, will have reference to the raiyatwari rents and therefore will stand on the same footing as the rates of rent commuted, settled or revised under sections 40, 158 and 10-A, for purposes of section 39-A, there is no reason why that section, which has been declared to be in applicable to the rents falling under the latter category, should apply to the rent fixed under section 25. Hence the new section 180-B has been amended so as to exclude the rent fixed under section 25 also from the scope of section 39-A. Except for these changes we have retained the clause intact.

Clause 7.—We considered it unnecessary to have any elaborate and expensive survey such as that under the Madras Survey and Boundaries Act for the purposes of the enquiry under the new section 190-A (2). We have therefore added a provision enabling the Collector to survey and prepare a record of rights for the purposes of enquiry under sub-section (2) of section 180-A.

The Bill was published in the *Orissa Gazette*, dated the 13th September 1937, and we do not consider its republication necessary.

We recommend that the Bill, as amended by us, be passed.

BISWANATH DAS.

M. G. PATNAIK.*

NABAKRUSHNA CHOWDHURY.

RAMACHANDRA MARDARAJ DEO,
RAJA BAHADUR OF KHALLIKOTE.*

G. C. THATRAJ.*

H. P. JENA.

SADASIBA TRIPATHY.

N. KANUNGO.

DIBAKAR PATNAIK.

BICHITRANANDA DAS.

*Subject to the note of dissent annexed.

Note of Dissent by Sriman M. G. Patnaik, M.L.A.

1. I have already given my opinion as to the Bill as originally introduced. The opinion was placed before the Select Committee. To avoid repetition of what I then stated I append a copy thereof as Appendix A* hereto.

2. The procedure followed by Government in obtaining public opinion is rather curious. Government opposed and defeated the motion for circulation of the Bill for public opinion and carried their motion to refer the Bill to a Select Committee. It is after the Bill was referred to the Select Committee steps were taken to obtain official opinion; the officials in their turn called for the opinion of a few non-officials. But the Bill was not published in Oriya and copies of the Bill either in English or in Oriya were not largely circulated. Such opinion purporting to have been received as that of the people is apparently the opinion of a few partisans who obtained the signatures of people to some printed matter not easily intelligible to the signatories. The procedure followed evidences a desire to rush through a Bill which is undoubtedly expropriatory in character, revolutionary in its effect if not in aim and devoid of all principles tyrannical to a minority and inspired by the idea that might is right.

3. Apart from non-official opinion the official opinion is practically unanimous that it is almost impossible to ascertain lands in raiyatwari tracts similar in quality to lands in a proprietary area with similar advantages. That it is not possible to do so is recognised in clause 2 as amended by the Select Committee. But with regard to other clauses the possibility is assumed. Under the Bill as originally introduced the officer had to seek for similar lands with similar advantages in the raiyatwari area of the same district. The deletion of restriction as to the district by the Select Committee has widened the scope of choice so that now the Collector may go on a "roving commission" not only beyond the boundaries of the district but also beyond the boundaries of the province. The officer who has to commute or settle or resettle rent having no further discretion than in regard to the ascertainment of similar land with similar advantages in the raiyatwari area has to travel over a large area before he can make the determination if he is a conscientious officer. Such a procedure is bound to involve the parties in heavy expenditure and the officers in considerable trouble in the disposal of applications for commutation or settlement or revision of settlement. In proceedings of this kind appeals provided against Collector's order of determination are practically useless unless the District Collector and the Revenue Commissioner

* Appendix A is attached hereto.

to whom appeals lie under the provisions of the Bill also make a local inspection. If they accept the determination of the Collector after local inspection there may be no further trouble but if they differ from the determination of the Collector they will have to go on a roving commission until a determination is made. Thus the parties will be put to heavy expenditure and the work of the officers concerned will increase tremendously so that it may become necessary to appoint special officers to perform the function prescribed by the statute. Thus it is clear that the legislation will in effect be beneficial neither to the riyat nor to the landholder and would throw a heavy burden upon the public revenue.

4. The so-called basic principle referred to in the report of the Select Committee is in effect the handing over of landholders bound hand and foot to the tender mercies of a partisan Government highly sensitive to clamour and itself at the mercy of a group of people bound by pledges capable of fulfilment only by serious encroachment upon vested rights. The assessment in riyatwari tracts of South Orissa is made by virtue of the prerogative of the Crown not yet limited by any statute though there are a set of rules framed by Government for the guidance of Settlement Officers, on what is known as the 'half net theory, that is to say, after ascertaining by different processes the gross outturn of land and the value thereof at the average price of the staple foodcrops prevailing during twenty non-famine years preceding the settlement or resettlement the net outturn is arrived at by deducting a certain percentage on account of cultivation expenses, etc., and half of the amount so arrived at is taken as the assessment payable on the land but as a matter of grace further deductions are made by Government as has been stated in Appendix A. In the last resettlement in the different taluks of the Ganjam district by reason of the rise in prices Government would have been entitled to an enhancement of assessment to the extent of 41 per cent but as a matter of fact Government directed that the enhancement should be made by 18½ per cent in regard to wet lands and 12½ per cent in regard to dry lands. The difference was given up by Government as a matter of grace. So the assessment actually levied in riyatwari tracts in the Ganjam district under the settlement now current is far short of what is payable even under the half net theory. It would be grossly unfair to so revise the rents comparatively recently settled or commuted for lands in proprietary estates under the provisions of the Madras Estates Land Act as to bring them to the level of the rates of assessment so fixed nearly thirty years ago in riyatwari tracts.

5 (a) Rents commuted under section 40 and settled under Chapter XI of the Madras Estates Land Act have been held not to be money rent within the meaning of section 30 of the Act. So far as money rents fixed otherwise than under section 40 and Chapter XI are concerned they will not be affected except on an

application made for settlement of rent under Chapter XI of the Act. Until rents are so settled the provisions of the Bill will not apply to such rents. Moreover in the meanwhile it is possible to the landholder to apply for enhancement of rent on the ground of rise in prices.

(b) Section 35 of the Act fixes the maximum of the rent payable at the value of the established waram of the village in which the holding is situated commuted in accordance with the provisions of section 40. This section is not amended but the Bill fixes another maximum, namely, the rent or rate of rent for similar lands with similar advantages in the nearest raiyatwari area increased by two annas in the rupee and section 40 is now so attenuated as to make its occurrence in section 35 meaningless.

Such incongruity is proof positive that the legislation undertaken by the Bill is a piece of ill-conceived patch-work which would do credit to no legislature.

6. On the whole this legislation will not benefit the actual tillers of the soil though it will seriously cripple the resources of several landholders. In the report submitted in 1913 relating to resettlement of the Government areas in the Ghumsur taluk it is stated that a raiyat gets as rent from an under-tenant from six to twelve times the assessment payable to Government. Sudden reduction of rent proposed by the Bill will encourage alienation of land to persons who purchase lands as an investment so that in course of time the persons who held the lands as raiyats will be reduced to the position of under-tenants holding the lands at the mercy of the alienees of such lands on payment of heavy rent. The evidence of Ananta Podhano shows how he has been cultivating lands which he owned formerly, as an under-tenant of the alienees. There are several such instances. Such cases are more numerous in Government areas and in the Parlakimidi estate where the rents are lighter than in other estates. So the crippling of the resources of zamindars would create a new class of middlemen more numerous but less useful than zamindars to society and would increase the number of landless cultivators. So the problem of economic distress will remain as keen as ever if it does not become keener. The legislation would rob Peter and pay Paul but would not relieve the economic distress of the agricultural population.

7. For the reasons above stated and for other reasons I dissent from the report adopted by the majority.

Appendix A.

1. The object of the Bill as has been stated in the statement of objects and reasons is to give relief to raiyats in the private estates of South Orissa in regard to the high rates of rent fixed by settlement or commutation. There can be no doubt that such rates of rent are high and relief is necessary. The Bill seeks to grant permanent relief and not merely temporary relief by directing the adoption in such estates practically the rates of assessment prevalent in the neighbouring Government areas.

2. Two main questions arise for consideration in this connection :—

- (a) whether it is fair to impose the rates of assessment prevalent in raiyatwari tracts upon private estates ;
- (b) whether the provisions of the Bill as they now stand will produce the desired effect.

3. At the outset I do admit that the rates of rent settled or commuted in certain private estates are much higher than the rates of assessment in raiyatwari tracts. The statement of objects and reasons so far as I have been able to gather accounts for the difference in the rates by the fact—

- (a) that in private estates ordinarily half the gross produce is taken as the rent payable and that in raiyatwari tracts half the net produce is deemed to be the king's share ;
- (b) that lean years are left out of account to the prejudice of the raiyats in commuting or settling rent ;
- (c) that in settling or commuting rents the rates of assessment prevalent in neighbouring Government areas are not taken into consideration.

In my opinion the large difference in rates found in rents in some private estates and the assessment in Government areas cannot be sufficiently accounted for by the grounds mentioned in the statement of objects and reasons.

4. The exclusion or lean or famine years is a common feature of settlement both in Government and private estates. So it cannot be taken as a ground for distinction to account for the large difference.

5. The first ground of distinction, namely, that half the gross produce is taken as the landholder's share is not wholly correct. For instance in the Parlakimidi estate in which cash rents were introduced more than sixty years ago the average rise in price of staple food crops showed an increase of over 100 per cent over the price at which the money rates were originally fixed. On the ground of rise in price the Settlement Officer doubled the money rates originally fixed. The raiyats did not challenge the

finding that the rise in price was so high. They however contended that the provisions of section 30 of the Madras Estates Land Act, 1908, which restricted the enhancement permissible to two annas in every rupee of the rent payable governed settlement of rents under Chapter XI of the Act. The contention of the raiyat runs counter to a ruling of the Madras High Court reported in A. I. R., 1926, Madras 480, though the authority of the ruling may be said to have been shaken by more than one Full Bench ruling of the same High Court that the High Court is not competent to revise the orders of the Board of Revenue under Chapter XI of the Madras Estates Land Act. On appeal by the raiyats of Parlakimidi one member of the Board of Revenue held that the landholder was not entitled to an enhancement of more than two annas per rupee. But on an application by the landholder the Collective Board under section 172 of the Act modified, by a majority, the order of the Board under section 171 of the Act by granting an enhancement of six annas per rupee of the original rent. So in this case rent was not settled on the basis of half the gross produce. In the Surangi estate what is known as *khola-mamool* is deducted out of the gross produce and the net produce is equally divided between the raiyat and the landholder. In the estates of Atagad and Khallikote half the gross produce is taken as the landholder's share. In some cases more than half is claimed as landholder's share. Thus the proportion payable as landholder's share differs in different estates and is based on the established varam in each estate.

6. The next question is whether the adoption of the principle that half the net produce should be taken as the landholder's share would account for the large difference between the rates in Government areas and the rates in private estates. To answer this question it is necessary to ascertain how settlement of assessment is made in Government areas. Theoretically the demand of Government is fixed at half the net produce and is based upon the prerogative of Government to fix and to determine by an executive act the *rajabhagam* or king's share in the produce of land and to vary such share from time to time (I. L. R., 27 Madras, 386, at page 396.) In the actual exercise of the prerogative the Crown is not supposed to proceed without any regard to definite and well-established principles. Neither in olden times nor now the Crown has been entitled to more than a fixed share of the produce—be it the theoretical one-sixth of the Hindu writings or the half net again and again proclaimed by the present Government as the share it takes (I. L. R., 27 Madras, 386, at page 389). Two principles govern all the processes gone through at a settlement :

One is that the assessment is on the land and does not depend on the kind of crop grown (except that on wet land the assessment includes a charge for water) or on the caste

or circumstances of the person who holds the land. By various experiments the Settlement Officer with fair accuracy ascertains the grain outturn of land under settlement per acre. It is converted into money value at the average of the prices of twenty non-famine years immediately preceding the settlement. Thus the money value of the gross produce of each holding is ascertained. Then the net produce is determined. For that purpose deduction are made from the gross outturn to represent—

- (1) an allowance for cartage of the grain to the nearest market,
- (2) an allowance for merchant's profit,
- (3) an allowance for vicissitudes of seasons,
- (4) an allowance for unprofitable areas such as bunds and channels included in holdings,
- (5) the cost of seed,
- (6) the cost of ploughing cattle,
- (7) the cost of agricultural implements,
- (8) the cost of manure, and
- (9) the cost of labour.

A percentage deduction is made under the aforesaid heads even though any particular raiyat may not be entitled to any such deduction. Theoretically Government is entitled to 50 per cent of the net produce so determined. Vide the press communique, dated Fort St. George, January 10, 1934. It is not known when the original settlement in the old Ganjam district was introduced. From the letter of Mr. G. F. Paddison, I.C.S., Special Settlement Officer, Party no. V, Berhampur, quoted in G. O. no. 82-Revenue, dated 9th January 1909, it appears that the original proposals for the resettlement of Chicacole taluk were submitted in 1875 and that the scheme for the Joint Settlement of Chicacole and Berhampur taluks was made in 1877 and that the earlier proposals were rejected on the ground that they resulted in too large an increase of assessment and that in Chicacole taluk Mr. Goodrich's original calculation for the money rates ranging from Rs. 7 to Rs. 1-4-0 in wet was rejected.

7. Before the Bill in question becomes law it is necessary to ascertain the entire history of settlement in the old district of Ganjam so as to enable people concerned to know whether the rates of assessment adopted at the original settlement and at the resettlements were the direct result of the application of the principles governing settlement or resettlement or were adopted after deductions made either arbitrarily or as a matter of grace by Government. The following extract from the press communique

above referred to clearly shows that Government did not levy the rates arrived at on a strict application of the principles governing resettlement :—

“ A resettlement is a fresh calculation of Government's share of the net produce.”

* * * *

“ If strict theory were adhered to a Settlement Officer's duty at resettlement would be to restore with reference to this revised commutation rate Government's share to its theoretical 50 per cent of the profits. To do this it would be necessary to raise the rates in the proportion that the revised commutation rate bears to the original rate less a deduction for a proportionate rise in the cost of cultivation. In practice this is not done. Government have left with the raiyat by far the greater part of the profit due to generally improved economic conditions and to the rise in prices which has taken place during the currency of all settlements that have come up for revision. If the theoretical 50 per cent net share had been retained Government would have had to raise the assessments in such districts as Tanjore, East and West Godavari by 75 to 100 per cent. But since 1924 Government have limited the enhancement to a maximum of 18½ per cent and even before 1924 enhancements went above 30 per cent in rare instances and in small areas.

This also explains why it has not been actually considered necessary at resettlement to make elaborate and expensive recalculation of cultivation expenses or grain outturns.”

In its proceedings (Land Revenue and Settlement) Misc. no. 2820, dated 29th September 1930, reviewing the findings of the committee appointed to enquire into the economic condition of the East and West Godavari and Kistna districts and the report of Mr. B. G. Holdsworth, I. C. S., on the findings of the committee the Board of Revenue, Madras, makes the following observation :—

“ The Board has to observe at the outset that the committee is in error in its statement of the principles of settlement. These are correctly stated by Mr. Holdsworth in paragraph 3 of his report. The Board desires to emphasise the fact that the assessment which the Government levy is an assessment on the produce of the land. It has been the immemorial practice in India for the State to claim a certain definite share of the produce. Originally this share was actually paid in kind. Consequently the Government automatically benefited in the same proportion as the rise in prices. If the old sharing system had been still in force there would have been no need for a periodical revision of the rates of assessment. It was only after the share of the produce was commuted into a money value that such periodic revisions of the rates became necessary. This commutation rate was fixed after making various liberal deductions for cultivation expenses incidental to the raising of a

crop. The result was of great benefit to the raiyat in that Government have never taken the full share of any increase in price which they would have taken if the old sharing system had been still in force."

In the aforesaid extract the Board has approved of all that Mr. Holdsworth has stated in paragraph 3 of his report. But I take exception to the following sentence occurring in paragraph 3 of Mr. Holdsworth's report:—

"and owing to the fact that produce is valued at a commutation rate which is always considerably below the market price prevailing at the time when the settlement is made the theoretical half share is never taken in practice".

Mr. Holdsworth submitted his report in April 1930 when probably fall in prices was not pronounced. At every settlement there was a steady rise in price until 1930 when prices began to fall. In the press communique of 1934 already referred to, there is a paragraph which refers to the commutation rate being reduced from Rs. 221 to Rs. 143 per garce. At the recent settlement of rents in Khallikote and Atagada estates the prevailing market price was Rs. 5 or Rs. 6 a bharanam but the settlement was made at the commutation rate of Rs. 9 or Rs. 9-5-4 a bharanam. The Board of Revenue, Madras, then directed that the gross grain outturn should be ascertained in accordance with the principles adopted in regard to Government areas under settlement but did not instruct that such principles should be adopted in determining the net produce and prohibited the then market price being adopted in spite of the provisions of section 35 of the Madras Estates Land Act. The last resettlement in Chicacole taluk of the old Ganjam district was made in 1909 or thereabouts. Even though an enhancement to the extent of 41 per cent was justifiable, in Government Order no. 9685, dated 30th July 1909, Government directed enhancement in the assessment to a maximum of 18½ per cent in respect of wet lands and 12½ per cent in respect of dry lands. The Government orders with regard to Berhampur taluk which then included the Government areas of the Chatrapur taluk and in regard to the Ghumsur taluk are not available. It is clear that the rates of assessment at the last resettlement are not the direct result of the principles governing resettlement in Government areas but are arbitrarily fixed. The foisting of such rates upon private estates regardless of the established varam in such estates even by legislation is to say the least unfair.

8. As has been shown above it would be unfair to take into consideration the rates of assessment in the neighbouring Government areas in fixing rents in private estates either under section 40 or Chapter XI of the Madras Estates Land Act though under Section 40 (3) (b) in certain circumstances it is permissible to take into consideration such rates of assessment. So ground (c) in paragraph 2 supra cannot be said to be sound.

In this connection it may not be out of place to point out that it is not easy to understand the meaning of the following sentence occurring in the statement of objects and reasons of the Bill in question.

“In the absence of representative cash rents or rates of cash rents within the proprietary area the procedure of the Settlement Officer has merely been mechanical ; he takes the theoretical rents stipulated during the 10 previous non-famine years and distributes the average value of the rents on the raiyati area in accordance with the taram or class of soil and fixes a rent which is said to be fair and equitable.”

Apparently the sentence refers to section 40 of the Act. It is based upon section 40 of the Bengal Tenancy Act. The section in the Bengal Act was repealed in 1928. Section 47 of the Orissa Tenancy Act corresponds to section 40 of the Bengal Tenancy Act. Sub-section 3(b) of section 40 of the Madras Estates Land Act was amended in 1934 by the addition of the words—

“or where there are none such, in the village of a neighbouring taluk”.

The officer who has to commute rent in kind into cash rent is at liberty to take into consideration the rates prevailing in the neighbouring Government villages as stated in section 40(3)(b). The amendment proposed in the Bill is that the officer shall not take into consideration the money rent payable by raiyats for land of a similar description and with similar advantages in the same village or neighbouring villages in the proprietary areas but shall have regard for rates prevalent in the Government area whether cash rents are prevalent in the same village or the neighbouring villages in the proprietary area. The amendment proposed goes much further than what has been stated in the statement of objects and reasons in that connection.

On the other hand the proposed legislation seeks the fixation of rent purely by a mechanical process as it is limited to lesser data. Moreover it is not always possible to get data in the form of money rates in any local area which may be considered fair and equitable with reference to the lands under settlement. Section 119(1)(c) of the Orissa Tenancy Act which corresponds to section 104-A(1)(c) of the Bengal Tenancy Act provides against such a contingency. On principle great latitude has to be given to the officer who fixes rents even though such power is very often abused. The remedy lies in selecting the right sort of man and not in fettering the discretion of the officer appointed.

9. Thus it is clear that the grounds mentioned in the statement of objects and reasons do not justify the legislation proposed. There are other grounds on which it can be said that the proposed legislation is objectionable.

(a) Resettlement of assessment in the old Ganjam district was made in 1909 or thereabouts. The period of thirty years for

which it is to be current will expire shortly and a fresh settlement will be due. Whether Government will take up fresh settlement or not is yet to be known. If they take up fresh settlement it is likely that there will be a rise in the rates of assessment owing to the high prices that prevailed during a large portion of the twenty years immediately preceding the fresh settlement if made in time. If the fresh settlement results in the rise of rates the benefit ought to go to landholders if the proposed legislation comes into force. On the other hand if there is a fall the benefit ought to go to raiyats. But if no fresh settlement is made and the existing rates are allowed to run for some time longer there will be reasonable complaint especially from landholders if rents in the estates are settled or resettled on the basis of rates of assessment determined and fixed in 1909 or thereabouts.

(b) Supposing that rents are settled or resettled in private estates during the two or three years preceding fresh settlement in Government areas. What is the legal position with regard to the currency or duration of such settlement or resettlement in private estates? When will the period of twenty years prescribed in the Madras Estates Land Act start? Will it start from the commencement of the later resettlement in the case of private estates in which rents have been already settled or resettled? In the case of some villages in private estates the period of twenty years will expire in seven or eight years.

Several practical difficulties are likely to arise and the provisions of the proposed legislation do not afford any solution for them.

10. Moreover when the private estates in South Orissa were permanently settled in almost all of them there were large tracts of unoccupied lands. Then the difficulty was to get raiyats to settle on land, population was sparse money was scarce. Payment of rent in kind was the rule and was considered fair and equitable. The proviso to sub-clause III of section 11 of the Madras Rent Recovery Act VIII of 1855 evidences the view then prevailing. It runs as follows :—

“ Provided that if either party be dissatisfied with the rates so determined he may claim that the rent be discharged in kind according to the ‘varam’ that is according to the established rates of the village for dividing the crop between the Government or the landlord and the cultivator. * * * ”

In parts where land was fertile and had facilities for irrigation and which were comparatively thickly populated cultivation was intensive and rent in kind was paid. But in parts thinly populated and by aboriginal tribes who were backward in agriculture rent was low. In the Jeypur estate in the Koraput district broadly speaking even now rent is very low in the upper division and is high in the lower division. The result of the operation of the proposed legislation will be reduction

of rent in the lower division and enhancement of rent in the upper division. So the proposed legislation is likely to work harshly upon raiyats who pay rent at rates lower than the rates of assessment prevalent in neighbouring Government areas. The object of settlement or commutation being to convert rent in kind into money rent with reference to circumstances of each case the wholesale adoption of rates of one estate even though it be a Government estate under legislation for other estates, regardless of the particular circumstances of each of such estate or even of the particular village or land under settlement cannot be fair and equitable in all cases. Government as has been shown above do not fix as their demand half the net produce arrived at on deduction of cultivation expenses. It may not be unfair to extend the principle that rent should be fixed at half the net produce to private estates as the rates of rent will prevail for a period of twenty years in spite of the rise or fall in prices or fall in outturn. But it would not be fair that the deductions made by Government as an act of grace should go in reduction of the rent payable in private estates.

Again the rates fixed at resettlements in the Government areas as has been stated in the press communique of 1934 referred to above are not determined on strict and elaborate calculations prescribed by the rules because of the intention of Government never to take full advantage of the enhancement such calculations would warrant.

So if the rates fixed at resettlements in Government areas are adopted for private estates it would mean the adoption of admittedly inaccurate figures—figures arrived at without scrupulous regard for rules governing settlement or resettlement in Government areas.

Moreover there is another ground why Government rates should not be adopted though the principles may be adopted.

In Government areas resettlement is made once in thirty years and cannot be made except when Government desires such resettlement. Even the whole body of raiyats cannot force Government to undertake resettlement when it falls due. But under the Madras Estates Land Act resettlement can be made once in 20 years and that on the application of either of raiyats or the landholder. In Government areas the average for the twenty years immediately preceding the settlement is taken into account whereas under the Madras Estates Land Act, ten years' average is taken into consideration. The rates arrived at are bound to differ in such varying circumstances even though half the net produce is deemed to be the rent payable in private estates.

11. If it was merely intended to assimilate private estates to Government estates so that rates of assessment may be taken into consideration in commuting or settling rents in private estates the

simplest way of doing it would be to substitute the definition of 'estates' in the Orissa Tenancy Act. Section 3 (7) of the Act runs as follows:—

'Estates' means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector of a District and includes Government Khasmahals and revenue-free lands entered in any register and includes also the sub-proprietary interests referred to in clause (20). This definition practically corresponds to the definition of 'estate' in Section 3 (7) of the Bengal Tenancy Act and includes within its scope major and minor inams and the Government raiyatwari tracts. If this definition is substituted for the definition of estate in the Madras Estates Land Act, the Bill in question would be unnecessary as the distinction between a private estate and a Government estate would practically disappear. But minor inams also will become estates but the framers of the Bill in question do not wish to hit the owners of minor inams but only the owners of estates within the meaning of the Madras Estates Land Act. Tenants cultivating minor inams do require protection against eviction and rack-renting as much as other tenants. So the Legislation proposed is discriminatory.

12. When rent is commuted under section 40 or settled under Chapter XI of the Madras Estates Land Act such rent should not be enhanced or reduced for a period of twenty years from the date of such commutation or settlement comes into force, on the ground of rise or fall in prices. Vide sections 41 and 177 of the Act. What is the rent payable on the expiry of the said period of twenty years? There is no provision in the Act on the strength of which the question can be directly answered. The question whether settled or commuted rent is money rent within the meaning of section 30 of the Act so as to attract the provision of section 30 (i) (b) is answered in the negative by A. I. R. 1926 Madras 480 and the recent ruling of the Madras Collective Board in the Parlakimidi case. The implication is that for purposes of Chapter XI of the Madras Estates Land Act on the expiration of the period of twenty years prescribed in section 177 of the Act reversion to waram is possible though the generality of the language employed in section 30 of the Act lends support to the view that settled or commuted rent does not admit of an enhancement more than two annas in the rupee of the rent so settled or commuted. The provisions of the proposed legislation confirm the view taken in A. I. R. 1926 Madras 480 and the recent ruling of the Madras Collective Board in the Parlakimedi case referred to above.

So far as rent commuted under section 40 of the Act is concerned though reversion to waram is possible no fresh proceedings under section 40 of the Act can be resorted to until rent in kind is actually taken for a period of at least ten years. Proceedings under Chapter XI of the Act can however be immediately started for settlement of rent on the expiry of the period of twenty years prescribed under section 177 of the Act. In effect commutation or settlement of rent amounts to a lease for twenty years with the option of reversion to waram if the view taken in A. J. R. 1926 Madras 480 and the Parlakimidi case is taken as correct. It is doubtful if the legislature intended the scope of section 30 to be so restricted.

If commuted or settled rent is excluded from the scope of section 30 of the Act only cases of cash rent fixed by agreement would come under section 30 of the Act. Before legislative confirmation of the aforesaid view a careful study of the relevant sections of the Act and of the effect such confirmation would have in regard to the rent payable in future is necessary. At all events the aforesaid view should not be confirmed by a side wind as the effect of the proposed legislation will be.

13. From what has been stated in the foregoing paragraphs the conclusion is irresistible that the proposed legislation is not fair and the first question formulated in para. 2 supra has to be answered accordingly.

14. I do not wish to deal with the question whether the proposed legislation will or will not come within the mischief of section 299 of the Government of India Act, 1935 and para. 17 of the Instrument of Instructions to Governors.

15. I shall now deal with the second question formulated in para. 2 supra.

16. At the outset I shall refer to the heavy responsibility cast upon the Collector for determining the nearest raiyatwari area referred to in clauses 2, 4, 5 and 6 of the Bill. In clauses 2, 4, and 5 the determination is limited to the district; Collector in this connection means the Revenue Divisional Officer or any other officer appointed to discharge the functions of the Collector according to the definition of Collector in the Madras Estates Land Act. The determination is as difficult as it is important. How the determination is to be made is not indicated. The situation of private estates in the district is such that it trenches more than one raiyatwari tract situate within different sub-divisions. A conscientious officer will find it impossible to determine a village in the raiyatwari area which contains lands of similar description and with similar advantages as a proprietary village under settlement. The application under new section 180 (A) presupposes previous determination by the Collector of the Government area with reference to which the application has to be made. Is it intended that the determination

should be made administratively by Collectors before any application is made by a raiyat and that in so doing the Collector may go beyond the district or even the province? If so, it must be taken to be too large an order to be given effect to by any Collector.

As simultaneous settlement in Government and proprietary areas cannot be expected, land which is about to be resettled shortly cannot be said to be of similar advantage with regard to a land which has been settled long ago with the result that the assessment or rent has been enhanced or reduced in consequence of such resettlement and vice versa. Moreover it will be found extremely difficult to classify lands in private estates with reference to lands in Government areas which are irrigated by the Rushikulya canal and are well levelled and otherwise better prepared for cultivation by the raiyats' labour. The provisions of the Bill generally speaking are unworkable.

17. Clause 2 of the Bill proposes to substitute for 'neighbourhood' the nearest raiyatwari area in the district as determined by the Collector.

The express 'neighbourhood' is more comprehensive than the proposed substitution. Neighbourhood would include neighbouring lands in the same village or in a neighbouring village of the same estate or of a Government tract. If the proposed Bill becomes law and even though other lands in the same village or lands in the neighbouring village of the same estate and of a neighbouring estate are settled under the provisions of this Bill after it becomes law the Collector has to search for and to determine a raiyatwari area containing similar lands with similar advantages even though such raiyatwari area is situate at a distance of over 70 miles. Such determination has to be made by the Collector previous to the admission of the raiyat by the land-holder and without application being made. Lands in Parlakimedi estate are in point. The lands are settled now and may be resettled under the provisions of the Bill in question if it becomes law. In a case of this sort unnecessary and useless burden is cast upon the Collector. The absurdity is apparent and further comment is unnecessary.

Secondly where the Collector cannot determine the raiyatwari area with similar lands and similar advantages the Collector may determine the rate on application. In such a case there is no bar to his taking into consideration the rates prevalent in the same village or in a neighbouring village.

Thirdly when rent is fixed on application *ex hypothesi* when Government area cannot be determined by the Collector he is at liberty to fix a rate exceeding the maximum Government rate in the district as there is no prohibition against his doing so.

Fourthly a raiyat would not be bound to pay, under section 25 as proposed to be amended, rent at a rate exceeding the rates prevailing in the Government area as determined by the Collector but if under Chapter XI of the Act rent is settled or resettled after the Bill in question becomes law he will have to pay rent at Government rate plus two annas in the rupee. Apparently the amendment proposed is a piece of ill considered legislation.

18. In clause 4 (i) of the Bill two amendments are proposed.

(a) In section 40 (3) (a) of the Act, for "actually accrued due", "actually received" is substituted. The substitution will give rise to practical difficulties. Suppose during the ten years in question there is litigation between the raiyat and the land-holder. For the first three years a suit for arrears of rent is filed. The matter may be pending in the District Court or the High Court on appeal. For the arrears of rent of the second three years a second suit is filed. It may be pending similarly in one of the courts of appeal or may have been stayed pending the final disposal of the first suit. In the last year suppose proceedings for appraisement or division of crop are taken and are pending. In such circumstances which are not improbable when no rent may be actually received it would not open to the raiyat or the land-holder to apply for commutation under section 40 of the Act. Very often prolonged litigation is cut short by proceedings taken under section 40. So the substitution proposed is not at all wise as it is likely to promote litigation and to prevent the raiyat or the land-holder from applying for commutation. Or if an application is made the Collector may have no alternative but to fix and to determine the cash rent with reference to sub-section 3(b) only. If regard is to be had to sub-section 3(a) also the purpose of the legislature will be defeated by the proposed amendment in the circumstances above stated.

Moreover in the circumstances above stated suppose decrees are passed but the amounts decreed in one or more suits are not realised or realised only partly. It would not be fair to take into consideration only the amount realised however small it may be in determining money rent under section 40 of the Act.

(b) The second amendment proposed is the inclusion of famine years in the period of ten years. Such inclusion might cause hardship to the raiyat or the land-holder. Though in a particular year which is declared to be a famine year because of failure of crop in a particular area of the district, on the land in respect of which an application for commutation is made there may be no failure of crop but the price shoots up on account of failure of crop in a large portion of the district. If such a year is not excluded the raiyat will suffer if the extraordinary price of the particular year is taken into consideration under sub-section 3 (a) as proposed to be amended. On the other hand if from the

land in question very poor crop is realised in the year which is declared to be a famine year the land-holder will suffer if that year is taken into consideration. That is why at settlement or resettlements in Government areas such years are excluded from consideration in fixing the outturn. Such exclusion is fair and is adopted as the result of experience of several officers who had to settle or resettle assessment in riyatwari tracts. The inclusion of famine years as proposed is therefore not wise.

19. In clause 4 (ii) of the Bill the amendment proposed is to the same effect as that proposed in clause 2 of the Bill. The observations made in paragraph 17 supra apply *mutatis mutandis* to the amendment proposed in clause 4 (ii). So the observations are not repeated here.

20. In clauses 5 and 6 certain amendments are proposed :—

(a) The proposed amendment in the form of provisos in clauses 5 and 6 are already dealt with in the foregoing paragraphs. The observations made therein need not be repeated here.

In clause 5 the amendment seeks to add a proviso to sub-section 2 of section 168 of the Act. The same difficulties as are pointed out in paragraph 17 supra are likely to arise.

Moreover when the Settlement Officer would find it difficult to locate a Government area containing lands of similar description and with similar advantages he cannot be said to go beyond his province if he settles rents with reference to the provisions contained in sub-section (2) of section 168 that is to say in the manner such settlement is done now. The task to determine 'similar land' and with similar advantages in the Government area is almost an impossible task.

The expression similar lands in clause 5 probably means land of a similar description occurring in clause 6 though the adjective similar qualifying land and standing by itself may be interpreted as more comprehensive than the expression "of a similar description".

21. Under new section 180-A proposed to be added by clause 6 of the Bill time for applying for revision of rents commuted or settled is limited to three years. The meaning of the restriction placed is not clear. Nor is it made clear whether the period of twenty years prescribed by sections 41 and 177 shall run from the date of revision or from the dates when commutation or settlement of rent was made. If the period of 20 years prescribed in section 41 or section 177 is to run from the date of commutation or settlement as the case may be notwithstanding the fact or subsequent revision difficulties are likely to arise in regard to the period of ten years for which the average rent has to be taken into account when resettlement has to be made.

22. In clause 6 it is provided that the rates of rent arrived at in accordance with the provisions of section 168 (2) shall be deemed not fair and equitable if they exceed Government rates on lands of similar description and with similar advantages by more than two annas in the rupee. This provision does not appear to be consistent with any principle. If the land-holder is deemed to be the assignee of Government revenue—no doubt he is such an assignee—then he ought to be entitled to such revenue not however as it would stand to-day if the private estate were a Government estate but as it stood at the time the permanent settlement was made. Section 14 of Regulation XXV of 1802 under which the permanent settlement was made lays down that zamindars or landholders shall enter into engagements with their raiyats for a rent either in money or in kind and shall, within a reasonable period of time, grant to each raiyat patta or Kaul defining the amount to be paid by him and explaining every condition of the engagement. It is true that by Regulation IV of 1822 the customary rights of raiyats were protected by declaring that the generality of the language employed in the regulations of 1802 was not intended to interfere with the rights of raiyats. The effect of section 14 of Regulation XXV of 1802 read in the light of Regulation IV of 1822 is that the land holder is entitled to take rent either in kind or in money subject to the customary rights of raiyats. Government of Madras though not bound by any statute in exercising the prerogative of the Crown demand an assessment theoretically equal to half the net produce. If rent is fixed on such basis there may be no objection on the ground of change of character of the permanent settlement. The demand by landholders in individual estates for rent at half the gross produce may be deemed unjustifiable as contravening the customary right of raiyat to hold land on payment of half the net produce as rent or assessment. Any variation made by Government from the aforesaid theory as an act of grace or otherwise would equally contravene the customary rent payable to a landholder whether such landholder be Government or a zamindar or a private landholder. If rates inconsistent with such customary rent payable are sought to be foisted in private estates, on principle it would be unjustifiable and would afford sufficient ground for an attack on the Bill that it is likely to change the character of permanent settlement. I am therefore opposed to the provision of two annas in excess of Government rates being paid to landholders if Government rates really represent half the net produce. If they do not, rents should be fixed on the basis of half the net produce which should be ascertained by the Settlement Officer. The provision as to enhancement of Government rates by two annas in the rupee is mere patch work which should find no legislative sanction.

23. In sub-clause (2) of clause 6 power is given to Government to frame rules as to how enquiry is to be conducted for determining rent or rate of rent payable. But there is no

provision for rules being framed as to how the Collector has to determine the Government area containing the village where there are lands of a similar description and with similar advantages. That is the most difficult task a Collector has to perform. For that purpose no guidance is sought to be given.

24. Under new section 180-B section 39-A is sought to be repealed. It may mean one of two things :

- (a) If there is fall in prices below those on which rent was settled or commuted raiyats in private estates shall have no right to apply for remission even if on that ground remission is granted to raiyats in Government area

or

- (b) Hereafter no remission will be granted to raiyats in Government tracts on the ground of fall in prices.

In the former case disparity would exist between the rent payable in private by a riyat in Government areas and the rent payable in private estates and would be evidentiary of lack of all regard for principles. If the rates of rent in private estates are sought to be assimilated to the rates of assessment in Government areas there is no reason why room should be given for the existence of such disparity.

In the latter case the policy adumbrated by Government would cause hardship to raiyats in Government areas in South Orissa especially in view of the large remission or reduction of assessment granted by the Madras Government. In course of time Government will find it impossible to adhere to such policy.

25. In conclusion I beg to state that, the Bill is an ill thought-out piece of legislation opposed to all principles and is a mere patch work bristling with practical difficulties which will defeat the desired object and may raise a storm of opposition which is likely to succeed. It would have been much better if steps had been taken as was done in Madras to constitute a committee to report on the conditions prevailing in zamindari and other proprietary areas and to propose any legislation that may be considered desirable. The committee appointed by the Madras Assembly has issued a questionnaire to be answered by persons interested.

M. G. PATNAIK.

**Minute of dissent by Raja Bahadur Sri Ramachandra
Mardaraj Deo, M.L.A.**

1. I am unable to agree with either the principle underlying the Bill or the provisions embodied in it. The reason for the introduction of the Bill as stated in the Statement of Objects and Reasons is that the pitch of rent in proprietary areas is unduly high. The Bill, therefore, proposes to make it imperative on the Revenue Officer settling rent in the proprietary areas to *have regard to the rents or rates of rent prevailing in the raiyatwari area*. If the Bill merely aimed at introducing an additional standard of what is a fair and equitable rent for the guidance of settlement officers acting under Chapter XI of the Madras Estates Land Act, it would not have been open to much serious opposition. The provisions of the Bill, however, go much beyond its scope as defined in the Statement of Objects and Reasons.

2. The Bill introduces an arbitrary and far too drastic a rule which declares that no rent shall be deemed to be fair and equitable which exceeds by more than two annas per rupee, the rent or rate of rent for similar lands with similar advantages in the nearest raiyatwari area. This rule of evidence has, as I shall presently show, not even the merit of novelty to recommend it. The Bill ignores the entire history of tenancy legislation in this part of the country extending for over a century and a half and proposes to do away with the customary rents and rates that have prevailed in proprietary areas both prior to and after the Permanent Settlement Regulation by a mere stroke of the pen. Curiously enough the Premier who piloted the Bill and presided over the deliberations of the Select Committee has evinced an undue haste in rushing through it. The Bill was introduced in September and a motion for circulation was defeated by the superior strength of the party in power. Practically all the amendments that were moved by the members of the opposition were defeated and even my modest proposal to give the benefit of the Bill to the actual tiller of the soil was negatived by the casting vote of the Chairman. The Bill has not attracted that amount of attention which it deserves from the public or the parties affected. Almost every official to whom the Bill was sent for opinion has complained that the time given to him was too short for studying the Bill in all its aspects. In spite of all this, the Bill is being rushed through in utter disregard of the far-reaching character of the issues involved.

3. I now propose to set out the reasons for opposing the principle of the Bill. In my opinion the Bill, if passed into law, would strike at the very root of the arrangement that was brought about by Madras Regulation XXV of 1802. I need not labour the point that the zamindars, whether they be regarded as proprietors of the soil or as mere farmers of Government revenue were collecting half and sometimes more than half of the gross produce both under the Hindu Government and the Mogul Emperors [See pages 150, 151 of the Fifth Report, Vol. I, (1917 Edition)]. Again at

page 152, "In addition to the assessment on lands or the shares of their produce received from the inhabitants, they were subject to the duties levied on the in-land trade which were collected by the renters under the zamindars".

"The Government possessed the right to certain proportion of the crops after making the customary deduction for the use of the Pagodas and other local purposes, which were regulated by the *same principles* as in the Zamindary lands" (Page 154, Vol. I, Fifth Report).

4. Prior to the introduction of the Permanent Settlement Regulation, the Board of Revenue issued proceedings dated 15th October 1799 to the Collectors containing instructions as to how they should proceed in computing the Peshcush to be fixed. I shall quote only two passages to illustrate my point. Para 30 reads as follows:—

"Rules will be established to enable the proprietors and farmers of land to realise with promptness what is *justly due* from their undertenants and ryots."

Para 34 is as follows:—

"Distinct from these claims are the rights and privileges of the cultivating raiyats who though they have no positive property in the soil have a right of occupancy as long as they cultivate to the extent of their usual means and give to the Sircar or proprietor, whether in money or in kind, *the accustomed portion of the produce*".

Two points are clear from the passages cited above:—

- (i) That the rent payable was the customary share of the produce.
- (ii) That the Government and the zamindar were guided by the same principles in the collection of rents.

5. Regulation XXV of 1802 and Regulation XXX of 1802 which were passed on the same day as well as the Sauads and Kabuliats exchanged between the Government and the zamindars, respect this customary right of the zamindar to collect the "accustomed portion of the produce". All the rights that were being exercised by the zamindar at the time of the Permanent Settlement whether they find express mention in these documents or not were retained and were not in any way affected by the Settlement Regulation. This is clear from the language of Madras Regulation IV of 1822. (Permanent Settlement interpretation Regulation). I am also fortified in this conclusion by a pronouncement of the Judicial Committee of the Privy Council reported in 40 Madras, page 886 at 907. "The Jama or Peshcush was in the

case of each of the zamindari's in question admittedly high. Again it does not follow that all which is not brought into account in fixing the Jama or Peshcush is excluded from the grant". The Bill in so far as it affects the right of the landholder to collect such customary rent as was prevailing in 1802 is expropriatory and would materially alter the terms of the Permanent Settlement.

6. It is pointed out in justification of the Bill that the income of the zamindars has gone up since the passing of the Permanent Settlement Regulation and that they being mere farmers of Revenue are not entitled to collect more than what the Government collects from lands under its direct management, namely, the raiyatwari area. This process of reasoning is fallacious on two grounds. First, the Permanent Settlement Regulation section 2 itself declares that the assessment was fixed "On all lands liable to pay revenue to Government" and as pointed out by the Privy Council in 44 I.A. 117 and re-affirmed in 40 Mad. 886 "The property taken into account in arriving at the Jama is by no means necessarily the same as the property upon which the Jama is chargeable, and all that is chargeable with jama or peshcush is included in the grant". The settlement conferred upon the zamindar the right to extend cultivation over the waste lands and profit thereby, as well as to benefit by improvements consequent on agricultural developments. I quote here from the instructions issued to Collectors in 1799 and printed as Appendix No. 18, Vol. III, Fifth Report—Para. 27 reads thus :

"It is well known that in the Circars there are very extensive tracts of uncultivated, arable, and waste lands, forming part of every zamindari. These are to be given up in perpetuity to the zamindars, free of any additional assessment, with such encouragement to every proprietor to improve his estate to the utmost extent of his means, as is held out by the limitation of the public demand for ever, and the institution of regular judicial courts to support him in all his just rights, whether against individuals or the officers of Government, who may attempt in any respect to encroach upon them. The advantages which may be expected to result, in the course of progressive improvement, from these lands, will, or ought to put the zamindar upon that respectable footing as to enable him with the greatest readiness to discharge the public demand, to secure to himself and family every necessary comfort, and to have besides, a surplus to answer any possible emergency."

7. Again in his classic speech introducing the Madras Estates Land Bill of 1908, Mr. Forbes observed as follows:—

"It will be observed from my quotation from Mr. Hodgson that the settlement was understood to give the zamindar the benefit of a rise in prices if the revenue was paid in kind or was a share of the produce".

8. The value of this right consisted in this: that formerly the peshcush had been variable and subject to periodical settlement, now it was to be fixed. The zamindar, therefore, has got no more than what he contracted for and the increase in his income is due not to any excessive or illegal exactions from his raiyats which necessitate legislative interference, but due to the fruits of his own labour, rise in prices both of produce and land and his investments. The Government transferred in consideration of a permanent jumma being paid in perpetuity its right to collect the revenue to the zamindars, be they regarded as proprietors of the soil or mere farmers of revenue. It may be observed in passing that farmers of revenue have been held to be "men who contract to take all profits of certain lands and to pay a specified sum to the person from whom they take" (1 Madras 49 at 52). This contract has been in operation for over a century and its sanctity maintained as inviolable. The effect of the settlement has been interpreted by the Judicial Committee and the various High Courts from time to time as conferring rights on the landholders which His Majesty's Government cannot disclaim. The Joint Parliamentary Committee on Constitutional Reforms reiterated the same sentiments and defined the effect of the Permanent Settlement as follows: "Briefly the effect of this settlement was to give a proprietary right in land to the class described as zamindars, on the understanding that they collected and paid to Government the revenue assessed on that land, which was fixed at rates declared at the time to be intended to stand unaltered in perpetuity". The complaint that the zamindar has acquired an undue advantage by reason of the Permanent Settlement is, therefore, unfounded.

9. The second reason why I consider any comparison between what the zamindar gets from his raiyats and what the Government gets from the raiyatwari area as fallacious, is that the Government rates do not represent either the half gross yield to which it is entitled or even the half net principle which the Government professes to be guided by. The right of the landholder to collect rent from his raiyat is founded upon either custom or contract or both, whereas the right of the Government to impose assessment on land is based on the prerogative of the Crown, according to the ancient and common law of India. As was pointed out by Justice Bhasyam Aiyangar "The prerogative right consists in this, that the Crown can by an executive act determine and fix the Rajabagam or King's share in the produce of the land and vary such share from time to time". To put the landholders and the Government on the same footing vis a vis their raiyats is to ignore the fundamental conception of land tenures in this country.

10. The pitch of rents in the raiyatwari areas is undoubtedly lower than what obtains in a proprietary area and the Statement of Objects and Reasons seems to suggest that it is "Representative rent". In fact it is no more representative than the rent,

say, prevailing in Travancore or Peshawar. The Government of Madras has repeatedly stated that the present assessment in the raiyatwari areas is not only not half net but is even less than one fourth net. Up to 1855 it was assumed "That the Government share was about half the produce of punja or dry and three-fifths of nunja or wet, i.e., irrigated land the three-fifths being reduced when there was not a full water-supply. Making the necessary allowances, however, for the deductions for the "mera" or grain share by which the village artisans are remunerated and for the vicissitudes of the season, the actual shares were one-third for dry and two-fifths for wet lands". (See Baden-Powell's *Land Systems of British India*, Vol. III, page 36). The history of the different districts as given in the Manuals "is one of a series of new *Hukum-Namas* or assessment orders by which rates were experimentally lowered, raised, and lowered again, till in 1855-58, a general and systematic resurvey and revision was ordered, and the modern order of things began" (Baden-Powell, Vol. III, page 38).

11. So far as the Ganjam district is concerned proposals for settlement were made in 1874 by Mr. Goodrich, who based his calculation on the prices which ruled during the twenty years ending 1874. The rates arrived at were Rs. 9-5-4 per garce of paddy but Rundall considered the rate high and recommended a commutation rate of Rs. 80 per garce. The rates proposed for wet lands ranged from Rs. 7 to Rs. 1-8-0 an acre and for dry Rs. 5-8-0 to 8 annas. "These rates would have caused an increase of Rs. 33,326 or 20 per cent on the then existing demand for wet, viz., Rs. 1,63,909." But the Board of Revenue directed a revision of the rates and the result yielded a 10 per cent increase in assessment. "It is said that the district has been lowly assessed, the highest rate being only Rs. 5-8-0 against Rs. 12, Rs. 10-8-0, Rs. 9 and Rs. 7-8-0 an acre elsewhere, but this is the first time the district has been settled and the old raiyatwari assessment was fixed in a very haphazard way" (See pages 222—224, *Ganjam District Manual*, 1822 edition). These rates can hardly be called "representative".

12. Even in 1910 when re-settlement of the raiyatwari area in Ganjam was ordered the Government observed in its Government Order no. 1346, Revenue, dated 8th May 1913, as follows:—

"The Government accept the Special Settlement Officer's recommendation that no general revision of classification is necessary and that only lands registered at the last settlement as 'permanently improved' and lands either unsurveyed or registered as poramboke at the original settlement but since granted on patta together with hitherto unclassified waste should now be classified and assessed at appropriate rates." It is further said that "the Government would be justified in enhancing the existing assessment by 41 per cent. The Special Settlement Officer and the Board of Revenue recommend however that the enhancement should be

limited to 18½ per cent in the case of wet lands and 12½ per cent in the case of dry lands as in the case of the Chicacole taluk." It is obvious that the inequalities and errors in classification of soils perpetrated in 1874 were not rectified at the last resettlement and persist to this day. To take these rates as representative rents is an undue stretch of language for which there is no justification.

13. Let me now refer to more recent pronouncements of the Madras Government, which put the point beyond doubt. In a press communique, dated 10th January 1934, the Government says, "Much misunderstanding prevails about this 50 per cent net figure. In the first place the figure only applied to a part of the land assessed, i.e., those lands that lie in villages most favourably situated for carrying on agriculture and disposing of the crop. Land not so situated was more lightly assessed. In the second place, Government's 50 per cent share even on the most favourably situated lands was in practice considerably less..... if the theoretical 50 per cent net share had been retained Government would have had to raise the assessment in such districts as Tanjore and East Godavari, by 75 per cent to 100 per cent. But since 1924 Government have limited the enhancement to a maximum 18½ per cent. This also explains why it has not been generally considered necessary at resettlement to make elaborate and expensive recalculations of cultivation expenses and grain outturns."

14. Mr. B. G. Holdsworth in his report dated 11th April, 1930, observes: "Owing to the fact that the net produce is valued at a commutation rate which is always considerably below the market price prevailing at the time when the settlement is made, the *theoretical half share is never taken in practice*, and the assessment is invariably very much less than half the current value of the net produce. The balance is left to the cultivator and as a result of the fact that at resettlements Government have never enhanced rates up to the full percentage of the rise in prices, it has come about that the raiyats' share is constantly increasing while the Government's share is constantly decreasing as the value of the product rises. . . . As a matter of fact, the present rates of assessment in these districts represent nothing like the value of half the net produce. Figures will be given later to show that the assessment is very much less than *a half or even a quarter of the net produce.*"

15. I need not multiply quotations on this point. It is obvious that the Government rates do not represent half the net produce of the land, nor can it be in any sense described as representative cash rent or rate of rent.

16. While the Government has adopted its own canons of settlement in the raiyatwari areas, it has studiously avoided enforcing them in the proprietary areas. I have already pointed out that

Regulation XXV of 1802, Regulation XXX of 1802 and other contemporaneous documents recognise the right of the land-holders to collect the "established waram" or "the accustomed portion of the produce". They were expressly enjoined to enter into engagements with the raiyats for the rent due to them at the waram rate. In case of disputes respecting rates of assessment, it was provided that the rate shall be determined "according to the rates prevailing in cultivated lands of the year preceding the assessment of the permanent Jumma on such lands, or where those rates may not be ascertainable according to the rates established for lands of the same description and quality as those respecting which the dispute may arise".

17. The next stage is reached when the Rent Recovery Act (VIII of 1865) was passed. Section XI, clause (2) lays down that in case of dispute regarding rates of rent where no contract, express or implied existed, the money assessment levied by the British Government previous to 1st January 1859 shall be deemed to be the proper rent. It is important to note that the so-called raiyatwari settlement or half net principle was introduced in 1859 and was in force in 1865 when the Act was passed. Prior to 1859 the Government as well as the zamindar were collecting half of the gross produce or its money value.

18. Why did the Government of the time enact that the rents prior to 1859 alone should be considered the proper rate? Does it not indicate that the Government felt bound by the Permanent Settlement Regulation and could not encroach upon the established right of the zamindar to the customary rent?

19. The Government of Madras no doubt purported to take a percentage of the net produce as the assessment when the raiyatwari settlement was introduced, but it proved as the following correspondence and extracts will show to be only a left-handed concession. What the Government lost in making allowance for cultivation expenses, vicissitudes of season and merchant's profits, it made up for the same by the imposition of a cess for the maintenance of roads and for education. In para. 5 of the letter of the Madras Government, no. 44 of 1855, dated the 11th October 1855, to the hon'ble the Court of Directors the following words occur:—

"The proportion is intended to be that taking for the general purposes of the State; but we have it in contemplation, besides to establish cesses for local objects . . . especially for the maintenance and improvement of district roads and for education." In this letter the Government of Madras proposed to take a percentage of the gross produce of the assessment. The hon'ble the Court of Directors replied in letter no. 17 of 1856, dated the 17th December 1856, in which, while recommending that the assessments should be a percentage of the net produce, they stressed the advisability of forming road funds. The Government

of Madras accordingly directed the levy in addition to rates calculated on half the net produce of a cess of 4 pies in every rupee "to be laid out on roads in the Taluks." This eventually found legislative recognition in the Madras Local Boards Act, 1884, which enacts that in so far as the proprietary area is concerned the cess leviable shall be shared equally by the land-holder and his raiyat calculated on the rental value of the gross produce. In the raiyatwari area, however, the raiyat bears the entire burden of the cess.

20. This was the state of law prevailing till 1908 when the Madras Estates Land Act came into operation. The provisions relating to the rate of rent and what is fair and equitable are contained in sections 27 and 28 of the Act. These were clauses 61 and 19 of the Bill as introduced and renumbered as clauses 23 and 24 by the Select Committee. It is significant that both these clauses were passed as introduced without any alteration, thus furnishing one more proof that the then existing rates were deemed fair and equitable both by the representatives of the people and the land-holders. And this has remained the law up-to-date. In section 35 it was laid down that the limit of enhancement shall not exceed a commuted value of the waram of the village. The principle of the waram was recognised in this section. In 1934 the Act was more or less recast after deliberation for over three years and several changes were introduced to improve the lot of the raiyats but the question as to what is a fair and equitable rent was never in controversy. Sections 27 and 28 were left untouched. Similar provisions are to be found in other Tenancy Acts such as section 51 and section 27 of the Bengal Tenancy Act, section 4 of the Central Provinces Tenancy Act, section 35 of the North-West Province Tenancy Act, and section 32 of the Orissa Tenancy Act. It is surely reasonable to suppose that what the raiyats have paid for more than a century and a half as a result of contract or custom is equitable and fair and the standard of what is fair and equitable is uniformly the same in all the Provinces where the Permanent Settlement has been effected. The justification for introducing the raiyatwari principle which is after all, based on more or less haphazard calculations, executive orders or "Hukumnamas" requires more convincing arguments and at least greater consideration than have been shown up to now by the supporters of the Bill.

21. The next point I wish to emphasise is the expropriatory character of the legislation.

(i) The right to the customary rent which often is a half share in the gross produce is a vested right based upon either custom or contract or both. The considerations that induced the contract are lost in antiquity and it is difficult to ascertain at this distance of time why and how a raiyat in a particular locality agreed to pay half the gross produce. It may be that when he

was first let into possession he paid less, but after improved cultivation he gradually paid the full half share. It may be that in a particular locality—in consideration of the land-holder setting up a new source of irrigation or opening of a new market that the full share was agreed to. It is easy to speculate but the fact remains that by 1802 the established practice was for the land holder to take half and sometimes more than half of the gross produce as proved by the Khambogatta accounts and the Report of the Circuit Committee. The half share has been willingly paid for over a century and half at least and what has been willingly paid is universally accepted as fair and equitable. Meanwhile, the value of the raiyat's holding has gone up by at least 200 per cent. This conflicts with the assumption that the present rates are otherwise than fair and equitable. Any legislation, therefore, that provides for the extinguishment or modification of this right is in my opinion expropriatory.

(ii) The Peshcush was fixed at $\frac{1}{3}$ rd of the gross collections made by the zamiadar before 1802 on the average of 10 years' figures collected by the Circuit Committee. It was fixed not only upon the lands actually under cultivation but upon all lands chargeable with the Jamma. The rate of rents to be collected and the actual rents collected in accordance with the prevailing rates formed the basis. If the rate was altered so as to reduce the rents payable or collectable at the Settlement, the Peshcush fixed is too high in the proportion of the rent to the new altered rate, now sought to be substituted. The peshkash so fixed was admittedly high so much so that several estates were being put up for sale till about the sixties of the last century for default in payment of the Peshcush. The right vested in the land-holder by the Regulation to collect the accustomed portion of the produce forms the consideration for his agreeing to pay the Peshcush that was fixed. Any disturbance of that relation would be an invasion of that right. To illustrate:

Rs.

Land-holders' collections	...	50,000
Peshcush at $\frac{1}{3}$ gross	...	35,000 (roughly).

The rent and the peshkash fixed thereupon are indissolubly connected and any disturbance of the income necessarily affects the proportion to which the Government is entitled. If the legislature enacted in 1803 that the landholders should collect only Rs. 25,000 and not more, the peshkash however remaining steady, the proportion of the peshkash to the gross collection would not remain at $\frac{1}{3}$ rd of the gross. It would contravene the assurance given to the landholder by the Permanent Settlement as the proportion of peshkash will be 140 per cent of the gross. While, therefore, the peshkash remains unaltered, the permanent character of the settlement is disturbed by making the peshcush a larger

percentage of the collection on the new basis. This is an invasion of the Permanent Settlement at its root. While it is not a violation by Government in the sense that they demand more than Rs. 35,000 fixed, it is a violation to declare that not Rs. 50,000 as rent (on the basis of which Rs. 35,000 was fixed) but really only Rs. 25,000 should be collected on the same lands. That is to say the right to collect half the gross produce or say the Rs. 50,000 is the fixed and unalterable basis of the Permanent Settlement. Any alteration of what are called the faisal rates or the settlement rates is really an alteration of the very basis of the Permanent Settlement.

(iii) In the Madras Estates Land Bill of 1908 there was a clause which provided for the suspension of the collection of the raiyats' kist in an estate when the Government suspended the payment of land revenue. This clause was, however, ultimately dropped, but the following passage from the report of the Select Committee bears me out in the position I have set out in the above paragraphs. Under clause 124 of the Bill the Select Committee observed "The original clause required the land-holder to suspend collection of such proportion of the kist payable to him by the raiyats as was equal to the proportion of the land-holders' peshkash, the payment of which the Government suspended. This rule may be workable in the case of estates which are under the temporary settlement where the land revenue payable by a zamindar bears a direct relation to rents. But in this presidency where virtually all the zamindari estates are permanently settled and have been so far 100 years, the peshkash is now ordinarily a small fraction of the kist payable by the raiyats. Under the rule referred to, therefore, the suspension of even a small percentage of a zamindari's peshkash might involve an enormous reduction in his agricultural income if he had to apply the same percentage to the suspension of his raiyat's kist. Nor would any zamindar accept the suspension of his land revenue which would entail so large a sacrifice."

"In order to afford the relief proposed, it is essential that the raiyat's claim to remission or suspension should originate from the action of the Government. We meet the land-holder's claim to consideration by providing in sub-clause 5 that when the raiyats receive a remission under the clause the Government shall grant the land-holder a remission of his peshkash or land-revenue which bears the same proportion to his total peshkash or land revenue as the remitted kist bears to the annual rent value of the land in the estate calculated under the Madras Local Boards Act, 1884". . . . It will be observed that although the clause provided for the proportionate reduction of the peshkash according to the remission granted by the land-holder, it was dropped by the Council. The present Bill makes no similar provision for the proportionate reduction of the peshkash although the land-holder's land revenue will decidedly fall by at least 60 per cent if this measure becomes law.

(iv) Some estates have been surveyed and rents settled under the existing Act. The landholders have spent considerable sums of money in going through the long process of survey, record-of-rights and settlement of rents. As the law stands at present they believed that the rents so settled would not be interfered with for a period of 20 years as provided for in section 177, Madras Estates Land Act. The right to get the settled rent for the full period of 20 years is vested in the landholder, even as the right to pay rent in money is vested in the raiyat. The Bill proposes to deprive the landholder permanently of his existing right. If the Bill were merely processual, this objection would not avail the landholder. This Bill on the other hand robs the landholder of a real right without providing for any compensation.

(v) It may be admitted for the sake of argument that the Provincial Legislature has the power to introduce Tenancy legislation, but such legislation should either be declaratory of the existing substantive rights or processual. No legislature can claim the power to interfere with private rights which have already vested. The purpose of every Tenancy Act has been merely to declare the rights of the parties or to make provisions for the proper exercise of those rights. We, therefore, find that in defining what is fair and equitable rent, almost every Tenancy Act in India has adopted one uniform reasoning, namely, that the existing rent or rate of rent is deemed to be fair and equitable. Where this is not ascertainable the rent of the neighbouring lands is deemed the proper standard. The introduction of the "nearest raiyatwari area" which may be, and very often is, removed by 20 to 30 miles from the area being settled, disturbs all the settlement principles that have been regarded as sound in every Province. Rents that are fair and equitable should not only be generous to the tenant but also just to the landholder. We have to look to the substance of the proposed legislation to judge whether it hits at the Permanent Settlement. The effect of the legislation is bound to reduce the income of the landholders by at least two-thirds if not more and is an invasion of the Permanent Settlement rights. If the contrary view were to prevail, the legislature can as well declare that the raiyat shall pay no rent at all or a ridiculously small one, but the landholder would still continue to be liable to pay peshkash to Government while he cannot collect even the amount of peshkash from his rights. The zamindar can thus be reduced to the position of a Government Tahsildar, without the concomitant privileges of his office and the statutory declarations of the Government for over a century may thus be reduced to a bundle of barren privileges. Does not this amount to a fantastic and unjustifiable exercise of power? Can the zamindar's right and income be thus confiscated? I submit, not.

22. Before proceeding to discuss the provisions of the Bill, it is my painful duty to point out that the consequences of the

proposed legislation have not been considered by the Premier. The legal implications and the constitutional aspects of the measure have been overlooked. All suggestions for improving the Bill and making it less drastic have either been ruled out of order by the Chairman or turned down by the members of the party in power. In short the opposition has just been tolerated as an objectionable but necessary element to whom convention allots a place in the Select Committee. I have endeavoured to show that the proposals embodied in the Bill are unsound in conception, unjust in their application and *ultra vires* of the legislature. It is legislation in a hurry, inartistically drafted and clumsily designed, depending for its passage, not on reason or law or equity, but on the numerical strength of the party in the Assembly.

Clause 2 (i).—I am strongly opposed to the deletion of the words ‘the neighbourhood’. The Patta Regulation 30 of 1802, Act 8 of 1865, rule 18 of the rules framed by the Governor in Council by notification no. 159, dated the 5th April 1910, all lay down that the prevailing rates of rent both in the village or area under settlement and in the adjoining village shall be the proper standard for determination of rent. The word neighbourhood is a compendious expression which includes the adjoining area, the other holdings in the village and the adjoining villages with similar advantages. This rule has been in force for over a century and has worked satisfactorily. Reason and experience point the same way. The substitution of ‘the nearest raiyatwari area’ is arbitrary and is opposed to common sense. The raiyatwari area may be as far away as 20 to 30 miles and it is absurd that the Collector should be asked to shut his eyes to the immediately adjoining area and go in search of a similar area, to a different taluk or to a different district. The immediate effect of the change will be to increase litigation and bitterness between the landholder and the raiyat.

(ii) The deletion of the word ‘in the district’ from the Bill introduces an element of confusion and uncertainty which may prove disastrous. The fact is that there is only one district under raiyatwari settlement in the province and that is the district of Ganjam. The deletion of the words ‘in the district’ might lead the Collector to take as his standard the rates prevailing either in the Puri district in the North or in the Vizagapatam district in the South, a result perhaps unthought of by the framers of the Bill. The rents or rates of rent obtaining in the Khasmahal areas of Orissa can hardly be called raiyatwari rates. Similarly the adoption of the raiyatwari rates prevailing in the adjacent district of Vizagapatam would make the landholders and raiyats of South Orissa dependent upon the land revenue policy of Madras. In either view the suggestion of the Select Committee is unacceptable.

My colleagues say in the report “to give wider discretion to the Revenue Officers’ fixing rent we considered it necessary

to remove the restriction . . . ” That is precisely the reason why I oppose the granting of a *carte blanche* to the Revenue Officer. The amendment would vest in the him unrestricted powers which may easily be abused and in course of time would make him a little despot. The danger is particularly great at the present time as all experienced Revenue Officers who had knowledge and experience of local conditions have reverted to Madras and we are to depend on officers who are brought up under a different system and cannot pretend to have any knowledge of local conditions or custom. Their judgment is bound to be informed, if not influenced, by the caprice of the party in power for the time being.

(iii) Yet another objectionable feature about the suggested amendment is the vagueness of the expression “having regard to the principles governing”. I cannot understand what is aimed at by making the clause so indefinite as it is. Is the Collector to be bound by the raiyatwari rates or merely to “have regard” to the principles governing the fixing of rent in raiyatwari area? If the former result is intended the Legislature should clearly say so. If the latter, the so-called ‘principles’ should be clearly ascertained and defined. Does the expression ‘principles’ include the policy of the Madras Government not to increase, at a resettlement, the assessment by more than 18½ per cent of the rates then existing? So far as the Orissa Government is concerned we cannot yet say what its principles will be. But it is not unreasonable to expect that public opinion will compel this Government to follow more or less the same principles as in Madras. If I am correct in this view, it stands to reason that this Government should wait till the proposed legislation in Madras has taken shape and although I brought this to the notice of Select Committee the proposal met with the same fate as the amendments moved by the Opposition.

(iv) This clause will in practice prove unworkable until a classification of soils is undertaken simultaneously in the raiyatwari and the proprietary areas. As I have pointed out, there has been no scientific classification of areas in Ganjam till now and the division of soils was done in 1874 in a haphazard way. It is, therefore, necessary that there should be a uniform classification of soils in both the areas as a condition precedent to the introduction of uniform rents in the two areas. The Bill makes no provision for this and the Premier has not taken the members of the Committee into his confidence and disclosed how he expects the Bill to work in practice.

Clause 3.—One result of this provision will be that in proceedings instituted after the passing of this amendment the presumption that the existing rent is fair and equitable will not apply unless the expression “until the contrary is proved” is deleted. It will be open to a raiyat in a suit for rent to invoke the new provisions in section 40 and section 168 and plead that the existing rent is not fair and equitable. If the amendment is to be confined to pending

proceedings, which I believe is not the intention of the framers, then the presumption raised by the section that the existing rent is fair and equitable is superfluous. If, on the other hand, the presumption is to apply to proceedings instituted after the passing of this Bill, the effect of the clause will be the reverse of what is intended. For, it will be open to the raiyat not to avail himself of the new section 180-A and force the landholder to sue for rent already settled. The raiyat can rely on the new section 28 and achieve the purpose aimed at by this Bill without the worry and expense of an application for revision. This may lead to a general suspension of payment of rent and drive the landholder to file suits.

Clause 4.—My objections to the deletion of the expression “in the district” set out under clause 2 apply with greater force to this clause also.

Clause 5—The principle of the Bill is sought to be foisted on the existing section 168 by a side wind. The suggested proviso hardly fits in with the substantive principle laid down in section 168(2). We are to presume under section 168(2) that the existing rent is fair and equitable and under the proviso we are not to make that presumption! It may be argued that the proviso cannot have the effect of negating the substantive section. It will place the Revenue Officer, settling rents, between the Devil of the main Section and the Deep Sea of the Proviso.

Clause 6.—The expression “shall have regard” occurring in clause 2 of new section 180-A is not clear and definite. It might raise the inference that the Collector is not bound even to adopt the raiyatwari rate though this might be an element for his consideration as a standard for determining a fair and equitable rent.

Clause 7.—The collector is expected to prepare a record-of-rights for purposes of the enquiry under section 180-A. Is this record to be in substitution of or in addition to the record already in existence? Is this record to undergo the procedure laid down in section 164 to 178? If so the Bill should expressly make mention of the procedure. I am also opposed to the vesting of power as contemplated by the amendment in the Collector to resurvey estates that have already been surveyed. There is no reason to resurvey estates for the purpose of revising rents. I am afraid this will lead to interminable squables and endless litigation between the landholder and the raiyat. Furthermore, it is undesirable that the Revenue Officer should be saddled with survey operations. In case of a boundary dispute, an appeal is to lie, I presume, to the Collector under section 180-A. The Bill would in effect make the Revenue Officers not only omnipotent but also omniscient!

I consider it highly appropriate that the expenses involved in obtaining a revision of the existing rents should be borne by the party applying. The party benefited should pay for the benefit he gets. But this elementary piece of justice has been denied to the landholder. An amendment to the effect was turned down by the Committee, I think, most perversely.

Justice also requires that when the raiyat in a proprietary area is to attain the status of a raiyatwari pattadar, he should discharge the same obligation as his fellow in the raiyatwari area does. Land-cess and other local cesses are wholly payable by a pattadar in the Government area while they are shared equally by the landholder and his raiyat in a proprietary area. This division into moieties was based on the waram system of sharing the produce, as I have already pointed out. Now that the waram rent is given the go-bye, it stands to reason that the landholder should be exempted from payment of a tax which goes mainly to benefit the raiyat. Apart from this, if this Bill becomes law the legitimate income of the District Board will be reduced to a very considerable extent and the finances of the District Board will be prejudicially affected. I am afraid this result has not been visualised by the sponsors of the Bill.

Before I conclude, I have to point out that the benefits of this Bill go to the wrong person. It is the middleman, the money-lender, to whom agriculture is a mere diversion and pastime that stands to profit by it. The landless labourer who slaves for the middleman and enriches his pocket is left severely alone. He is given no status under the Act and the long speech with which the Premier introduced his handiwork in the Assembly has not a word of reference or sympathy to this unfortunate class. My amendment in this regard, I am glad to say, had the support of some prominent members of the Congress Party, but the Premier-Chairman gave it a burial by his casting vote.

Srijut Ananta Padhano was examined on behalf of the actual cultivating tenants. His evidence reveals the manner in which the unfortunate tiller of the soil is treated by the Pattadar. There were several others prepared to give evidence, on behalf of the tillers, but they were not allowed.

As has been pointed out by experienced officials, the provisions of the Bill are most impracticable.

I consider it absolutely necessary that the Bill, as amended by the Select Committee, should be republished.

Subject to the above observations, I sign the report.

Minute of dissent by Sri Gobinda Chandra Thatraj Bahadur, M.L.A.

I regret having been unable to support the majority report of the Bill. It is highly expropriatory in character. Unfortunately all my amendments, to relax the vigour of the Bill were lost.

Brevity prevents detailed discussion of the Bill but the principle underlying it needs careful elucidation.

The radical change which the Bill seeks to introduce into the provisions of the Madras Estates Land Act is the application of the principles of raiyatwari settlement to zamindari areas.

In clauses 2, 4 and 5 of the Bill, it seeks to amend the existing provisions of sections 25, 40 and 168-168 (2), and sets up the raiyatwari rates of rent as the standard of rent even in zamindari areas, with a margin of not more than two annas in the rupee.

This is a clear departure from the method of settlement as also of commutation, so far adopted in the zamindari areas. Hence it is necessary to investigate and find out if there is any fundamental difference between the two methods of settlement.

It may be stated at the outset that the raiyatwari system as it prevails to-day is the outcome of an Executive Act of the Government in exercise of the prerogative of the Crown and depended upon the exigencies of the State for the fairness or otherwise of the rates whereas the zamindari rates of rent have been fixed by the statute from the beginning.

Let us briefly refer to the history of the two different schools of Land Revenue Administration.

The zamindari system.

From about 1765 when the British first acquired large extents of territory, the Land Revenue Administration was carried on by means of short leases up to about 1792 in Bengal and 1802 in Madras. "As a result, a great number of zamindars were superseded by farmers of revenue. The dispossession of these zamindars was one of the principal injuries and wrongs which the Parliament in statute 24 Geo. III C. 25 enjoined the Court of Directors to redress."

In Madras, these instructions were carried out by means of the Permanent Settlement Regulation 25 of 1802. What vested in the zamindars by the said Regulation is the proprietorship in the soil including the right to collect customary rent from the tenants. The State no doubt reserved certain rights of interference with the administration of the zamindars with regard to the tenants but interference with the "customary rent" payable by raiyats, with which we are now directly concerned, was certainly not one of the grounds.

Permanent Sanad, paragraph 12, is :

“ You shall enter into engagement with your raiyats either for a rent in money or in kind. ”

Section 14 of Regulation 25 of 1802 is :

“ Zamindars or landholders shall enter into engagements with their raiyats for a rent in money or in kind. ”

In the general conditions of sale of the estates in May 1802, it is stated as follows :—

“ All purchases of land succeed to the signorial right which Government exercised in their capacity of general landlord but in order to prevent abuse of the exercise of the right, Government will frame regulations for the protection of the rights, prescriptions, immunities and customary advantages of the lower class of people ”.

The Board of Revenue in paragraph 53 of their well-known proceedings of the 2nd December 1864, said in discussing the effect of Regulation 30 of 1802 :

“ The Board maintain that the whole tenour of this Regulation is consonant with the expressed intention of the framer of the Permanent Settlement to put a fixed limit to the demands of the zamindar on the raiyats and to preclude the zamindar from arbitrarily determining the demands, or modifying them at pleasure except to relax them for a specific purpose . . . “ x x x ” The Government therefore followed the only course which they could justly take in reserving to themselves by Regulation 30 of 1802, the right of interfering to regulate the raiyat's payment to the zamindar and in imposing a maximum which it was not to exceed, as well as, forbidding the zamindar from, levying any new assessment, a right which could be exercised by the sovereign power alone. ”

(Please vide sections 4 and 14 of the Regulation.)

Though the Regulation itself does not specify the rates of rent or their limit, contemporary Government records, subsequent legislation and decisions of the Madras High Court put it beyond doubt that what passed to the zamindars by the Regulation is the right to collect *Customary rent*. To mention some of them :

Section 9 of Patta Regulation 30 of 1802 states that in case of dispute “ the rates shall be determined according to the rates prevailing in the cultivated lands of the year preceding the assessment of the permanent Jumma. ”

In 1806 Mr. Hodgson speaks of the recognition of *an old and a known tax* which was not to be exceeded.

In response to an enquiry regarding Act VIII of 1865 by the Governor General, the Madras Government with regard to the

rights of the resident raiyats refer to the "paying of the *Established Rates* as recorded in the village Niriknama as evidenced by the immemorial and perfectly well-known custom of the village for the class of land concerned."

The Circuit Committee Report for Ganjam, dated 25th April 1788, specifies *the definite share of the produce* that is payable by the raiyat to the zamindar in the several zamindaris.

Mr. William Brown, Collector of Ganjam, in his report to the Board, dated the 15th March 1802, refers to the customary rent and what is very important, prepares the permanent settlement account of every zamindari in Ganjam specifying the peshkash payable on every village thus determining the rates of rent payable to the zamindars.

The Kham Bhogotta Accounts prepared by the Government in faslis 1214-1226 give a specific description of the shares of rajbhagam payable by the raiyat with relation to each kind of crop.

Mention is also made of the zamindar's share being "about one half the gross produce" in Appendix 18, Circular Instructions to Collectors, dated the 15th October 1794, (please vide 5th Report, Vol. I, page 218). At pages 150 and 151 of the same report, Vol. I it is stated "By the custom of the Hindu Government the cultivators were entitled to *one half* of the paddy produce."

Sir Thomas Munro's minutes—Paragraphs 23 and 25 (page 205, Vizagapatam, District Manual):

"Under the old Hindu Government they paid *half the produce* in kind but after the Muhammadan conquest the zamindars, imposed a kist or fixed assessment on the lands, to which extra assessments were afterwards added, by which the share of the raiyats was reduced nominally to one third and actually to *one-fifth or the gross produce* in rice fields,—in dry grain cultivation the shares of the raiyats and the Government are equal. These were the shares which were prevailing in the Chicacole Circars."

Proceedings of the Committee of Circuit in the Vizagapatam and Chicacole district (page 16):

"The crops—were formerly *equally divided* between the Government and the labourers but at present the former secures half to himself."

Page 23—"Those watered by labour retaining *one-half*, flooded grounds under tanks one-third of the harvest" Kimcdi.

Page 27—"The inhabitants should be allowed 15 putties in the garce or *half of the produce*."

Fifth Report, Vol. III, Appendix 13 (New print)—Letter of Mr. Grant, p. 31. "—and estimated on the spot by the Mukum or skilful appointed appraisers, should be *equally divided*, share and share alike between Government and its raiyat or husband man."

“Though the cultivating raiyats have right of occupancy as long as they cultivate.....and give to the Circar or proprietors whether in money or in kind the *accustomed portion* of the produce,” under orders of the Government, the Madras Board of Revenue in 1799 issued instructions to Collectors, explanatory of the principles of Permanent Settlement and paragraph 34 refers to this liability of the raiyats :

Baden Powell on Land Tenures at page 36.....“the Governmet share was about half the produce of punja and three-fifths of nanja or wet.”

General conditions of sale of the Estates in Jaghir formed at the time of Permanent Settlement in May 1802:

Paragraph 18.—“In order, however, to prevent litigations on the part of the inhabitants, it is declared to all purchasers of land that the inhabitants of the Jaghirs are *not considered entitled to higher rate of varam than that inserted in the Dowlc for fasli 1210*, nor the purchaser entitled to higher division of produce as succeeding to the rights of the Government than the rate therein specified as the Government share.”

Act 8 of 1865, section 11 (2), refers to money assessment fixed on the fields “previous to 1st January 1859” to be the “proper rent”. This is because the half net system was introduced subsequent to 1858 and the Legislature while enacting in 1865 did not want to introduce the half net principle in zamin villages in fixing fair and equitable rent but to continue the principle of taking a definite share of the gross produce as it existed in Government villages previous to 1859, a principle that was in force at the time of Permanent Settlement. What was assigned by the Permanent Settlement was the right to collect rent levied or leviable at the rates that were in existence at that time, the levy being in any case not less than one half of the gross produce.

In view of the definiteness of this right, section 3(11) of the Madras Estates Land Act defined “rent” as that which is lawfully payable by a raiyat.

This right has never been doubted since the beginning. In all the suits and proceedings either under Act VIII of 1865 or Act I of 1908 what was prayed for and recognised as the rajbhagam is this half gross produce. The petitions of the raiyats themselves for commutation or settlement recognised the said right. The record of rights registers prepared in the Madras Province invariably show that the landholder's share is “half the produce raised on the land”.

The Madras Local Boards Act from the beginning recognised the respective liabilities of the landholder and the raiyat for the purpose of payment of cesses as half and half.

Turning to decisions of the Madras High Court 7, Madras 335' (Full Bench) states: "Moreover persons settled on Estates had applied themselves to the cultivation of the soil without any express bargain but on the understanding that they would pay the rates customarily paid in the village for lands of similar quality. It was also the intention of the Legislature that in conferring on the landlords the benefit of a Permanent Settlement the cultivating classes should participate in that benefit and should be required to pay no higher rates than had been *paid before the settlement or than had been established by usage.*"

Reference may also be made in this connection to the decision reported in 7, Madras 322.

The landholder's right to the customary rent which is half the gross produce in almost all cases has thus received the sanction of the Legislature, the Law Courts and the public for generations, and undoubtedly forms part and parcel of the Permanent Settlement Contract entered into between the zamindars and the Government.

Let us then examine the details of the Raiyatwari Settlement—To start with, both the principles of Settlement were the same. Only the raiyatwari pattadars did not hold under Permanent Sanads as the zamindars, though the former was also declared permanent settlement for the time.

In the raiyatwari settlement made in 1792 in the Baramahal, now a part of the Salem district, the State demand was about one half the estimated produce of the fields. Under instructions from the Board of Directors, this demand in raiyatwari settlement was reduced to one-third of the produce even as early as 1807. For a series of years this demand of the State was further reduced if the raiyat could make out a sufficiently good case in shape of a large family, poor yield of the crop or distress to the cattle, etc., "Harassing and inquisitorial searches" were made into the means of every cultivator and the demand varied from year to year, yet Sir Thomas Munro, the founder of the raiyatwari system in his evidence, before the House of Commons in 1813 said: "The assessment is *permanent*" and that the raiyat "holds it forever without any additional assessment". The raiyatwari system in Madras was so far described as permanent.

In the meantime Northern India adopted in 1833 a system of 30 years settlement as also did Bombay in 1835. Finding the results there more satisfactory than in the so-called Permanent Raiyatwari Settlement in Madras, the Directors of the East India Company gave their formal sanction to this system. In their letter to the Governor, Fort St. George, dated the 17th December 1856, wherein among other matters they say for the first time in Madras as follows:—

* * * * "The Right of the Government is not a rent which consists of all surplus produce after paying the costs of

cultivation and the profits of agricultural stocks *but a land revenue only* which ought, if possible, be lightly assessed as to leave a surplus or rent to the occupier whether he, in fact, let the land to others or retain it in his own hands”.

“We are therefore of opinion that the assessment should be proportioned to the net and not to the gross produce.”

It may be stated that the East India Company desired to have two-thirds of the net produce as Land Revenue in raiyatwari tracts as two-thirds of the rental had been claimed as Land Revenue in Northern India before 1855. In that year Lord Dalhousie's Government reduced the land revenue to one half the rental in Northern India. And nine years after, . . . Sir Charles Wood, Secretary of State for India similarly fixed one half of the net produce as the limit of land revenue in Southern India. The undermentioned extracts from his famous despatch no. 7, dated 24th February 1864, paragraphs 11 and 15, clearly elucidate the change in the Land Revenue Policy of the Government :

“I am accordingly prepared to give my full support to the proposition of Sir William Denison that the net and not the gross produce, should be adopted as the unit of which the Government is to take a fraction.”

“I have to communicate to Your Excellency my deliberate opinion that the share of the net produce, which may be fairly taken as the due of the Government should be assumed at half . . .”

From 1864 therefore the Madras Government had to fix the Government demand so as to leave out half the net produce of fields to the cultivators and to claim the other half as Land Revenue (please vide R. C. Dutt “India in the Victorian Age”, page 308).

It may be noted in passing that the said famous despatch entirely ignored the principle of permanency which underlay the raiyatwari system. Sir Thomas Munro “had declared emphatically before the House of Commons *that the principle of the raiyatwari system of Bengal was the permanency of the State demand.* With respect to permanency there is no difference between the two systems, but the raiyatwari leaves the Government an increasing revenue arising from the waste in proportion to its cultivation”.

Section 1 of Act VIII of 1865 places the raiyatwari pattadar on a par with the zamindar and styles both of them as “Landholders”.

And for more than 40 years after Munro's examination, the Madras Government while claiming an impossible land revenue and varying the actual collection from year to year, had never questioned that a fixed and permanent demand was the principle of the Madras system.

This is why Mr. R. C. Dutt in his memorial to the Governor-General in 1900 calls it a confiscation of rights of the raiyatwari pattadars in Madras.

And it is no wonder that in Indian Law Reports, 26 Madras, 268, Justice Bhasyam Iyengar says that the raiyatwari patta is a mere bill and not a grant or conveyance. Justice Anantakrishna Iyer in 1930, Madras Weekly Notes, 385, says that a patta is not a document of title or deed of grant—only a record of demand of Government that a certain amount is due as land revenue on a certain area, and it is perfectly clear that it is merely a bill for rent and it is in no sense a grant or conveyance of land referred to therein. Reference may also be made to the judgment of Justice Bhasyam Iyengar reported in Indian Law Reports, 27 Madras, 386.

At present the Government nowhere accepts rent in kind and the half net principle exists only in theory and has undergone substantial changes in the process of commutation into money.

Mr. B. G. Holdsworth, I.C.S., replying to the charges of unfairness on the part of the Madras Government in resettlement principles, made by the Economic Enquiry Committee of 1930, says, *inter alia*, as follows:—

“The theoretical half-share is never taken in practice and the assessment is invariably very much less than half the current value of the net produce”. * * * *

“The calculation of cultivation expenses is a matter of extreme difficulty and a recalculation of such expenses would involve a recalculation of the standard outturns. In recent resettlements, in view of the fact that the enhancements proposed have been so much lower than the rise in prices, it has been considered unnecessary to embark upon such debatable points as the cost of cultivation. If it were proposed to enhance the assessment up to the full percentage of the rise in prices it would be essential to examine the relation of modern cultivation expenses to those of the preceding settlement”.

At the same time the press communique of 1934 quoted above makes a significant statement that “a resettlement is a fresh calculation of *Government's share of the net produce*”.

Thus it will be seen that the raiyatwari system substantially differs from the zamindari system and by no stretch of imagination can the principles of settlement in raiyatwari system be called the same as those under Chapter XI of the Madras Estates Land Act.

As stated in 27 Madras, 386, the raiyatwari settlement is a purely executive act. It is linked up with the exigencies of the State. It is not subject to the control of the Legislature. It cannot therefore furnish any standard for settlement in zamindari areas.

Moreover there are a large number of practical difficulties in applying raiyatwari principles to settlement in zamindaris. Let us discuss some.

The Revenue Recovery Act II of 1864 applies to cases of recovery of the Government dues from pattadars. When the zamindari lands are liable to the same assessment why should the zamindars incur expenditure under stamp duty and undergo the other incidental troubles peculiar to sections, 74,77 and 111 of the Madras Estates Land Act? Is the Legislature prepared to extend the operation of Act II of 1864 to zamindars?

The last raiyatwari settlement in Ganjam district was made about 30 years ago. A resettlement is due now but the Government is not bound to do it. The classification of the soil has undergone substantial changes owing to the improved methods of agriculture and manuring. Is the resettlement in zamindari areas to be based upon the time-worn classification of raiyatwari soil of 1874? If not, is the Government prepared to face the expenses and trouble incidental to a reclassification of soil over half the extent in the district?

Raiyatwari settlement lasts 30 years and "Estate" settlement 20 years. How can the two keep uniform pace?

Sections 30, 41 and 177 provide for enhancements at two annas in the rupee under specific conditions. There is no statutory limit to alterations in raiyatwari areas.

How can the frequent remissions granted to raiyatwari areas be extended to Estates? Will the Government agree to a proportionate reduction in the peshkash?

Why should the landholder continue to pay half the land cess?

What justification is there for continuing the onerous liabilities regarding repairs to irrigation sources provided for in the Madras Estates Land Act, sections 136-142?

Is "Reversion to waram" as essential a right of the zamindar as the press communique of 1934 makes out on the part of the Government?

In fine, could statute and executive Acts be yoked together to produce uniform speed and action?

It will thus be seen neither in principle nor in practice could the two systems be worked together assuming that zamindars will be willing to accept half the net produce in place of their customary half of the gross produce.

The Constitutional aspect.

The instrument of instructions in paragraph 18 states as follows:—

“Our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor General, any Bill of any of the classes herein specified, that is to say,

(a) * * * * *

(d) * * * * *

(c) Any Bill which would alter the character of the Permanent Settlement.

(d) Any Bill regarding which he feels doubt whether it does or does not offend against the purposes of Chapter III, Part V, or section 299 of the Act.

And likewise paragraph 27.

“Our Governor General shall not assent in our name to, but shall reserve for the signification of our pleasure any Bill of any of the classes herein specified, that is to say,

(a) * * * * *

(b) * * * * *

(c) Any Bill passed by a Provincial Legislature and reserved for his consideration, which would alter the character of the Permanent Settlement.

(d) Any Bill regarding which he feels doubt whether it does or does not offend against the purposes of Chapter III, Part V, or section 299 of the Act.”

Could any doubt be entertained on the question that this part of the Bill, so far discussed, “alters the character of the Permanent Settlement?”

The Permanent Settlement has transferred, among other things the right of the Government to collect the customary rent as obtaining in 1801, to the zamindars. This customary rent has been defined in responsible Government papers and declared in Law Courts to be half the gross produce. How can the Legislature change this right to collect half the gross produce into one to collect theoretically half the net produce, but according to Mr. Holdworth, “very much less than a half or even a quarter of the net produce”.

If then, the change in the character of the Permanent Settlement is so patent, should the Legislatures rush through such a measure irrespective of consequences?

I need not refer here to the provisions of section 299 of the Government of India Act and paragraph 372 of the Joint Parliamentary Committee Report which are well known.

The Bill is undoubtedly expropriatory and affects the vested interests of the zamindars.

If any immediate relief to the raiyats is desired necessary the existing provisions of the Madras Estates Land Act contain sufficient material for bringing down the present money rents to what is considered "fair and equitable." As Justice Reilly says in 63 Madras Law Journal, 430 (F. B.) at page 413 et seq "And yet, if either the landholder or the raiyat went to a Civil Court in the absence of *fair rent legislation* or some special provision in this Act, no court could make a decree for the recovery of more than the lawful rent or a declaration for the raiyat that less than the lawful rent was due from him.

Obviously by the intention and provisions of this section the Revenue Officer is not tied to the lawful rent already established and recorded but has a duty to fix fair and equitable rent for each holding. * * " "Except in Chapter XI there is no provision in the Act for enhancing or reducing the lawful rent on any land other than a money rent * * *"

"The Right of the Government which is recognised in the Act to interfere and settle the amount of the Rajbhagam when the lawful rate of rent fixed by contract, decree or otherwise is not fair or equitable, depends ultimately on the theory that it is proper for Government to see that the zamindar gets "from the raiyat the fair and equitable Rajbhagam, no more and no less."

There is therefore no ground even for violating the provisions of the Permanent Settlement.

Before I conclude, I wish to express without the least hesitation, that owing to the present fall in prices the raiyats in zamindari areas do require some substantial relief. But to what form and extent such relief can be given, without at the same time doing injustice to the landholders, is a matter for thoughtful consideration and greater deliberation, and in my opinion the amendment of this Act should have been postponed at least until the parent Act (Madras) is amended, as a result of the comprehensive enquiry that is being held now by the Government of Madras.

Subject to the above observations, I sign the report.

**THE MADRAS ESTATES LAND (ORISSA
AMENDMENT) BILL, 1937.**

(As amended by the Select Committee.)

Note.—Matter omitted is shown in italics within square brackets. New matter is underlined.

AN ACT TO AMEND THE MADRAS ESTATES LAND ACT, 1908, [*and to amend the Madras Estates Land (Amendment) Act, 1934,*] IN [*their*] ITS APPLICATION TO THE PROVINCE OF ORISSA.

Preamble.

WHEREAS it is expedient further to amend the Madras Estates Land Act, ^{Madras Act I of 1908.} 1908, in its application to the province of Orissa in the manner hereinafter appearing;

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Madras Estates Land (Orissa Amendment) Act, 1937.

(2) It shall come into force at once.

Amendment of section 25, Madras Act I of 1908.

2. In the first paragraph of section 25 of the Madras Estates Land Act, 1908 (hereinafter referred to as the said Act), for the [*word "neighbourhood" the words "the nearest raiyatwari area in the district as determined by the Collector" shall be substituted*] words "the neighbourhood, or in case such rate cannot be ascertained, exceeding such rate as the Collector may on application decide to be fair and equitable", the words "the nearest raiyatwari area together with such increase thereof upto a maximum limit of two annas in the rupee and, in case of dispute, the rate or area may be such as may be decided by the Collector on application made to him by the parties concerned. In case such rate cannot be ascertained, the rent payable shall be as the Collector may on application decide to be fair and equitable having regard to the principles governing the fixing of rent in raiyatwari areas" shall be substituted.

Amendment of section 28, Madras Act I of 1908.

3. In section 28 of the said Act between the words "this Act" and "the rent or rate of rent" the words [*unless otherwise provided*] "prior to the determination of rent under the Madras Estates Land (Orissa Amendment) Act, 1937" shall be inserted.

Amendment of sub-section (3) of section 40, Madras Act I of 1908.

4. In sub-section (3) of section 40 of the said Act, the following amendments shall be made, namely:—

(i) [*for clause (a) the following shall be substituted, namely:—*

"the average value of the rent actually received by the landlord during the ten years preceding the date of application or during any shorter period for which evidence may be available"] clause (a) shall be omitted and clauses (b) and (c) shall be renumbered as (a) and (b) respectively.

(ii) in clause [(b)] (a) as renumbered for the words "in the same village or neighbouring villages or where there are none such, in the village of a neighbouring taluk" the words "in the nearest raiyatwari area [*in the district*] as determined by the Collector" shall be substituted.

Amendment of sub-section (2) of section 168, Madras Act I of 1908.

5. After sub-section (2) of section 168 of the said Act, the following shall be added, namely:—

"Provided that no rent or rate of rent shall be deemed to be fair and equitable which exceeds by more than two annas per rupee the rent or rate of rent for similar lands with similar advantages in the nearest raiyatwari area [*in the district*] as determined by the Collector".

6. After section 180 of the said Act, the following sections shall be inserted, namely:—

Insertion of sections 180-A and 110-B, Madras Act I of 1908.

"180-A. (1) Notwithstanding anything contained in this Act where the rent of any land has been commuted under section 40 or

settled under Chapter XI prior to the date of commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, the raiyat may, by application made [*within three years of the said date,*] and, on payment of the fees prescribed in this behalf, apply for a revision of the settled rent on the ground that the rent or rate of rent payable by him is not fair and equitable and exceeds by more than two annas per rupee the rent or rate of rent payable by raiyats for land of a similar description and with similar advantages in the nearest raiyatwari area as determined by the Collector:

“ Provided that where after the revision of the commuted and settled rents under this sub-section the rent or rate of rent in the said raiyatwari area is enhanced or reduced the landholder or raiyat may apply for proportionate enhancement or reduction of the revised rent.

“(2) On the making of application under sub-section (1), the Collector shall, after enquiry in accordance with prescribed rules, determine the rent or rate of rent payable by the raiyat which is fair and equitable and in doing so shall have regard to the rent or rate of rent payable by raiyats for land of a similar description and with similar advantages in the nearest raiyatwari area as determined by the Collector :

“ Provided that no rent or rate of rent shall be deemed to be unfair which does not exceed by more than two annas per rupee the rent or rate of rent prevailing in the said raiyatwari area for such land.

“(3) An appeal shall lie to the Collector of the district from any order passed under sub-section (2) by an officer subordinate to him within 30 days of the order, and an appeal preferred within 2 months shall lie to the Revenue Commissioner from any order passed by the Collector of the district under this sub-section or sub-section (2) and the order of the Revenue Commissioner on appeal shall be final and shall not be questioned in any civil court.

"180-B. After the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, the provisions of section 39-A of the said Act shall not apply to any rent fixed, commuted, settled or revised under sections 25, 40, 168 and 180-A."

Amendment of section 215, Madras Act I of 1938.

7. [In sub-clause (d) of clause (1) and clause (1-A) of the second paragraph of section 215 of the said Act; after the words and figures "section 39-A" the words and figures "and section 180-A" shall be inserted.] In the second paragraph of section 215 of the said Act—

(i) in clause (1)—

(a) the word "and" at the end of sub-clause (c) shall be omitted,

(b) in sub-clause (d), after the words and figures "section 39-A" the words and figures "and section 180-A" and at the end the word "and" shall be inserted and

(c) after sub-clause (d) the following sub-clause shall be added namely:—

"(e) power to survey and prepare a record-of-rights for purposes of the enquiry under sub-section (2) of section 10-A"; and

(ii) in clause (1-A) after the words and figures "section 39-A" the words and figures "and section 180-A" shall be inserted.

**THE MADRAS ESTATES LAND
(ORISSA AMENDMENT) BILL,
1937. (~~Law Bill~~)**

AN ACT TO AMEND THE MADRAS ESTATES
LAND ACT, 1908, AND TO AMEND THE
MADRAS ESTATES LAND (AMENDMENT)
ACT, 1931, IN THEIR APPLICATION
TO THE PROVINCE OF ORISSA.

Preamble.

WHEREAS it is expedient further ^{Madras Act I} to amend the Madras Estates of 1908. Land Act, 1908, in its application to the province of Orissa in the manner hereinafter appearing;

It is hereby enacted as follows—

Short title and commencement.

1. (1) This Act may be called the Madras Estates Land (Orissa Amendment) Act, 1937.

(2) It shall come into force at once.

Amendment of section 25, Madras Act I of 1908.

2. In the first paragraph of section 25 of the Madras Estates Land Act, 1908 (hereinafter referred to as the said Act), for the word "neighbourhood" the words "the nearest ryotwari area in the district as determined by the Collector" shall be substituted.

Amendment of section 28, Madras Act I of 1908.

3. In section 28 of the said Act between the words "this Act" and "the rent or rate of rent" the words "unless otherwise provided" shall be inserted.

Amendment of sub-section (3) of section 40, Madras Act I of 1908.

4. In sub-section (3) of section 40 of the said Act the following amendments shall be made, namely:—

(i) for clause (a) the following shall be substituted, namely:—

"the average value of the rent actually received by the landlord during the ten years preceding

the date of application or during any shorter period for which evidence may be available”;

- (ii) in clause (b) for the words “in the same village or neighbouring villages or where there are none such, in the village of a neighbouring taluq” the words “in the nearest ryotwari area in the district as determined by the Collector” shall be substituted.

Amendment of sub-section (2) of section 168, Madras Act I of 1908.

5. After sub-section (2) of section 168 of the said Act, the following shall be added, namely :—

“Provided that no rent or rate of rent shall be deemed to be fair and equitable which exceeds by more than two annas per rupee the rent or rate of rent for similar lands with similar advantages in the nearest ryotwari area in the district as determined by the Collector”.

6. After section 180 of the said Act, the following sections shall be inserted, namely :—

Insertion of sections 180-A and 180-B, Madras Act I of 1908.

“180-A. (1) Notwithstanding anything contained in this Act where the rent of any land has been commuted under section 40 or settled under Chapter XI prior to the date of commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, the ryot may, by application made within three years of the said date, and, on payment of the fees prescribed in this behalf, apply for a revision of the settled rent on the ground that the rent or rate of rent payable by him is not fair and equitable and exceeds by more than two annas per rupee the rent or rate of rent payable by ryots for land of a similar description and with similar advantages in the nearest ryotwari area as determined by the Collector.

“(2) On the making of an application under sub-section (1), the Collector shall, after enquiry in accordance with prescribed rules, determine the rent or rate of rent payable by the ryot which is fair and equitable and in doing so shall have regard to the rent or rate of rent payable by ryots for land of a similar description and with similar advantages in the nearest ryotwari area as determined by the Collector:

“Provided that no rent or rate of rent shall be deemed to be unfair which does not exceed by more than two annas per rupee the rent or rate of rent prevailing in the said ryotwari area for such land.

“(3) An appeal shall lie to the Collector of the district from any order passed under sub-section (2) by an officer subordinate to him within 30 days of the order, and an appeal preferred within 2 months shall lie to the Revenue Commissioner from any order passed by the Collector of the district under this sub-section or sub-section (2) and the order of the Revenue Commissioner on appeal shall be final and shall not be questioned in any civil court.

“180-B. After the commencement of the Madras Estates Land (Orissa Amendment) Act, 1937, the provisions of section 39-A of the said Act shall not apply to any rent commuted, settled or revised under sections 40, 168 and 180-A.”

Amendment of
section 215,
Madras Act I of
1908.

7. In sub-clause (d) of clause (1) and clause (1-A) of the second paragraph of section 215 of the said Act, after the words and figures “section 39-A” the words and figures “and section 180-A” shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

It is generally known that the rates of rent in the proprietary estates in South Orissa are extraordinarily high as compared with the rates prevailing in the ryotwari area. In the ryotwari area, half the net profits of the cultivator is aimed as a standard in fixing the rents whereas in the proprietary estates ordinarily half the gross produce is considered as the landholder's due and the rent in the proprietary area, as a matter of fact, is based on that theory. What happens often is that the landholder leases out the ryoti lands in entire villages either to the collective body of villagers or to mustajirs, and the rent recovered is but the cash equivalent of half of the estimated gross produce. In course of the settlement proceedings under chapter XI of the Madras Estates Land Act, 1908, the Revenue Officer is required to have regard to the provisions of the Act in determining the rates of rent payable by a ryot. Under section 40 of the Act, the officer settling or commuting rents into money rents has to consider two factors, namely, the rents prevailing in the neighbourhood and the average value of the rent which actually accrued due to the landholder during the preceding period of ten years other than the declared year of famine. The great majority of ryots in the proprietary estates are liable to pay half the gross produce or its cash equivalent, and therefore there are practically few representative cash rents or rates of rent which are worth the consideration in fixing a fair rent in the proprietary estates. Furthermore, the small profits of the landholder on the low yield during famine years is left out of account, and the rents which accrued due in previous years, i. e., the high rents stipulated (and not the value of rents actually paid eventually) is taken into consideration. Such a procedure has resulted in pitching up the rents of ryots in proprietary estates unfairly high. The interpretation of the "neighbourhood" in the application of prevailing rents has been rather too rigid and inelastic and in practice has not been allowed to apply to the rent prevailing in the ryotwari area in the vicinity or the neighbouring taluk. In the absence of representative cash rents or rates of cash rents within the proprietary area, the procedure of the Settlement Officer has been merely mechanical; he takes the theoretical rents stipulated during the 10 previous non-famine years and distributes the average value of the rents on the ryoti area in accordance with the taram or class of soil and fixes a rent which is said to be fair and equitable. The ordinary pitch of rents in the Government ryotwari area for similar lands with similar advantages is far less than what obtains in the proprietary area. The Bill therefore proposes to make it imperative on the revenue officers settling rent in the proprietary area to have regard to the rents or rates of rent prevailing in the ryotwari area, and this is calculated to give the ryots of the proprietary area a much desired relief.

N. KANUNGO,
Member in charge.