quoted shows that the plaintiff cannot be allowed to erect a bund and throw the water which would ordinarily flow on to his land over on to the defendant's land and thus cause an injury to the latter. This is what the plaintiff seeks to do. The obvious remedy is that proposed by the fourth defendant. The parties should join and deepen the common drainage channel.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Boddam.

KAVIPURAPU RAMA RAO (PLAINTIFF), APPELLANT,

v.

DIRISAVALLI NARASAYYA (DEFENDANT), RESPONDENT.*

1903. December 9, 10.

Rent Recovery Act—Madras Act VIII of 1865, *ss.* 9, 10, 11—*Suit to compel acceptance of patta—Provision in patta for payment of rent in kind—Power of Court to amend patta by providing for payment in money—"Rent."*

The term "rent," as used in section 11, paragraphs (1) and (2) of the Rent Recovery Act, includes rent of every description, whether payable in kind or in money. *Polu* v. *Ragavammal*, (I.L.R., 14 Mad., 52), explained.

Where rent is payable in money but a patta has been tendered which provides for the payment in kind, the Court has power to amend the patta. *Mahasingavastha Ayya* v. *Gopaliyan*, (5 Mad. H.C.R., 425), approved.

Whether a contract in terms to the effect that rent is payable in money but at a rate to be determined by the Court as reasonable would be a contract within the meaning of section 11 (1);—*Quære.*

Rent had been paid in money from fasli 1288 to fasli 1308, at rates which had varied. On its being contended that the Court could find, from the mere fact of these past payments, that there was an implied contract between the parties that rent was to be payable in money at a rate to be determined by the Court:

Held, that such an implied contract could not be found. To warrant such a finding, the circumstances should be such as to suggest an agreement to pay at some definite rate.

SUITS by a landholder to compel his tenants to accept pattas under section 9 of the Rent Recovery Act. The pattas provided

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* Second Appeal No. 458 of 1902 presented against the decree of J. H. Munro, District Judge of Kistna, in Appeal Suit No. 53 of 1901, presented against the decision of K. V. Srinivasa Ayyangar, Head-quarter Deputy Collector of Kistna, in Summary Suit Nos. 293 to 320 of 1900, respectively.

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for the payment of certain rates of rent in kind. Defendants denied that they had ever been asked to accept the pattas and refused to accept them now, alleging that they were improper. They contended that the proper rates were the money rates which prevailed before fasli 1303, and, if not these, the rates which were accepted by both the parties in fasli 1303 and which were intended to be permanent. They also contended that a landholder was not entitled to compel acceptance of pattas for payment of rent in kind, under section 9 of the Act, and that, in consequence, the Court could not entertain the suits. The Deputy Collector said :—

"The various documents exhibited by both the parties show (1) that from fasli 1268 to fasli 1273 the system of payment in money has obtained in the village; (2) from fasli 1276 up to fasli 1284 the system of payment in kind has obtained and that from fasli 1285 to fasli 1307, the system of payment in money has again been acted upon. The defendants urge that the introduction of the Arsa system in the interim is the result of the damage done by the cyclone of 1864, in consequence of which the ryots could pay nothing and the landholders agreed to take what they could get in the shape of a share of the produce. The defendants stated that no regular system fixing definite shares prevailed in the village. While the plaintiff did not deny the explanation of the defendants for the introduction of the Arsa system, his cross-examination shewed that it was not any kaphara rental that the ryots paid, but a definite share accepted by both parties. The plaintiff has also produced documents to show that the Arsa system prevailed previous to fasli 1268. I consider that the Arsa system was introduced as being the most equitable under the circumstances of the damage done to the fields by the cyclone and that as soon as the fields had been improved, both the parties reverted readily to the previous existing money rentals. One can easily understand the readiness with which both the parties should have taken up the system of payment in money, seeing that it should be much more convenient to both. Even at present the plaintiff admits that he has offered Arsa pattas because the defendants refused to pay the increased money-rentals that he demanded. It is held out apparently as a threat to coerce the ryots into paying more if they should care to avoid the inconveniences of the Arsa system. Taking into account, however, the period

from fasli 1268 to fasli 1308 a period of 41 years during which the system of payment in money has been in force except for nine years in the interval, taking into account the circumstances of exceptional nature which caused the change of system in those nine years and taking into account the continued payment in money even subsequently for 24 years, the reasonable inference is that both the parties intended to pay and accept rentals only in money and that an implied contract to that effect exists in this case. Under clause (1) of section 11 this has to be enforced and the present pattas are on that account improper."

Dealing with the rates to be paid he said :—

"The defendants contend for the rates that were in force previous to fasli 1303. These cannot be acted upon for the reasons (1) that they have not been in force uniformly for any length of time such as would reasonably raise the inference of an implied contract. One of the defendants admits the changes made now and then. (2) The defendants gave up these rates deliberately in fasli 1303 when they accepted other rates. This clearly is against any possibility of an inference that the previous rates had been intended to be acted upon by the parties for ever. I therefore find that the rates contended for by the defendants have not been found to be the proper rate. The defendants contend that the rate of Rs. 6-4-0 per acre arranged between the parties in fasli 1303 and according to which pattas and muchilikas for five years were written was intended to be a permanent arrangement. The plaintiff's contention is that there was no such understanding and while the defendants asked for a ten years' lease on these terms he gave them a lease only for five years and that the rates were liable to revision at the end of that period. The plaintiff has also collected rentals at the same rate for one fasli beyond those faslis, *i.e.*, in fasli 1308, but the circumstances under which this was made have been clearly explained. The plaintiff was sick and the defendants and he could not easily come to terms as to what rates should be agreed upon for that fasli. Whereas he demanded Rs. 10, the defendants offered to pay only Rs. 7-8-0 and the negotiation fell through. When the plaintiff subsequently went to the village and asked for payment at least at Rs. 7-8-0 per acre, the ryots pleaded inability to pay even at that rate the price of paddy having fallen considerably. They promised however to accept

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that rate in subsequent faslis and the plaintiff collected according to Rs. 6–4–0 as requested by the ryots."

He disbelieved the contention of the defendants as to a definite rate having been arranged, but held that the implied contract as to the form of the rent was enforceable. He considered the evidence and held that Rs. 8 per acre was a proper rate for the wet lands and directed pattas to be tendered accordingly. He directed all conditions relating to payment in kind to be omitted. Nine of the suits were dismissed on the ground that pattas had not been properly tendered. Various appeals were preferred, namely, by the landholder, contending that the tenders were proper and that payments in kind should have been directed, and by the tenants contending that all the suits should have been dismissed for want of proper tender. The District Judge held that none of the suits should have been dismissed on the question of tender. He considered there was ample evidence to justify the finding that there was an implied contract to receive rent only in money. He however doubted the power of the Court to alter the form of rent entered in the pattas which had been tendered, and then to proceed to determine what amount of rent should be paid and amend the pattas accordingly. The result was that, as the pattas could not be enforced as they stood, the suits must, he held, be dismissed. He referred to *Polu* v. *Ragavammal*(1) and dismissed all the suits.

Plaintiff preferred these second appeals.

V. Krishnasawmi Ayyar and *P. Nagabhushanam* for appellant.

P. R. Sundara Ayyar and *V. Ramesam* for respondent.

JUDGMENT.—This was a suit brought by a landholder against the defendant—a tenant to compel the acceptance of a patta under section 9 of the Rent Recovery Act. The patta tendered stated that the rent was payable in kind. The lower Appellate Court, having come to the conclusion that the landholder was not entitled to claim rent in kind, but only in money, dismissed the suit without determining what were the terms of a patta such as the landholder was entitled to enforce the acceptance of, the view of the lower Court being that the expression "such a patta" in section 9 meant a patta which, with reference to the nature of the rent, was correct though its terms might be otherwise not binding

(1) I.L.R., 14 Mad., 52.

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on the tenant, and that when the patta tendered was incorrect, with reference to the nature of the rent the Court had no jurisdiction to amend it under section 10 and pass a decree determining what the terms of the patta should be.

The learned Pleader for the respondent sought to support the decision of the District Judge on the ground that section 10 requires the decision to be in conformity with the terms of section 11 which, he urged, should be construed as referring only to disputes occurring in respect of rent payable in money and not to cases where the rent was payable in kind. If this contention were well founded it would follow that the Act fails to provide for a decision of disputes in cases where rent is payable in kind and as the power of the Revenue Courts is derived exclusively from the provisions of the Act, those Courts would have no power to deal with such disputes. Such a result would itself suggest serious doubts as to the soundness of the contention.

The language of section 11 however leaves no doubt upon the point. The term "rent" in the first and second paragraphs occurs without any limitation and must be understood to include rent of every description, whether payable in kind or in money. That the subsequent clauses refer to money rates would not warrant the restricted construction suggested. As to the case relied on by the District Judge (*Polu* v. *Rayavammal*(1), this was reviewed. The judgment on review was as follows:—

"The question in this case is what is the proper patta to be "given by the plaintiff to the defendants. The lower Courts "came to the conclusion that the facts relied on did not establish "an implied contract to pay the rent alleged by the defendants.

"In one part of his judgment the district judgment states "that the defendants do not deny that they have been paying "rents at varying rates. In another place he refers to the total "amounts paid as rent at different times apparently in support of "the conclusion arrived at by him. The defendants contend that "the variations were in consequence of the increase in the extent "of the lands held by the defendants. It is not quite clear "whether this was the case or whether the rates themselves were "raised or why they were raised. To establish an implied contract, "among other circumstances, payment of rent at a uniform rate

(1) I.L.R., 14 Mad., 52.

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"for a number of years would have to be proved. The mere fact "that the rent has been paid in *money* for a long period is not in "itself sufficient evidence of an implied contract. We must ask "the Judge to find on the evidence on record whether the patta "tendered is a proper one and if not what is the proper patta." This judgment was, unfortunately, not reported and the case, therefore, having regard to the decision on review is no authority for the view adopted by the District Judge that the Court had no power to amend the patta where the rent, being payable in money only, a waram patta had been tendered. The point was however distinctly decided in *Mahasingavastha Ayya* v. *Gopaliyan*(1), the Court there holding that section 11 of the Rent Recovery Act applied to a case where a landholder brought a suit on a patta in which rent in kind was claimed in respect of dry land but with respect to which it was found a money rent alone was payable. We entirely agree with that decision and it follows that the decree of the District Judge dismissing the suit should be reversed, and the appeal remanded for disposal. In remanding it, it is necessary to point out that the first question for determination is whether the express contract set up by the defendant in paragraph 3 of the written statement as having been entered into in fasli 1303, is true. With reference to the course to be adopted by the District Judge in the event of his finding that the above contract is not true, it is necessary to consider the question which has been fully argued, whether upon the facts relied on it is open to the Courts to find an implied contract, the facts being that from faslis 1288 to 1308,—money rent had been paid under written khats at varying rates. The learned pleader for the respondent urged that even though these facts may imply that there is no contract to pay at any one particular rate, it is open to the Court to infer that there was an agreement that the rent was payable in money at a rate to be determined by the Court as reasonable in the circumstances. Whether a contract in terms to the effect that rent is payable in money, but at a rate to be determined by the Court as reasonable would be a contract within the meaning of section 11 (1) is open to question. For where there is no contract as contemplated in clause (1), the section lays down categorically the different rules to be followed by the Court in determining questions as to rent

(1) 5 Mad., H.C.R., 425.

arising in this class of suits and that it is only when the other rules are found inapplicable, rents considered just and reasonable by the Court have to be settled. Now, if the Court were to enforce the agreement to pay at a reasonable rate it would of course not be sufficient that the patta to be enforced should merely be made to say that the rent is payable at a reasonable rate. The Court must proceed to determine what that rate is to be, should it do so the Court would virtually be acting under the very last rule in section 11 and ignoring the rules which the section lays down shall be availed of, if possible, before that rule is resorted to. Assuming, however, that a contract to the effect suggested would be a valid express contract under the section; the question is whether the facts referred to would justify the Court in finding an implied contract between the parties with reference to the future. In the view hitherto adopted in this Court, to warrant the finding of an implied contract from mere past payments the circumstances should be such as to suggest an agreement to pay at some definite rate and the decision on review above referred to as well as the decisions in *Venkataramayya* v. *Ganganna*(1), and the unreported cases there referred to are direct authorities in support of this statement. And certainly there would be no more warrant for inferring from mere payments at varying rates an agreement to pay at a reasonable rate than there would be for inferring an agreement to pay at some definite rate. It is thus impossible to find any implied contract from the past payments of the character relied on in the present case. In the event of the District Judge finding against the truth of the alleged contract of fasli 1303 he should proceed to determine what is a proper patta with reference to the provisions of section 11 on the footing that there is no contract express or implied.

The costs will abide and follow the event.

In Second Appeals Nos. 459 *to* 504 *of* 1902.—These cases follow Second Appeal No. 458 of 1902 and for the like reasons as are recorded in our judgment therein the decrees of the District Judge of Kistna should be reversed and the appeal suits remanded for disposal accordingly.

(1) S.A. No. 235 of 1898 (unreported).