Rev (Spl) Dept

Government of Madras

HOME DEPARTMENT (MISCELLANEOUS)

G.O. No. 358-A, 5th April 1917

Planters Labour Act, 1903

Recording papers relating to the amendment of section 35 of the Madras —.

N. P.

ORIGINAL.

2

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HOME DEPARTMENT (MISCELLANEOUS)

G.O. No. 358-A, 5th April 1917

Planters Labour Act, 1903

Recording papers relating to the amendment of section 35 of the Madras — .

READ—the following papers :—

I

Question asked by the Hon'ble Rao Bahadur P. Kesava Pillai at the meeting of the Legislative Council held on the 23rd November 1915 and the answer given thereto.

125 *Q.*—Will the Government be pleased to state

(*a*) whether their attention has been called to the judgment of the Taluk Magistrate of Coonoor in C.C. No. 58 of 1914 in which one maistri Samy Dass, Pariah by caste, was convicted to one month's rigorous imprisonment on the complaint of R. Waldeck, Superintendent, Glenburn estate, Coonoor, on a charge of having failed to supply coolies under the agreement entered into by him ;

(*b*) if so, whether the judgment, and the complainant's deposition and accused's statement referred to therein disclose the facts

(1) that the estate is in a feverish locality,

(2) that some coolies were sent by the maistri but they "bolted away after working" for a few days,

(3) that the accused represented to the complainant that he could not bring the coolies because they got fever and that the other coolies whom he brought seeing the returning coolies suffering from fever would not come,

(4) that the complainant refused to take back the advance as his master wanted only coolies but not the advance money,

(5) that the accused sent the advance money to the court as soon as a warrant was issued against him,

(6) that he was convicted and sentenced because the fact of the estate being in a feverish locality was fully known to him when he took the advance,

(7) that the advance money of Rs. 300 was ordered to be given to the accused on release ; and

(*c*) in view of the hardships involved in such contracts, will the Government be pleased to amend Act I of 1903 at an early date ?

125 *A.*—(*a*) The Government have perused the copy of the judgment forwarded to them by the Honourable Member.

(*b*) The Government are unable to add any information to that contained in the judgment ; but in regard to clause (6) they observe that the accused was convicted under section 24 (*c*) of the Planters Labour Act for failing to account for his advance. If the accused thought he was wrongly convicted, he had the right of appeal against the decision of the Magistrate.

(*c*) The Government are not satisfied as to the necessity for such a course.

II

Letter—from F. B. Evans, Esq., I.C.S., District Magistrate of Malabar.
To—the Secretary to Government, Judicial Department.
Dated—Calicut, the 14th November 1915.
No.—D. 1805-M.

I have the honour to forward a copy of the order of the High Court in Criminal Revision Case No. 454 of 1915 which embodies a ruling on the interpretation of section 35 of the Madras Planters Labour Act, 1903, that is in conflict with the previous ruling in Criminal Revision Case No. 90 of 1912, a copy of which was communicated with G.O. No. 58, Judicial, dated 10th January 1914.

2. The High Court remarks that "the Act seems to call for amendment" and I have the honour to enquire whether the Government propose now to take any action in the direction suggested by Mr. Innes in his letter of 25th November 1913.

Enclosure

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday the Twenty-sixth day of October One thousand nine hundred and fifteen.

Present:

The Hon'ble Mr. Justice Ayling.
" " Phillips.

Criminal Revision Case No. 454 *of* 1915.

(Criminal Revision Petition No. 367 of 1915.)

N. C. Whitton .. .. *Petitioner.*
Mammad Maistry .. .. *Respondent.*

Petition under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Second-class Magistrate of Vayitri in his proceedings, dated the 17th March 1915, declining to give further direction to the respondent herein to complete the performance of his contract under section 35 of Act I of 1903.

This case coming on for hearing on Monday and Tuesday, the 18th and 19th days of October 1915, upon perusing the petition and proceedings of the lower Court and the record in the case and upon hearing the arguments of Mr. W. Barton for Mr. E. R. Osborne, counsel, and Mr. C. Narasimha Achari, vakil for the petitioner, and of the Public Prosecutor on behalf of the Government and the respondent not appearing in person or by pleader and the case having stood over for consideration till this day, the Court made the following

Order.

Ayling, J.—We are asked to revise the order of the Second-class Magistrate of Vayitri, dated 17th March 1915, refusing to direct counter-petitioner under section 35 of the Madras Planters Labour Act (I of 1903) to complete the performance of the contract entered into by him with petitioner. The Magistrate's ground for refusal is that he had already issued one such direction on 18th November 1913 in default of compliance with which counter-petitioner had been convicted and sentenced to two months' rigorous imprisonment under section 24 (*c*) of the same Act. He had in addition been previously tried and convicted under the same section and clause on 28th March 1913 for failure in connection with the same contract. The Magistrate held the following *re* Panga Maistri, I.L.R., 26 Mad., 437, that he had no power to make more than one direction; and on this view dismissed the petitioner's application.

Mr. Barton, who appeared for the petitioner, contends that the ruling above quoted is erroneous; and that, apart from such special restriction as may be involved in the particular contract, there is no limit to the number of successive directions which may be issued under section 35, or to the number of prosecutions and convictions which may follow in default.

He has been at pains to explain that his client is prosecuting this petition simply as a test case and is only anxious to have the law on the matter determined.

The counter-petitioner is not represented; but the learned Public Prosecutor has been instructed to oppose the petition and support the Magistrate's order. He has done so, not with reference to the abstract question of law on which the order is based; but by arguing that the two previous convictions of counter-petitioner and the previous direction have all been illegal and that for this reason the direction now applied for should not be granted. We do not think we should be justified in ignoring such points when asked to interfere in revision to counter-petitioner's detriment.

We have therefore to consider the facts of the present case as well as the bearing of the Act upon them.

The contract itself is exhibit A. Disregarding superfluous detail it may be said to provide as follows:—

Counter-petitioner (called the contractor) in consideration of an advance of Rs. 50 undertakes to work, with 25 coolies whom he is to procure on petitioner's estate, for six months from 20th December 1912 to 19th June 1913 at fixed rates of wages; if he makes default in such work, in whole or in part, petitioner has the option of calling on him to complete the performance of the work in default at any time up to 20th December 1915.

His subsequent conduct is not in dispute, he failed to appear till 13th February 1913, when he brought not 25 coolies but 8; these worked till 28th February 1913 when they began to absent themselves and were all gone by 16th March 1913; after that no more work was done. Counter-petitioner returned to the estate after his first imprisonment, and the first direction; and promised to pay the balance due by him. He has not however done so. On these facts I can find nothing illegal in the first conviction which is dated 28th March 1913. We have heard some discussion of the meaning of clause (*c*), section 24; but I take it that the words "fails to account for the money advanced to him" mean simply this "failure to either supply labour equivalent to the advance received or to refund any balance of the advance for which he is unable to supply labour, and prove that it has been legitimately expended."

On this reading the conviction was justified, and also the direction which was passed on 18th November 1913 under section 35 on counter-petitioner's apprehension after release from the first term of imprisonment.

Admittedly this direction was not complied with. Counter-petitioner promised to return the money due, but failed to do so or to do any more work.

Now what was the effect of this? The Act nowhere makes non-performance of a contract punishable in itself. Section 24 renders punishable three specified failures in connection with a contract. It says "any maistri who (*a*) fails without sufficient cause to present himself at an estate upon the date specified in his contract; or (*b*) having contracted to remain upon an estate for a specified time fails without sufficient cause so to remain; or (*c*) fails to account for the money advanced to him by a planter in consideration of his contracting to supply labourers to work on an estate, shall be punishable with imprisonment which may extend to three months or with fine which may amount to Rs. 500 or with both. And the magistrate may award to the planter out of the fine such compensation as he may deem fit." Section 35 runs thus:—"On the expiry of any sentence of imprisonment on a maistri or a labourer for any offence under this Act the maistri or the labourer shall, if the planter or employer so requests, be produced before the magistrate who shall direct such maistri or labourer to complete the performance of his contract on pain of further prosecution and punishment in case of his refusal to do so, and no conviction under this Act or imprisonment under such conviction shall have the effect of releasing any maistri or labourer from the terms of his contract or labour contract as the case may be.

"Provided that no such direction shall be given in the case of a labourer if more than twelve months have elapsed since the date on which his original labour contract would have determined."

We cannot take this as constituting disobedience of the contract a distinct offence, if only for the simple reason that no punishment is specified for it. Mr. Barton admits that the words "on pain of further prosecution" can only be taken to refer to a fresh prosecution under section 24.

This is the view taken by the magistrate, who in Calendar Case No. 580 of 1914 has convicted counter-petitioner of the same offence under section 24 (*c*) failure to account for the advance. The question is whether this was legal or whether counter-petitioner was entitled to plead "*Autrefois acquit.*"

That the contract was still in force cannot, I think, be disputed. As already pointed out, petitioner had the option of extending the period for performance up to 20th December 1915; and section 35 itself provides that the previous conviction should not operate as a release.

Mr. Barton, in supporting the legality of the second conviction relies, on two English cases (1) *Unwin* v. *Clarke*, 1 Q.B., 417, and (2) *Culter* v. *Turner*, 9 Q.B., 502.

Both these cases are of workmen absenting themselves from work contrary to the terms of a contract and it is held that in such circumstances although the workman did not return to work after his first conviction and imprisonment yet as the contract continued he was guilty of a fresh offence and could be again convicted. The question is whether the principle of these rulings applies to a case of failure to account for an advance. After careful consideration I am inclined to think it does. The contract and with it the liability to account for the advance is still in force. And the counter-petitioner is by the option of the employer given a fresh chance of accounting for it, in either of the ways in which he could have accounted for it originally. His failure to do so is just as much a fresh offence as the workman's failure to resume work in the English cases. I can find no valid ground of distinction.

No argument has been addressed towards to the contrary.

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The conviction in Calendar Case No. 580 of 1914 was therefore correct, and there only remains the question of whether the magistrate was justified in refusing the second direction.

The wording of the section appears to leave him no option; and I can see nothing in the Act which is opposed to the issue of repeated directions. I have carefully considered the judgment *in re* Panga Maistri, I.L.R., 36 Madras, 497. I am not without some sympathy for the view which the learned Judge seems to have taken; but we have to construe the statute as it stands, and with all respect I am unable to agree that the magistrate can issue only one direction. It seems to me unfortunate that the magistrate is given no discretion regarding the issue of directions, and in this as in other respects the Act seems to call for amendment. The magistrate has, of course, discretion as to the imposition of punishment on conviction; and would presumably exercise it where the Act was being vindictively used. But this is only a partial safeguard against the possibility of oppressive use of the section. As the law stands, in the present case, the magistrate should have issued the direction; and I would now direct that under section 423, Code of Criminal Procedure, a direction should issue.

Phillips, J.—I need only add that I agree in the view taken by my learned brother of the meaning of section 35 of the Act. The section itself does not limit the number of directions to fulfil the contract that can be made, but it does say that action taken under the section does not put an end to the contract. If the contract is still in force, there can undoubtedly be a fresh breach of such contract, and for each breach (coming within the provisions of section 2) the offender renders himself liable under section 35. This view is in accordance with the interpretation put upon similar statutes in England (*Unwin* v. *Clarke* 1 Q.B., 417, and *Cutler* v. *Turner*, 9 Q.B. 502).

I therefore concur in the order proposed.

III

Memorandum No. 2824 A-4, Judicial, dated 24th December 1915.

With reference to his letter D. No. 1805/M.15, dated the 14th November 1915, regarding the amendment of section 35 of the Madras Planters Labour Act, 1903, the attention of the District Magistrate, Malabar, is called to the correspondence ending with G.O. No. 367, Judicial, dated 28th February 1908, and he is requested to report whether an amendment of the section on the lines suggested therein would, in his opinion, meet the necessities of the case. A copy of the section as then proposed to be amended is enclosed.

C. G. TODHUNTER,
Acting Secretary to Government.

To the District Magistrate of Malabar.

IV

Memorandum No. 2824 A-5, Judicial, dated 24th December 1915.

A copy of the High Court's judgment in Criminal Revision Petition No. 367 of 1915 is furnished to the District Magistrate, the Nilgiris. The District Magistrate will observe that section 35 of the Madras Planters Labour Act has been interpreted by the High Court to mean that a maistri may, if he fails to perform his contract, be prosecuted and sentenced to imprisonment and that such prosecution and imprisonment may be repeated until the contract is finally completed. In order to free maistris from this liability to repeated imprisonment, the Government have under consideration the question of amending section 35 of the Act as suggested in 1907 (vide correspondence ending with G.O. No. 367, Judicial, dated 28th February 1908).

A copy of the section as it was then proposed to amend it is enclosed and the District Magistrate is requested to report whether, in his opinion, amendment on these lines would meet the necessities of the case.

C. G. TODHUNTER,
Acting Secretary to Government.

To the District Magistrate of the Nilgiris.

ENCLOSURE

"35. (1) When a complaint has been made against any maistri that he has committed an offence punishable under this Act, the magistrate may, on application made by the complainant or by or on behalf of the planter, in respect of whose estate the maistri has entered into a contract, direct in his judgment or order of acquittal or discharge, that such maistri shall present himself on a specified date at the estate in respect of which he has entered into a contract and shall remain there for the time specified in his contract or for such shorter period as the magistrate may specify. Any maistri who fails to comply with such an order shall be deemed to have committed an offence punishable under section 24 (*a*) or (*b*) as the case may be.

"(2) When a complaint has been made against a labourer that he has committed an offence punishable under this Act, the magistrate may, on application made by his employer or by or on behalf of the planter on whose estate the labourer has contracted to work, direct in his judgment that the labourer shall complete the performance of his contract.

"Provided that no such direction shall be given if more than twelve months have elapsed since the date on which his original labour contract would have determined.

"Any labourer failing to comply with such direction shall be punishable under this Act as if he had failed to perform his original labour contract.

"35-A. Subject to the provisions of section 35, no conviction or punishment inflicted under this Act shall have the effect of releasing any maistri or labourer from his contract or labour contract as the case may be or from liability to prosecution for further offences punishable under this Act in respect of the same contract or labour contract."

V

Letter—from F. B. EVANS, Esq., I.C.S., District Magistrate of Malabar.
To—the Secretary to Government, Judicial Department.
Dated—Camp Areacode, the 27th January 1916.
No.—D. 11-Confdl.

I have the honour to reply to Government Memorandum No. 2824-A-4, dated 24th December 1915, regarding the amendment of section 35 of the Madras Planters Labour Act, 1903.

2. In my opinion sections 35 and 35-A as proposed in the draft amendment forwarded with the memorandum would meet the necessities of cases such as that to which Mr. Innes referred in his letter No. D. 55 Confdl./13, dated 25th November 1913. The main point put in that letter was the necessity of allowing sub-magistrate's discretion, in passing an order the infringement of which will enable the planter to prosecute the maistri again in respect of the same contract. The proposed new sections secure this since they provide that the magistrate *may* make a direction on application by the planter.

3. I may add that I have not failed to observe that the proposed amendments go further than was suggested by Mr. Innes in that they limit liability to further prosecution to the omissions specified in section 24 (*a*) and (*b*) and exclude the omission specified in section 24 (*c*). In my own opinion this is justified for the reasons propounded in paragraph 3 of the Hon'ble Mr. Bradley's letter No. 1855, dated 10th August 1907, printed on page 13 of G.O. No. 367, dated 28th February 1908. But I am not sure that the planters will agree. I have not consulted them on the point as it is a question not directly raised in the previous correspondence of 1913, and the Government have not asked me to obtain their opinion. From Mr. Ormerod's letter, dated 29th August 1907, it would appear that the United Planters' Association was at first disposed to accept amendments to section 35 such as are now proposed; but subsequently both the United Planters' Association and the Wynaad Planters' Association apparently came to the conclusion that they would encourage fraudulent maistris.

VI

Memorandum No. 2824 A-7, Judicial, dated 9th March 1916.

With reference to the Judicial Department memorandum No. 2824 A-4/5, dated the 24th October 1915, regarding the proposed amendment of section 35 of the Madras Planters Labour Act, 1903, the District Magistrate, $\frac{\text{Malabar}}{\text{the Nilgiris}}$, is requested to invite the attention of the $\frac{\text{Wynaad}}{\text{Nilgiri}}$ Planters' Association to the correspondence that took place on the subject in 1907 and to say that the Government feel that it is necessary that the section should be amended either by excluding maistris from its operation or by giving the magistrate discretion in the matter of making an order to complete performance. The Government would prefer to exclude maistris from the operation of section 35, as the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of the fine, appear to be sufficient. The Government are however willing to accept as a compromise the amendment of section 35 by substituting the word "may" for 'shall" occurring in lines 3 and 4 of the section.

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2. The District Magistrate is requested to forward with his remarks the opinion of the Wynaad / Nilgiri Planters' Association on the above proposals.

(By Order)

E. A. HARVEY,
Under Secretary to Government.

To the District Magistrate of Malabar.
" " " of the Nilgiris.

VII

Letter—from M. YOUNG, Esq., I.C.S., District Magistrate of the Nilgiris.
To—the Secretary to Government, Judicial Department.
Dated—Ootacamund, the 19th March 1916.
No.—Confdl. 1.

I have the honour to submit the report called for in memorandum Confidential No. 2824 A–5, dated 24th / 28th December 1915.

2. Section 35 of the Madras Planters Labour Act, I of 1903, provides that a convicted maistri or labourer may, on the expiry of his sentence, be directed to complete the performance of his contract, on pain of further prosecution and punishment in case of his refusal to do so. The words underlined have been interpreted by the High Court to mean that the offender, if he disobeys this order, can be again prosecuted for breach of his contract, and that in the case of a maistri, such prosecutions and punishments can continue indefinitely, until the contract has been finally completed. In my opinion, the amendment proposed in the year 1907 leaves things very much the same as before, as it does not free a maistri from liability to repeated prosecutions and punishments. Instead of the words "on pain of further prosecution and punishment in case of his refusal to do so" which appear in the original section, the following words are substituted, viz., "any maistri who fails to comply with such "order shall be deemed to have committed an offence punishable under section 24 "(*a*) or (*b*) as the case may be." In the absence of a distinct proviso restricting the number of times a maistri can be punished, by imprisonment, under section 24 of the Act, it cannot be said that he will be freed from liability to repeated imprisonments.

3. To illustrate what I mean, we will take the case of a maistri who is sentenced to six weeks' imprisonment under section 24 of the Act. He undergoes the imprisonment, imposed upon him, and is brought up again under section 35 before the magistrate who directs him to complete the performance of his contract. The accused refuses to obey the direction and thus, makes himself liable to punishment again for "an offence punishable under section 24 (*a*) or (*b*), as the case may be." He is again, therefore, further prosecuted and punished with imprisonment. He undergoes that punishment also. On his release, a second time, he can be again brought before the magistrate for a further direction and for further punishment, since the amendment suggested, does not prevent the issue of any number of directions followed by punishment. I would, therefore, beg to suggest that the amendment should be so worded as to give the magistrate discretion to issue as many directions, as may be necessary, provided that only one imprisonment may be ordered altogether.

I see no objection to the issue of more than one direction.

4. I beg to take this opportunity to suggest certain verbal corrections in the proposed amendment. Cases under the Planters Labour Act are all summons cases. The accused is not therefore *discharged* in any case. The words "or discharge" appearing in the fourth line of the amendment may therefore be deleted. The expression "and shall remain there for the time specified in his contract or for such shorter period as the magistrate may specify" appearing in lines 7 and 8 of the amendment do not make it obligatory on the part of the defaulter to work in terms of his contract, until the contract is completed. For these words, the expression "with an order to complete his contract" may, I submit, with advantage, be substituted.

5. I am consulting the Nilgiri Planters' Association on the proposals contained in memorandum No. 2824 A–7, dated 9th instant. I shall submit my remarks on the opinion of the Association, when it is received.

VIII

Letter—from F. B. EVANS, Esq., I.C.S., District Magistrate of Malabar.
To—the Secretary to Government, Judicial Department.
Dated—Camp Tirur, the 20th April 1916.
No.—D. 828/M.

With reference to Memorandum No. 2824 A–7, dated 9th March 1916, on the subject of the amendment of section 35 of the Madras Planters Labour Act, I have the honour to enclose a copy of a letter written by the Secretary of the Wynaad Planters' Association dated 18th March and of a resolution passed at a subsequent meeting of the association, at which the letter was considered.

2. The arguments advanced do not appear to me to be of great validity against the proposal to substitute the word "may" for "shall" in lines 3 and 4 of section 35. The main contention is that it will weaken the deterrent effect of the provision as it now stands, but I do not see that merely to give the Magistrate discretion in the matter should have this effect.

3. The planters also urge strongly that there is no necessity for the amendment since the provisions of the Act are not abused: and on this point I am inclined to agree with them. In 1915 there were altogether 330 cases brought under section 24, and in only 38 of these were orders subsequently passed under section 35 and in only 23 were there second prosecutions. There were no third prosecutions.

ENCLOSURES

(1)

Letter—from C E. ABBOTT, Esq., Honorary Secretary, Wynaad Planters' Association.
To—the District Magistrate of Malabar.
Dated—Meppadi, the 23rd March 1916.

In continuation of my letter of March 18th, replying to yours of 14th instant, I have the honour to state that the question of the proposed amendment of clause 35 was fully discussed at the meeting of this association held on 22nd instant. The following resolution was proposed by Mr. Bisset, seconded by Mr. Gillatt and carried unanimously:—

"That this association approves of the Honorary Secretary's letter to the Collector of Malabar. The association considers section 35 a vital one, and that no case has yet been made out for its amendment. It considers it acts as a decided deterrent to deliberate fraudulent breach of contract, and that it has not been misused."

(2)

Letter—from C. E. ABBOTT, Esq., Honorary Secretary, Wynaad Planters' Association.
To—the District Magistrate of Malabar.
Dated—Meppadi, the 18th March 1916.

I have the honour to acknowledge receipt of your letter (No. 958-M–16) of 14th instant. I have called a meeting of this association for the 22nd instant, and have now sent out notices that the proposed amendment of clause 35 will be discussed.

The correspondence that took place in 1907 to which you refer, had to do with the proposed amendment of various clauses of the Act, which the United Planters' Association asked for. It was finally decided to drop the subject.

Writing as secretary of one of the two District Associations that accepted the Act, I venture to say that there appears to be a good deal of misunderstanding as to the origin of this clause. It seems to be assumed that there must have been some mistake in drafting the clause. One Judge of the High Court declared it could not possibly mean what it says: two other Judges say it does; but one of the latter considers that it ought to be amended. Section 35 was very carefully considered at the time and ought not to be altered without very full consideration. Lord Ampthill speaking in the Legislative Council (see *Madras Mail* of December 16th, 1902) said:—"The origin of the Planters Labour Bill has been fully explained, and it has been drafted after protracted consultation with the Planters' Associations, the District Officers considered, the Judges of the High Court, the Law Officers of Government, the Governments of Mysore and Coorg and the Government of India. The object of the Bill is two-fold: to ensure good and fair treatment to the labourer, in sickness and in health, and to protect the employer from the serious losses to which he has hitherto been exposed through the dishonesty, extortion or caprices of the labourer. It has been amply demonstrated that the ordinary civil law is inadequate in the peculiar circumstances of the planting industry and the importance of the planting industry is sufficient to justify special legislation."

The Hon'ble Mr. G. Stokes in introducing the Bill reviewed the then existing remedies that the planter had under section 492 of the Penal Code (Fraudulent Breach of Contract) and the other Acts that might be applied, and went on to say (same reference: the numbering of the clauses is different to that in the Act as finally passed) "None of these remedies give what is really necessary to help. All these remedies are unsuitable to the planting industry. It is not the punishment of the cooly nor the repayment of the advance that the planter wants. What is essential in the case of that industry is to get the work done for which the advance is made, whether that work be the supply of coolies by the maistri or whether it be the agricultural work of the estate. The position has been expressed by the phrase that what is wanted is specific performance. In the Bill this is to be attained in the two following ways. Following the principle of the Penal Code and Act V of 1866 the breach of contract is itself made punishable, but power is given to the magistrate to release and make over the maistri or cooly sentenced to imprisonment to his employer with an order to complete his contract. This is a provision taken from the Labour and Emigration Act of 1901. Specific performance is also recognised in the Bill in sections 31, 32 and 33 under which conviction and imprisonment is not to operate as a release, the labourer being compelled to return to service after his term of imprisonment, the period not only of his absence from service but also of his imprisonment being added to the term for which he has contracted to serve." Further on, replying to certain objectors he said "The special case that Mr. Ratnasabhapati Pillai had taken was that of the maistri. In this case the punishment, it was true, was more severe than in the Assam Act: but the reason for that was that the position of the maistri was different from what it was in Northern India. In Northern India, he was the agent of the planter: here in the South he was not. In Northern India he did not get the same advances. Here in Southern India he constantly got advances that went on as high as Rs. 3,000. If he absconded with this money, under the existing law he could get only three months' imprisonment. It might therefore be well worth his while to make away with the money and then go to jail for three months. The planter could not recover his money after he had imprisoned the man for defalcation. The planter's only remedy was a civil suit, but that, experience, in the majority of the cases, had shown was only throwing good money after bad. To meet cases of this kind the punishment needed to be more severe than in Assam. Even under the proposed Bill, if the provision enforcing specific performance had not been inserted, it would still be worth while for the maistri to go on as he was."

The whole of Mr. Stokes' two speeches ought to be read, as showing that the Government of India and the Government of Madras intended that this Bill should enforce "specific performance" of the maistris' and coolies' contracts.

Clause 35 embodies that decision. If it was being used oppressively and incessantly it might be necessary to amend it. I have not seen last year's statistics of the working of the Act. The figures are before you for the purpose of your annual report. I venture to surmise that in not one-half per cent of the cases brought forward would it have been necessary for the magistrate to exercise the discretionary power it is proposed to give him. Mr. Whitton's appeal, as, I think, you know, was a test case taken on behalf of the planters' association and could not be compromised. It is the deterrent power of the clause that is required. Your predecessors in Malabar and the District Magistrates of the Nilgiris have never, as far as I know, complained that the Act was unfairly worked. In probably 80 per cent of the cases not even the first sentence of imprisonment is carried out, but the man is released at once under clause 33.

IX

Letter—from A. R. KNAPP, Esq., I.C.S., District Magistrate of the Nilgiris.
To—the Secretary to Government, Home (Judicial) Department.
Dated—Ootacamund, the 2nd August 1916.
No.—Confdl. 1.

With reference to paragraph 2 of Judicial Memorandum No. 2824 A–7, dated the 9th March 1916, and in continuation of my predecessor's report, Confidential No. 1, dated the 19th March 1916, I have the honour to forward a printed copy of the proceedings of the Nilgiri Planters' Association, dated the 12th April 1916, which contains a discussion of the proposed amendment of section 35 of Act I of 1903 and also the resolution of the association on the subject.

2. My predecessor has already offered his general remarks in connection with the original Government Reference No. 2824 A-5, dated the 24th December 1915. This reference, I understand, is to be regarded as superseded by the memorandum now under reply. I need not therefore allude to it, beyond remarking that I do not altogether concur in Mr. Young's recommendations. He suggested that the magistrate should have discretion "to issue as many directions as may be necessary (under section 35) provided that only one imprisonment may be ordered altogether." My view on this point is that it is useless to issue directions which cannot be enforced.

3. The alternatives put forward by Government in the memorandum of the 9th March 1916 are either (1) that maistris should be excluded from the operation of section 35 or (2) that the issue of an order to the maistri to complete his contract should be discretionary with the magistrate and not, as now, compulsory. Taking the latter alternative first, I doubt whether it would be a satisfactory solution of the difficulty. The sub-magistrates in this district are not usually men of much experience and to leave a point so important to the planters to their unfettered discretion would, in my opinion, be dangerous. If it is decided to amend the section in this manner, I think that provision should at the same time be made for an appeal to a first-class magistrate against the sub-magistrate's order, whether he has directed the maistri to complete his contract or has declined to do so. At the same time if such an amendment is carried out, I would suggest the advisability of further extending the scope of section 35. It seems somewhat anomalous that a maistri who has been convicted of an offence under section 24 may be directed to complete his contract when he has been sentenced to imprisonment but cannot be subjected to any such order when the punishment for his offence under section 24 has been a fine.

4. As regards the exclusion of the maistri altogether from section 35, it may be observed that, excepting section 33, to which I find resort is seldom had, section 35 is the only provision which gives the planter that which he has always asked for and that which the legislature intended to allow him, namely the power to secure specific performance of the maistri's contract. It is true that in the Act as originally drafted a maistri, as such, did not fall within the purview of this section: but the amendment which included him therein was made in deference to the views of an Indian Member of the Legislative Council, who was one of the strongest opponents of the principle of compulsion contained in the Act. It was evidently not then considered that the new law laid any undue burden on the maistri. Unless it is found that the section in practice has worked improperly or too severely, there is, I venture to suggest, no ground for departing from the provisions deliberately inserted in the Act when it was first made law.

5. So far as this district is concerned there is no reason to consider that the section as it stands has led to undue severity or has been abused. During the last three years only one case has occurred in which a second punishment has been inflicted under section 35. This being so, I venture to doubt whether there is any practical evil to be remedied and I am inclined to concur in the view of the Nilgiri Planters' Association that there is no need for an amendment of the Act.

ENCLOSURE

Proceedings of the Nilgiri Planters' Association, dated the 12th April 1916.

* * * * *

PLANTERS LABOUR ACT.

With reference to the amendment of section 35 of the Labour Act the following letter from the Collector was read:—

"Sir,—I have the honour to invite your attention to the correspondence regarding the amendment of the Madras Planters Labour Act, which took place in the year 1907 (vide G.O. No. 367, Judicial, dated 28th February 1908) and to inform you that Government have now under consideration the question of amending section 35 of the Act. Government feel that it is necessary that the section should be amended either by excluding maistris from its operation or by giving the magistrate discretion in the matter of making an order to complete performance. The Government would prefer to exclude maistris from the operation of section 35, as the remedies provided by section 24, including, as they do, a power to fine up to Rs. 500 and to give the planter compensation out of the fine, appear to be sufficient. The Government are, however, willing to accept as a compromise the amendment of section 35 by substituting the word 'may' for 'shall' occurring in lines 3 and 4 of the section.

2. I request that you will be good enough to place these proposals before the Association and to communicate to me the opinion of the Association at an early date."

Mr. Nicolls made the following remarks:—

I know there are planters who are waiting to hear what I have to say on the proposed amendment. I was a strong supporter of the Act and am still so, and welcomed the introduction of the Act into the planting district of Wynaad and the Nilgiris. It was aiming at giving me what I wanted—"Protection to ourselves as well as to the Labourer and Contractor." I did

not think the Act a perfect one and knew, as time went on, wise and just amendments would be made. A point we all want is specific performance and the only way the Act gives us this is through the section Government now propose to amend, or to cut out of the Act.

"Penalty for default by a maistri," section 24 of the Act. Government suggest that the planter may obtain compensation by being paid a certain proportion of any fine levied. If a defaulting maistri was in a position to pay a fine over and above that which would recompense the planter, I do not think he would default. The maistri who defaults with the intention of doing so would rejoice at the deletion of section 35. His position would be the same as it was under Act XIII.

Why should Government wish to amend section 35. Has this section been in any way abused. I say no. Can the Government or have they given us any reason for this amendment. No. Some years back we suggested some amendments to Government, and I think Government informed us we had made no case out for amendment. The reply from us now to Government should be the same—"That no case has been made out for its amendment." We ask Government to protect us against deliberate fraud on the part of the contractor and to give us, as far as possible, specific performance." The contractor who defaults from no fault of his own would not be dealt with harshly by any planter and he can always prove his case under the Act. The Wynaad Association passed a strong resolution at their meeting of the 22nd ultimo. I would suggest that a similar resolution be made by this Association. I hope members present today will go thoroughly into this matter and give the meeting their opinions.

The Honorary Secretary pointed out that the Collectors of the Nilgiris and Malabar had always reported well on the working of the Act in their annual reports, and had not referred to any abuse of section 35.

After some discussion it was resolved that this Association should adopt the following resolution carried at the Wynaad Association, namely :—

"This Association considers that section 35 is a vital one, and that no case has been made out for its amendment. It considers that it is a decided deterrent to deliberate fraudulent breach of contract and that it has not been misused. Carried unanimously."

L. A. Rogers,
Honorary Secretary.

Order—No. 358-A, Home (Miscellaneous), dated 5th April 1917.

Recorded.

(True Extract)

E. A. Harvey,
Acting Secretary to Government.

NOTES CONNECTED WITH G.O. No. 358-A, HOME (MISCELLANEOUS), DATED 5TH APRIL 1917

[Subject.—*Amendment of the Planters Labour Act*, 1903.]

Previous papers :

G.O.	1067-68,	*Judicial*,	*7th May*	1902	G.O.	58,	*Judicial*,	*10th January*	1914
,,	558-60	,,	*28th March*	1906	,,	589	,,	*7th March*	,,
,,	367-68	,,	*28th February*	1908	,,	1073	,,	*14th May*	1915
,,	2612	,,	*16th December*	1913	,,	239, *Home (Mis.)*.,		*9th March*	1917
,,	1622	,,	*11th August*	,,					

Interpellation by the Hon'ble Mr. Kesava Pillai.

The Honourable Additional Member has forwarded with his question copies of records of the case in which Samy Dass, a maistri, was convicted by the Taluk Second-class Magistrate, Coonoor, under section 24 of the Planters Labour Act.

2. The facts enumerated in clause (*b*) are substantially correct. As regards item (6), it is submitted that the maistri was convicted not because the fact of the estate being in a feverish locality was fully known to him when he took the advance, but because the trying Magistrate was convinced that the accused had not fully accounted for the amount of advance received by him and that he did not try his best to get the coolies to the estate.

3. Under section 35 of the Planters Labour Act, the maistri is liable to be prosecuted and imprisoned again, and no conviction and imprisonment shall release him from the terms of the contract.

4. For orders whether the amendment of section 35 of the Act will be considered necessary. It is however submitted that in the present case the Magistrate must have been satisfied as to the culpability of the maistri or else he could merely have ordered the repayment of the advance money under section 23 of the Act. The estate is apparently not unfit for residence of labourers by reason of any sanitary defects [the District Magistrate could have reported the matter to Government under section 17 (1)].

5. It may however be pointed out in this connection that, according to a recent decision in the Madras High Court, a maistri or a labourer can be prosecuted and imprisoned any number of times under section 35 of the Act until the terms of his contract are fulfilled.

A.R.—16-11-15.
M.J.—16-11-15.

Draft answers are submitted for consideration.

E. A. Harvey—16-11-15.

The conflicting decisions as to the interpretation of section 35 are regrettable and the case in question certainly seems to be an instance of its harsh operation. It would be as well to have a full report of the facts from the District Magistrate.

C. G. Todhunter—16-11-15.

In limine I invite the attention of the Legislative Department to the excessive length of the question. Mr. Kesava Pillai is a frequent offender in this way and his question about the Hindupur Tahsildar is another instance on the present occasion.

See clause (*b*) of rule 4 of the rules for asking questions. I suggest that the honourable gentleman be told to cut his question down and ask it at another meeting. If this is done, we may call for a report; but if the question is allowed to stand, I accept the draft answer as amended by me. I have mentioned that the accused had the right of appeal, for although this does not answer any specific question, it is relevant to the general suggestion that there has been injustice.

Extract sent to Legislative, 18th November 1915.

2. I dislike the whole system of quasi-forced labour and contracts enforceable by means of the criminal law, but I am not prepared to open up that large question on such a case as this.

H. A. S[TUART]—17-11-15.

Extract from the "New India," dated 21st September 1915

PLANTERS AND LABOUR.

Mr. T. Srinivasa Mudaliyar, B.A., B.L., High Court Vakil, and Municipal Chairman of Erode, writes:—

Now that the heat of controversy over the subject has subsided and each side has exhausted its vials of wrath over the head of the other, I would earnestly invite the attention of the Government to the condition of labour in the South Indian plantations and the law governing them with a view to remedy existing evils and to elevate the present status of the labourers.

If my criticism of labour conditions in such estates has quickened the conscience of the powers that be and the planters, I should consider it to be an appreciable step towards the amelioration of the condition of estate labourers. Under such circumstances I venture to suggest the following reforms:—

(1) The amendment of the Labour Act (I of 1903) on equitable terms, more especially the elimination of the enslaving sections of that Act, e.g., s. 35.

A maistri ought to be set at liberty when he is unable to supply the labour he had contracted for, and when he pays back the advance he had received from a planter, if need be with a penal rate of interest.

(2) The appointment of an official protector and non-official honorary visitors to safeguard the interests of estate labourers.

(3) The restriction of advances made to labourers.

At present a small amount may be allowed to hang over the head of a coolie so that he, as well as his maistri, may be hauled up at any moment before a magistrate for any default which may otherwise be pardonable because accidental or unintentional. A certain amount may be fixed, say Rs. 10, beyond which advances to labourers may be held to be irrecoverable.

(4) A more satisfactory method of keeping accounts in estates.

There seems to be much complaint against the way in which maistris are treated with regard to sums debited against them. When there is any hitch between the planter and the maistri, the ledger is sprung upon him to his utter dismay. The estate writers may not be the most honest accountants and the maistris are mostly illiterate. In the interests of both as well as their common master, it will be better to enact that a copy of the extract from the ledger should be granted every month to the maistri concerned.

(5) A more careful and conscientious enquiry into the grievances of labourers than the slipshod manner in which some of the sub-magistrates seem to indulge while dealing out justice in cases launched by planters against labourers.

Seeing that the poor coolies cannot defend themselves properly in out of the way places, it behoves Divisional and District Magistrates to devote better attention to the calendars of such subordinate magistrates, who may often be found to be too weak-kneed to withstand the powerful personal influence of planters, to the prejudice of poor labourers. Hearsay evidence is easily let in and surmises unscrupulously drawn, and judgment is often based on such hearsay and inference, and the labourer is doomed.

(6) A thorough inspection and enquiry may be made as to the adequacy of accommodation provided for labourers in the plantations.

Many of the bodily ills, like malaria, that affect men working in the estates can be minimised by proper care being taken with regard to the necessary comforts that are indispensable in climatic conditions which are foreign to the labourers.

The extract may be sent demi-officially to Mr. Barber who should be asked whether he has any remarks to make on its allegations and proposals.

H. A. S[TUART]—29-9-15.

Demi-official—from the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.
To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
Dated—the 1st October 1915.
No.—2824 A.

I am desired to enclose herewith a copy of a cutting from *New India*, dated the 21st September 1915, on "Planters and Labour" and to ask you whether you have any remarks to make on the allegations and proposals contained therein.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.
Dated—the 4th October 1915.

I thank you for your letter of 1st instant enclosing a copy of a cutting from *New India* on "Planters and Labour."

I had already seen this as it appeared in the *Madras Times* and recently I was asked if our Labour Department should take any steps to refute the insinuations. I thought this was inadvisable, for it seemed to me that this letter as well as the previous one by the same writer were but efforts at cheap advertisement. However, since the matter seems to have attracted the attention of the authorities, I will get Martin to deal with the points raised. I may say that there is very little in what has been written, and that whether the whole matter of "the Planter and his labour" is at fault or not, is being attended to by the Labour Department.

1. The Collectors of Malabar and the Nilgiris report annually on the working of the Act. The number of cases taken under the Act is distressing, but this proves I suppose that an Act of some sort is necessary.

What are called the enslaving sections should be deterrents, and prevent an honest man from taking on a contract he cannot perform. I agree that a maistri should be set at liberty when he is unable to fulfil his contract, provided he pays back the amount of his advance, and provided the advance is taken in good faith. A maistri may take an advance of Rs. 200 for 20 coolies, he may collect the coolies and may then accept an advance of Rs. 300 from a Straits recruiter, even if he has a shred of honesty which makes him repay the original Rs. 200, still he has acted in bad faith.

2. The appointment of an official Protector should be unnecessary, while the appointment of non-official Honorary visitors would be resented by any planter. To put it on no higher ground, self-interest will make a planter look after the interests of his coolies, and systematic bad treatment and the lack of proper care will tell their own tale on an estate.

3. The restriction or limitation of advances is an integral part of the Labour Department scheme. Once internal competition is controlled the department will be able to deal with external competition. The advance system has been abused, coolies don't emigrate because they want to, but because they are bribed to. The worst abuses probably occur between the maistri and the cooly, but the Labour Department aims at returning to the patriarchal system that used to be in vogue, and if this can be brought about, public feeling in the villages will make it difficult for a maistry to do his coolies down.

4. As a rule I think the accounts on the estates are well kept. Every cooly's account, that is his pay and his food and cumbly advances, is kept in the roll book. A planter will always go through a cooly's account with him on pay day. The cooly will often keep his account by notching a stick for the days he does not work, and this sometimes leads to a disputed account in the month of February. I think Mr. Srinivasa Mudaliyar has an exaggerated idea of the position of a writer on an estate, but of course with dishonest subordinates trouble may occur.

The maistri can always check his account by keeping a pass book, which can be written up from the estate ledger.

5. I should hesitate to criticize the Sub-Magistrates as I have no acquaintance with them. I have heard some nasty things said about them at a Legislative Council meeting, and not by Official Members, but by their compatriots. I have no doubt however about the District Magistrates, and I am pretty certain, because they have the passable honesty of an Englishman, that their influence is on the side of fairness and justice. I am glad to hear of the powerful personal influence of planters, they must have established this by rarely taking a wrong case, they could never have established it by talking down the defending vakil.

Mr. Srinivasa Mudaliyar's experience of the planter and his law cases was during the years he was at Pollachi, but I never heard that he was retained by any planter in a case, and it is possible that he had plenty of time to exercise his calling on behalf of the cooly in order to see justice done. I don't know that he ever did.

6. It is a general rule that planters treat their sick coolies. On large estates, perhaps, there is an apothecary, on smaller estates the verandah treatment is usual, this may be rough and ready, but it's the best that can be done with limited knowledge and the help of a hand book.

I should like to know how the treatment afforded by planters compares with that afforded by the Indian landowners, and I wonder if Mr. Srinivasa Mudaliyar can find a parallel to the devotion of a planter's wife, who nursed a case of cholera to recovery in her own verandah.

I am strongly in favour of better medical attendance, and I have already asked that medical stores may be issued at reduced rates to estates keeping dispensaries and apothecaries.

Accommodation is improving every year, but it is difficult to deal with a class that prefers kutcha houses and dirty surroundings to properly built houses and cleanliness. Any improvements that have been made recently may be said to be in spite of the cooly, not because of him.

The various points of Mr. Srinivasa Mudaliyar's article are dealt with below :—

(1) *Amendment of the Planters Labour Act on equitable terms.*—Reference is solicited to G.Os. Nos. 558–60, Judicial, dated 28th March 1906, and 367–368, dated 28th February 1908. The Government of Madras have already expressed their readiness to amend the Act, and though the Government of India were opposed to some of the amendments suggested, it was the planters themselves who induced the Government to postpone the question of the amendment. It is now open to the planters themselves to move in the matter if they consider the amendment of the Act to be an urgent necessity.

(2) *Appointment of an official protector and non-official honorary visitors to the estates.*—Mr. Barber considers that the former is unnecessary and that the latter would be resented by the planters whose self-interest would make them look after the interests of their coolies. It will be observed that in the case of factories (places for similar employment of labour) there are no non-official visitors, but Inspectors are appointed by Government to inspect those factories.

(3) *Restriction of advances to labourers.*—This question appears to be one for the internal management of the estates. Mr. Barber says that this is an integral part of the Labour Department scheme. The department aims at returning to the old system, and if this can be brought about, public feeling in the villages will make it difficult for a maistri to do his coolies down.

(4) *Satisfactory method of keeping accounts.*—As a rule the accounts are well kept, and the maistri can always check his account by keeping a passbook which can be written up from the estate ledger.

(5) *A more careful enquiry into the grievances of labourers.*—Mr. Barber hesitates to criticize the Sub-Magistrates and says that the influence of District Magistrates is always on the side of fairness and justice.

(6) *Accommodation and medical relief for labourers.*—These are improving year after year. Vide page 5 of G.O. No. 1622, Judicial, dated 11th August 1913, page 7 of G.O. No. 589, dated 7th March 1914, and page 7 of G.O. No. 1073, Judicial, dated 14th May 1915.

A.R.—25–10–15.
M.J.—25–10–15.

A case seems to be made out for the exercise of greater supervision over the condition of Indian labourers working in this Presidency, not that any case of ill-treatment or hardship has been brought to the notice of the Government; but it is only reasonable that conditions which we insist on in Malaya should be enforced here also. In the Malay States Labour Code and Straits Settlements Ordinance provision has been made for thorough supervision of estates by Government officers, and in both these enactments the right of inspection by an officer of this Government endowed with adequate power is secured. The Ceylon Government also makes arrangements for the thorough inspection of estates and the protection of labour. Of this however no details are available and it is not known whether special inspectors are appointed or not.

2. The question of the principle of appointing officers for the protection of the weaker classes and the security of the conditions under which they work is not likely at this time to be challenged. Analogous cases in this country are appointments such as the Protector of Emigrants, the Inspector of Factories, and the Registrar of

Joint Stock Companies, one of whose duties is to protect the interest of shareholders. Under the Companies Act, Inspectors of Companies may be appointed (section 138). In the same way, under section 16 of the Planters Labour Act, Government have power to appoint an officer to enter and inspect all lands and houses wholly or partially used by or for labourers and to make any enquiries he thinks proper. This is a clear recognition of the principle that an Inspector (or Protector) of Labourers may in certain circumstances be proper. No one can doubt Mr. Barber's assertion that the coolies are well looked after and that the planters realise that the health and comfort of their coolies conduces to their own prosperity, and that they, being a body of intelligent men, are guided by motives of enlightened self-interest in such matters. Irregularities however occur in the best regulated professions and this would be no reason for the State to refuse to step in and shoulder its responsibilities in a case in which a responsibility is usually held to devolve on it; such arguments as Mr. Barber uses might very well have been used against Government intervention in regard to Slavery in North America or Factory Legislation in Industrial England. It can hardly be denied that here in the estates if anywhere is an ignorant and industrious class of people, whose existence is to be encouraged, and who, more than others, require the support and protection of Government. It must be remembered that there is no such thing as organised union amongst these people and very little chance of their standing up against an unjust or tyrannical employer (and the potential existence of such employers must be admitted) except by spasmodic and sporadic strikes in which they would almost certainly come off second best. Nor is any such organization likely to come into existence, anyhow for a long time; in view of the poverty and ignorance of the labourers and the well-known disinclination of agriculturists, as distinct from the industrial workers, to combine and form protective unions, a trait which may perhaps be attributed to their working scattered over large areas and the nature of their work. It is true that District Magistrates, Sub-Divisional Magistrates and the District Medical and Sanitary Officers are ex-officio Inspectors under the Act. It is patent, however, that these officers with their multifarious duties are not in a position to pay more than transient attention to this work. It is a matter for consideration whether an officer with more leisure, if such a one can be found, or a non-official, if that be legal, should not be appointed to this office, one who can deal with this subject as a whole and not from the piece-meal and local point of view of a district officer, and can give at least a considerable amount of time to the study of the subject and to fairly thorough inspections. In these days, when any real or apparent exemption in favour of a European is made a pretext for exciting racial animosity, it is indispensable that the estates of planters who are mainly Europeans should be above suspicion. So long as the planters' estates are well-managed and manned by happy and healthy coolies, the racial agitator will find the miserable condition of many of the agricultural labourers working under the Indian village ryots and landed proprietors a certain stumbling block in his path of denunciation of European monopoly and ill-treatment of labour. I submit that before further steps are taken statistics of estates and labourers may be called for from local officers and also reports of the results and amount of inspection done by officers now empowered to inspect estates.

E. A. HARVEY—4–12–15.

II

From the District Magistrate, Malabar, dated 14th November 1915, D. No. 1805-M.

Reference is solicited to pages 13–17 of G.O. No. 367, Judicial, dated 28th February 1908, where a proposal to amend section 35 of the Planters Labour Act was considered but dropped at the suggestion of the United Planters' Association of Southern India.

2. A case of the abuse of the provisions of section 35 was recently brought to the notice of the Government by the District Magistrate, Malabar, in G.O. No. 2612, Judicial, dated 16th December 1913; but the High Court's ruling recorded in G.O. No. 58, dated 10th January 1914, was considered to be a sufficient safeguard, in that it was ordered that only one prosecution could be made under that section of the Act. The present ruling of the High Court conflicts with that referred to above and

empowers a magistrate to issue repeated directions to maistries [and labourers, subject to the proviso] to complete the performance of the contract on pain of further prosecution and punishment.

A.R.—29-11-15.
W.B.S.—6-12-15.

Whatever Mr. Srinivasa Mudaliyar's motives may be, he has a fairly good case. His points may be taken in order.

(1) *Amendment of the Act, especially section* 35.—This is not a new question and cases of abuse are accumulating. Since Mr. Barber's letter was received, the District Magistrate, Malabar, has reported a case in his district. Proposals for amendment were actually framed in 1907 and dropped because the planters, who had moved for amendment of the Act, asked for a postponement of the consideration of the question. Mr. Innes raised the question on a case of abuse in 1913, but again the question was dropped because yet another case had arisen in the Nilgiris, and on a reference to the High Court, Mr. Justice Sadasiva Ayyar had held that the Act did not authorise repeated sentences in respect of the same contract. Since then Ayling and Phillips, JJ., have reversed that ruling, the former holding that the Act needs amendment in that and other respects. Since that again we have the case from Coonoor about which a question was asked in Council.

The Honourable Member was not prepared to open up the large question involved in the Coonoor case. It is for orders whether the four cases cited make action necessary.

(2) *The appointment of an official protector and non-official visitors.*—We insist on official inspection in Ceylon and the Straits Settlements as well as in the colonies to which emigrants are sent under the Emigration Act. The Act also provides for such inspection. If the Inspector were, as in some of the colonies referred to in McNeill and Chimman Lal's report, given power also to settle disputes between planters and their labourers, in other words to try cases under the Act on the spot, that would go far towards meeting the planters' objection that no need for inspection had been shown to exist, since they would welcome anything that would save them from the necessity for journeying to magistrates' courts in the plains. No case for non-official visitors seems to be made out.

(3) *The restriction of advances.*—The office have not put up references, but I think a strong case on this head also could be made out. The following are two I remember. An Assam planter, Mr. Fraser, in writing about the scheme for emigrating Kalichedu criminals, mentioned that they would bind them by a nominal advance to serve for three years. Another Assam planter told the Excise committee that some planters liked the liquor shops because the coolies spent all their money there and were ready to re-engage. In an enquiry about recruiting in 1913 a case was given of a cooly taken to Ceylon who had found himself some hundreds in debt to the maistri practically as the price of his recruitment. Such instances could be multiplied, if it were necessary. An advance, generally by a maistri, to a recruited cooly, affords a substitute for an indenture, and a provision that there should be a maximum limit of recovery would afford a valuable protection to the cooly.

(4) *More satisfactory accounts.*—No doubt the majority of planters do keep their accounts fairly well and coolies generally know what they are about, but since the cooly by taking an advance binds himself to labour, I think something more is required. Something in the nature of a pass-book for each cooly seems to be desirable.

(5) *More careful enquiry into cases.*—Enquiry on the spot by a European magistrate would certainly be an improvement on present arrangements.

(6) *Inspection of accommodation.*—We insist on this in the colonies and the same arguments apply.

The fact that the United Planters' Association of Southern India are doing many of the things that Mr. Srinivasa Mudaliyar contends for, without being forced to do so, is no argument against his contentions. It shows on the other hand that

the better class planters recognise their propriety. But the Act gives equal powers to less scrupulous persons who are not members of the association and who are liable to abuse them if they are not looked after.

C. G. Todhunter—6-12-15.

For the present, I think it will be sufficient to amend section 35 to prevent perpetual imprisonment. This can be done by giving the magistrate a discretion as proposed in 1907. But please consult the District Magistrates of Malabar and the Nilgiris first, and also Mr. Barber demi-officially.

H. A. S[tuart]—9- 2-15.

[Memorandum No. 2824-A-4, dated 24th December 1915, to the District Magistrate, Malabar—**III.**]

[Memorandum No. 2824-A-5, dated 24th December 1915, to the District Magistrate, the Nilgiris—**IV.**]

Demi-official—from the Hon'ble Mr. C. G. Todhunter, I.C.S., Acting Secretary to Government, Judicial Department.
To—the Hon'ble Mr. E. F. Barber, Additional Member of the Madras Legislative Council.
Dated—the 24th December 1915.
No.—2824A-3.

I am desired to address you on the subject of the amendment of section 35 of the Madras Planters Labour Act I of 1903.

2. As it stands, section 35 of the Act provides that a convicted maistry or labourer may on the expiry of his sentence be directed to complete the performance of his contract "on pain of further prosecution and punishment." This has been interpreted to mean that the offender may, if he continues to fail to perform his contract, be repeatedly prosecuted and sentenced to imprisonment until the contract is finally completed.

3. In order to prevent the possibility of such repeated imprisonment, the Government propose to amend the Act by giving the magistrate a discretion in issuing directions for the completion of the contract.

4. A copy of the section as proposed to be amended is herewith enclosed and I am to request that the Government may be favoured at an early date with an expression of your opinion in the matter.

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Demi-official—from the Hon'ble Mr. E. F. Barber, Additional Member of the Madras Legislative Council.
To—the Hon'ble Mr. C. G. Todhunter, I.C.S., Acting Secretary to Government, Judicial Department.
Dated—Ootacamund, the 29th December 1915.

I am in receipt of your demi-official No. 2824 A-3, dated 24th instant.

2. In regard to section 35 of the Madras Planters Labour Act, No. 1 of 1903, I can only give you my personal opinion, and this is that the section should be amended.

3. It is manifestly unfair that a man, who has acted in good faith, and yet has failed to fulfil his contract, should be subject to constant imprisonment, for it is obvious that if he entered into the contract in good faith, and failed to complete it, no amount of punishment can make him make his failure good.

4. There must be some deterrent clause in an Act like this to prevent men from contracting rashly, but the deterrent clause should take a different form and should if possible inflict far severer punishment when *malâ fides* can be proved, and should be as lenient as possible when the case is one of bad luck, rather than of wrong doing.

5. It seems that it would be difficult to so word a clause that it might meet any case that might come before any magistrate, so it would appear that the only way is to give the magistrate some discretionary power under the section, but here again the discretionary power might be abused, and I think it should be exercised only after reference to the District Magistrate.

6. There is a class of man that makes a livelihood out of making contracts which it is never intended to fulfil, and there is no clause under the Act which can inflict a punishment severe enough for one of these.

7. Would it be possible for a magistrate, if he suspected a case of cheating, to order that the accused be tried under one of the sections of the Indian Penal Code that might meet the case?

8. I think that the reasons for this section 35 being as it stands in the Act should be carefully considered before it is amended. I know that the planters asked for a clause dealing with specific performance, which could not be allowed, and this section appears to be a compromise, and unsatisfactory at that.

9. The Government will realize that conditions have changed since the Act came into force. In order to secure labour it was necessary to advance maistries who were often unknown men and there were no means by which a planter could make enquiry and get information regarding the men who came forward and offered to supply labour. Big companies found it cheaper to make some bad advances rather than to be short of labour and in many cases a superintendent was warned that he only kept his billet if he had sufficient labour. Thereby the evils of the system and the difficulties of the small company and the private proprietor were increased. The superintendent himself was tempted to be unscrupulous and the maistry was tempted to be dishonest.

10. Now if he cares to use it, any planter in South India can make enquiry about a maistry, before he advances him, through the labour department.

11. Even if he make enquiries, he may be let down, but if he do not make enquiries he has only himself to blame, and I have no sympathy with him if the Act fail to give him satisfaction.

12. I believe it would be a good thing if the amendment made it necessary for a planter to show that he had taken every reasonable precaution before entering into a contract with a maistry, by enquiring and satisfying himself that that maistry would be likely to fulfil his contract, before he could take proceedings against the maistry under this Act. If he had been swindled owing to false representation made by the maistry, surely he could have recourse to some provision of the Indian Penal Code.

13. I know that things will not be satisfactory if we are always taking the law against our maistries and warranting our labour, but if it has to be done the planter should be sure that the law and the warrants are effective.

14. As I have said I have given my personal view on the matter. I am sending a copy of this letter to the Chairman of the United Planters' Association of Southern India and if I may have more time I shall be able to put the views of my community before you.

Mr. Barber suggests that it is necessary, before proceeding against the maistry under this Act, that the planter should show that he had taken every precaution by enquiring and satisfying himself that the maistry would be likely to fulfil the contract.

2. Section 41 of the Planters Labour Act admits of action being taken under the Indian Penal Code, if a planter has been swindled by false representation.

A.R.—5-1-16.

W.B.S.—6-1-16.

D. N. STRATHIE—7-1-16.

Thank Mr. Barber for his letter and say that the further communication promised by him is awaited. Work up the whole history of the section meanwhile.

C. G. TODHUNTER—9-1-16.

Demi-official—from D. N. STRATHIE, Esq., I.C.S., Under Secretary to Government, Judicial Department.
To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
Dated—the 11th January 1916.
No.—2824-A-6.

I am desired to acknowledge with thanks the receipt of your letter, dated the 29th ultimo, containing your views on the proposed amendment of section 35 of the Planters Labour Act, 1903, and to say that the further communication promised by you is awaited.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—D. N. STRATHIE, Esq., I.C.S., Under Secretary to Government, Judicial Department.
Dated—Ootacamund, the 15th January 1916.

I am in receipt of your letter of 11th instant.

2. You will notice that Mr. Todhunter's letter, to which mine of 29th ultimo was a reply, is headed "confidential," so I did not think it was a matter which I could put before the associations of the districts concerned. However I have taken it upon myself to consult two or three men who are working labour under the Act.

3. They quite see that, in view of what Mr. Justice Ayling said in his judgment in a recent High Court case, Government may feel obliged to take some action. This case was taken up to the High Court at the instance of the Wynaad Planters' Association in order to get a ruling.

4. My friends point out that section 35 is the keystone of the Act, it was drafted by the Legal Advisers of the Governments of India and Madras after a prolonged discussion, and it ought not to be lightly put aside or altered in a hurry.

5. I would ask that, before any action be taken, the Associations of the Wynaad and Nilgiris be consulted and that they should have full information of what Government propose to do.

6. This might perhaps best be done by arranging a joint meeting of the associations at which the Collectors of the Nilgiris and Malabar might be present.

7. There is one point on which planters are generally agreed, to which I should like to call the attention of the Government.

8. There appears to be an idea that if a defaulter offers to pay back his money he ought not to be punished, but in reality a man who takes an advance on the off chance of being able to fulfil the contract he has undertaken is a danger to the industry and ought to be punished.

9. We might put the maistries who would come under this section of the Act under three heads:—

(1) The maistry who takes an advance with the full intention of not fulfilling his contract.

(2) The maistry who takes an advance with no certainty and very little chance of fulfilling his contract.

(3) The maistry who takes his advance and fails through sheer bad luck.

10. Apparently we have one instance of No. 3 in what is known as the Glenburn case, but I believe that such a case is very rare and that few planters would be found to press such a case for punishment.

11. No. 2 is a speculator who tries to secure a certain standing with no risk to himself, and since risk is an element of speculation that spice should be added in some very certain way.

12. The following supposition has been given to me and I can say that it is no exaggeration.

Suppose a maistry to take an advance of Rs. 2,000 in March to bring in 200 coolies in June. He uses the money on business or gets a better offer from some other estate and sends his coolies there nominally under a relative. A warrant is issued but he is not arrested till December when he offers to repay the money. An entire year's coffee crop might be lost, or the bulk of the year's tea crop. Rupees 2,000 would not represent a fraction of the actual loss and damage to the estate.

13. Apart from this, those whom I have consulted are against giving the ordinary magistrate who tries cases under the Act, discretionary powers.

V

From the District Magistrate, Malabar, dated 27th January 1916,
No. D. 11/*Confdl.*

The earliest reference to the provision corresponding to section 35 of the Planters Labour Act, 1903, will be found in clause 32 of the Planters Labour Bill as drafted in 1900 and forwarded to India with letter No. 443, dated the 23rd March 1900. This clause was based on section 204 of the Assam Labour and Emigration Act, VI of 1901, and, in spite of the numerous phases which many of the other clauses passed through, appears to have undergone no change at all until it was finally discussed in the Legislative Council in 1903 when it settled down in its present shape. The discussions on the Bill as far as this section is concerned will be found in pages 81 and 82 of the Proceedings of the Council.

358-A Mis.—4-17-3

The clause of the Bill as amended by the Select Committee as well as section 204 of the Assam Labour and Emigration Act are submitted below for purposes of comparison:—

Planters Labour Bill.	Assam Act.
32. On the expiry of any sentence of imprisonment for any offence under this Act the Magistrate shall, subject to the provisions of section 34, make over such labourer to any person appointed on the part of the employer to take charge of him, and no conviction under this Act or imprisonment under such conviction shall operate as a release to any labourer from the terms of his labour contract.	204. On the expiry of any sentence of imprisonment passed on a labourer for any offence under this Act, the Magistrate shall, subject to the provisions of section 200, make the labourer over to any person appointed on the part of his employer to take charge of him; and no conviction under this Act or imprisonment thereon shall, save as aforesaid, operate as a release to any labourer from the terms of his labour contract.
Section 34 provides that if the terms of imprisonment endorsed on a labour contract amount to a total of nine months the contract should be cancelled.	Section 200 provides that if a labourer has actually suffered imprisonment for six months for desertion from his employer's service his labour contract is to be cancelled.

It will thus be observed that under the provisions of the Bill before it was amended by the Council, only labourers (not maistries) were liable to be made over to the employer, and there was a limit of imprisonment which freed the labourer from his contract. The provision when it became law was not only extended to the maistry but also removed the protection which a term of imprisonment gave to the accused. [Reference is in this connection solicited to paragraph 25 et seq. of Mr. (now Sir) G. S. Forbes' note on pages 12 and 13 of notes to G.O. No. 367, dated 28th February 1908.]

2. Mr. Barber suggests that the Wyanad and the Nilgiri Planters' Associations should be consulted and that the best way to do this is to arrange for a joint meeting of the two Associations at which the two Collectors also might be present. For orders.

A.R.—27-1-16.
W.B.S.—4-2-16.

From Mr. Barber's reply it is apparent that the planters will not be satisfied with the amendment giving discretion to Sub-Magistrates. It does seem necessary to consult the Associations.

2. The case of a dishonest or speculative maistry could of course be taken up under the Indian Penal Code [section 41 of the Planters Act]. The instance put forward by Mr. Barber in paragraph 12 of his letter might occur in any business.

D. N. STRATHIE—6-2-16.

I certainly think that the Associations should be consulted and Mr. Barber may be told to consult those of Wynaad and the Nilgiris.

P. RAJAGOPALA ACHARIYAR—8-2-16.

I think the best course will be for us to direct the District Magistrates of Malabar and the Nilgiris to consult their respective Planters' Associations. The District Magistrate should invite the Association's attention to the correspondence that took place in 1907 and he should say that the Government are of opinion that it is necessary that section 35 of the Act should be amended either by excluding maistries from its operation or by giving the magistrate a discretion in the matter of making an order to complete the performance of the contract. This will not commit us to adopting the exact form of words accepted by the Government of 1907. My personal opinion is that maistries should be excluded from the operation of section 35, for I think the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of the fine, are sufficient; but I should be willing to accept as a compromise the amendment of section 35 by substituting "may" for "shall" in lines 3 and 4.

2. The case should be sent to His Excellency at this stage before orders are issued, as the matter is one of some importance. A short précis of the case should be prepared for His Excellency's information.

H. A. S[TUART]—10-2-16.

This file relates to the amendment of section 35 of the Madras Planters Labour Act, 1903. When the Planters Labour Bill was first drafted by this Government in 1899, a provision similar to the present section 35 was not included. It was afterwards inserted on the suggestion of the planters, one of them remarking that "Any Labour Act should provide that punishment by imprisonment when convicted "of breach of contract shall not act as a release from the performance of the "contract, but that the maistry or labourer convicted should, at the end of his term "of imprisonment, be compelled to perform his contract." A clause (similar to section 204 of the Assam Labour Act, 1901) was accordingly inserted in the Bill, providing that a labourer should at the expiry of his term of imprisonment be made over to his employer and that neither conviction nor imprisonment should operate as a release from the labour contract. It was also provided that, if the term of imprisonment endorsed on a labour contract amounted to a total of nine months, the contract should be cancelled. This latter provision was deleted when the Bill was discussed in the Council, and the original clause 32 was altered into its present form (section 35 of the Act).

2. Cases have been brought to notice in which maistries have been prosecuted and imprisoned under section 35 of the Planters Labour Act. In 1912 Mr. Justice Sadasiva Ayyar held that the Act does not authorize the infliction of repeated sentences of imprisonment in respect of the same contract and remarked that the meaning is merely that the civil contractual obligation does not cease by the criminal court's punishment. In October 1915 Ayling and Phillips, JJ., differed from the above ruling as they were unable to agree that the magistrate could issue only a single direction. [As regards the labourer the proviso to section 35 is some safeguard, but it is not so in the case of the maistry.] Proposals for the amendment of the Act with a view to protect maistries from this liability to repeated imprisonment were considered by the Government in 1907. The planting community were not quite in favour of the proposals then made by the Government and the question of amending the Act was finally dropped because the planters who had at first moved for an amendment of certain other sections of the Act asked for a postponement of the consideration of the whole question. In 1907 it was proposed to separate the provisions relating to maistries from those relating to labourers and to enact that the magistrate *may* on application direct, in his judgment or order of acquittal or discharge, that the maistry shall present himself at the estate on a specified date and remain there for a specified time. Failure to comply with this order will then be deemed to be an offence punishable under section 24 (*a*) or 24 (*b*).

3. Honourable Member (Judicial) is now of opinion that maistries should be excluded from the operation of section 35, as the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of this fine, are sufficient. A similar proposal was put before the Planters' Association in 1907, but the planters considered it essential that maistries should continue to find a place under section 35. The Honourable Member is willing to accept as a compromise the amendment of section 35 by substituting the word "may" for "shall" in lines 3 and 4, thus giving the magistrate a discretion in the matter of making an order to complete the performance of the contract. Honourable Member wants to direct the District Magistrates of Malabar and the Nilgiris to consult their respective Planters' Associations.

A.R.—29-2-16.
W.B.S.—29-2-16.

P. RAJAGOPALA ACHARIYAR—2-3-16.

I am disposed to think with Sir Harold Stuart that in the case of maistries the remedies provided by section 24 are sufficient, but I reserve a final opinion until the Collectors of Malabar and the Nilgiris report as proposed.

P[ENTLAND]—3-3-16.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Judicial Department.
Dated—the 2nd March 1916.

At a meeting of the Committee of the United Planters Association of Southern India held on 29th ultimo I was instructed to find out if Government propose to make any amendment to section 35 of the Madras Planters Labour Act, and if so, to request that the text of the amendment may be sent to those districts that are interested in the Act, for full consideration.

2. The Committee of the Labour Department would deprecate any action being taken by Government that might lead to any difference of opinion among planters themselves, for the department is young and the most difficult part of the work in front of it is to harmonize the views of planters on the matter of labour and to regularize, as far as local conditions will permit, the terms of service on estates.

3. Of course self-interest is at the bottom of it all, for you would not expect a body of men to tax themselves heavily otherwise, but I think that it is obvious that planters want happy and contented labour forces, so it may be taken that the ultimate aim of the department is to improve the lot and status of the estate labourer.

4. In connection with this matter, I would remind you that I told you in Madras that my demi-official to Todhunter is not for publication.

[Memorandum No. 2824-A-7, dated 9th March 1916, to the District Magistrates of Malabar and the Nilgiris—**VI.**]

Demi-official—from the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Judicial Department.
To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
Dated—the 9th March 1916.
No.—2824-A-8.

In reply to your letter, dated the 2nd instant, regarding the proposed amendment of section 35 of the Planters Labour Act, 1903, I am desired to forward herewith a copy of memorandum, No. 2824-A-7 of this date, in which the District Magistrates of Malabar and the Nilgiris are being asked to consult their respective Planters' Associations in the matter.

VII

From the District Magistrate, the Nilgiris, No. 1, *dated* 19*th March* 1916.

VIII

From the District Magistrate, Malabar, No. D. 826/*M.*, *dated* 20*th April* 1916.

A draft demi-official to Mr. Barber is submitted in accordance with the oral instructions of the Secretary.

A.R.—4-7-16.
W.B.S.—4-7-16.

P. RAJAGOPALA ACHARIYAR—4-7-16.

Demi-official—from the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Judicial Department.
To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
Dated—the 4th July 1916.
No.—2824-A-9.

With reference to our conversation today and in continuation of my demi-official letter No. 2524-A-8, dated the 9th March 1916, I am desired to inform you that the Wynaad Planters' Association has expressed itself against the proposal to amend section 35 of the Madras Planters Labour Act, 1913, in the manner suggested in Memorandum No. 2824-A-7, Judicial, dated the 9th March 1916, while the views of the Nilgiri Association have not yet been received. Copies of letters addressed by the Wynaad Association to the District Magistrate, Malabar, on the subject are enclosed.

IX

From the District Magistrate, Nilgiris, No. 1-*Contdl.*, *dated* 2*nd August* 1916.

Both the Nilgiri and the Wynaad Planters Associations are against the amendment of section 35 of the Planters Labour Act. They say that the section is a decided deterrent to deliberate fraudulent breach of contract and that it has not been misused. Mr. Evans reports that the arguments advanced do not appear to be of great validity against the amendment proposed; and Mr. Knapp doubts whether the amendment would prove a satisfactory solution of the difficulty and suggests that provision should be made for appeals against the sub-magistrate's decision to a first-class magistrate.

On the whole it would appear that the District Magistrates concerned are inclined to accept the views of the planters that there is no need for the amendment of the Act. Both the District Magistrates certify that the provisions of the section have not been abused.

It appears that the Hon'ble Mr. Barber is also preparing a case against the proposed amendment of the Act. For orders whether it should be awaited.

[Attention is invited to His Excellency's note, dated 3rd March 1916, on page 11 supra.]

A.R.—16-8-16.
W.B.S.—19-8-16.

Perhaps Mr. Barber may be asked demi-officially whether he has any further remarks to add to his demi-official letter, dated 29th December 1915, with reference to subsequent correspondence. Opinion so far evoked, whether planting or official, is on the whole hostile.

E. A. HARVEY—22-8-16.

Yes: let us ask Mr. Barber whether he has anything further to say. Ask him to treat the matter as urgent. Mr. Barber should not of course be told what the District Magistrates say.

P. RAJAGOPALA ACHARIYAR—24-8-16.

Draft demi-official submitted. The opinions of the District Magistrates were not communicated to Mr. Barber. But the letters addressed to the District Magistrate, Malabar, by the Wynaad Planters Association were communicated to him.

A.R.—24-8-16.
W.B.S.—24-8-16.

E. A. HARVEY—25-8-16.

Demi-official—from E. A. HARVEY, Esq., I.C.S., Under Secretary to Government, Home (Judicial) Department.
To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
Dated—the 28th August 1916.
No.—2824-A-10.

I am desired to invite a reference to the correspondence ending with my demi-official letter No. 1966 A-1., dated the 10th ultimo, regarding the proposed amendment of section 35 of the Madras Planters Labour Act, 1903, and to enquire whether you have anything further to add to your previous remarks on the subject. The Government would be glad if you will kindly treat the matter as urgent.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—E. A. HARVEY, Esq., I.C.S., Under Secretary to Government, Home (Judicial) Department.
Dated—Pundalur, the 30th August 1916.

I have to thank you for your demi-official No. 2824 A-10 of 28th instant.

Without reference to my file I cannot say if I have anything to add regarding the amendment of section 35 of the Madras Planters Labour Act.

358-A Mis.—4-17—4

Certainly I can have little to add to what I have said in conversation with the Honourable Member.

The Wynaad Association has had both official and demi-official correspondence with the Collector of Malabar, all of which I trust will be placed before Government. The Nilgiris Association holds a similar view to the Wynaad.

If the section be amended and if discretionary power be given to the magistrate who try these cases, it will cause some dissatisfaction among planters and for this reason I venture to hope that the Government will find no pressing reason to amend this section.

Demi-official—from the Hon'ble Sir HAROLD STUART, K.C.V.O., K.C.S.I., I.C.S., Member of Council.
To—the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Home (Judicial) Department.
Dated—Ootacamund, the 2nd September 1916.

I enclose a letter from Barber about the amendment of the Planters Act. I have asked him to give me a brief note of his reasons for recommending the abandonment of the proposal and when they are received, I will send them to you.

ENCLOSURE.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—the Hon'ble Sir HAROLD STUART, K.C.V.O., K.C.S.I., I.C.S., Member of Council.
Dated—Pundalur, the 30th August 1916.

I have just had a letter from Harvey asking me if I have anything further to say on the question of amending Act I of 1903, section 35. If it can be avoided, I think it would be a great mistake to stir up this Act again. There was always some dissatisfaction about it and it has caused more bitter feeling among planters themselves than anything else I know of.

As there is no proof of abuse of that section, can't it be left alone especially as planters on the whole are trying to work out their own salvation satisfactorily, without having recourse to law?

The enclosed letter from the Hon'ble Mr. Barber should be examined. He is very anxious that we should drop the proposal to amend section 35 of the Planters Act.

H. A. S[TUART]—19-9-16.

ENCLOSURE

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—the Hon'ble Sir HAROLD STUART, K.C.V.O., K.C.S.I., I.C.S., Member of Council.
Dated—Ootacamund, the 5th September 1916.

Thanks for yours of 2nd September which I found on my return here yesterday.

The reasons against the amendment of section 35 are—

(1) That the section has never been abused.

(2) That the section as it stands should be a deterrent to a man who, though honest, is too weak to resist a doubtful opportunity of getting rich quickly.

(3) That as it stands the section, if it be brought into operation, does provide a more adequate punishment for swindling, leaving the onus of proving good faith with the accused, than it would be possible to obtain under the Criminal Procedure Code where proof of bad faith has to be adduced by the complainant.

(4) That the planter, by force of circumstances and conditions ruling in the country, has to advance sums of money to people he knows little or nothing about, and that in consequence he needs protection against the dishonest middleman or maistri. The conditions are not of the planter's making, they have been in existence for years. They have not been aggravated by internal competition, but by competition from the Straits and Ceylon, the former especially during the last few years, has forced the pace considerably, and not only that, has also afforded a safe haven of refuge to a maistri or a cooly who wishes to escape his liabilities in this country.

(5) That there is nothing in the section, or for that matter in the whole Act, that need give an honest man a qualm. The section itself is dependent on section 24, it cannot be used until some penalty under that section has been enforced, but though, to this extent, it amplifies section 24, it also modifies it in conjunction with section 33 which allows a sentence for imprisonment under section 24 to be cancelled. This gives the man a further chance, and in accepting that chance, he should have to accept a further risk.

(6) That the planters are against any discretionary power being given to the class of magistrates who try these cases. I do not know if this feeling is justifiable, any way this feeling of mistrust seems to be shared by some of my non-official Indian colleagues on the Legislative Council. The exercise of such discretionary power will not be on the matter of any evidence at the time before the magistrate, but merely leaves it to his personal opinion as to whether the accused has been punished enough or not.

(7) That although a lot of trouble was taken over the drafting and passing of this Act, it was not generally acceptable to planters. The planters wanted a clause for specific performance. This could not be given. This clause was I believe the sop, that was given instead. The districts were then asked if they would accept the Act. The Shevaroys and the Anamalais refused. The Wynaad and Nilgiris accepted, in each case I believe by the casting vote of the Chairman, and I think it was only on the strength of this section 35, that the Act found any to support it at all.

(8) The final reason is more general than specific. There is a cheap politician, in search for cheaper popularity, usually a disappointed vakil, who is always holding up the treatment of labour by planters to obloquy and that the Government should see fit to amend a section that has never been abused might be looked on as a further incitation to mud throwing.

Will the Home Department be so good as to let me have for perusal the file regarding the proposed amendment of section 35 of the Madras Planters Labour Act?

C. G. TODHUNTER—28-9-16.

Mr. Todhunter u.o.

E. A. HARVEY—29-9-16.

Perused and returned with thanks. I should be glad to have a spare proof of as much of the file as has been printed up, and of the rest as soon as it comes from the press.

A | I hope the suggestion that the revision of the local law should lie over till we know what standard we are going to ask of the colonies will be pressed. It will be difficult to ask of the colonies more than we are ready to do ourselves and it would be a mistake to amend the Act now and then take it up again for general revision next year.

If an intermediate remedy is desired it might be found in making Divisional Magistrates try planters' cases in the locality.

C.G.T.—29-9-16.

The department may concur in the Special Officer's opinion marked **A** above.

E.A.H.—3-10-16.

The arguments advanced by Mr. Barber against the amendment of section 35 of the Act are examined below.

2. The statement of Mr. Barber that the section has never been abused is not quite correct. Please see Mr. Todhunter's note, dated the 6th December 1915, in which he stated that cases of abuse were accumulating. The District Magistrate, the Nilgiris, states that there has been only one case of the kind during the three years, but the District Magistrate, Malabar, states that in 1915 there were 23 second prosecutions against maistris under section 35 of the Act. It might be contended that only occasionally resort is had to the provisions of section 35 in a prosecution against a maistri. The retention of the provisions of the section in so far as they permit of repeated prosecutions against a maistri in respect of a particular offence seems objectionable in view of the following consideration urged by Sir George Forbes:—

Paragraph 24, page 12 of notes to G.O. 367-8, Judicial, 28th February 1908.

If the section can be construed to render the unfortunate defaulter liable to continuous spells of imprisonment so long "as he is recalcitrant, it must be amended at once."

The ruling of the High Court that section 35 allows of repeated prosecutions against a maistri is only recent and cases of abuse might arise in future.

3. *Second argument of Mr. Barber.*—If as Mr. Barber states a person is too weak to resist a doubtful opportunity of getting rich quickly, the planter may take action to recover the amount of advance from the maistri under section 23 of the Act though he may not always be successful. Honourable Member has already pointed out that the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of the fine, are sufficient.

4. *Third argument of Mr. Barber.*—The third argument that the section provides a more adequate punishment for swindling appears to be a sound one so far as the interests of the planters are concerned.

5. *Fourth argument of Mr. Barber.*—The fourth argument that the planter has to advance large sums of money to a maistri of whom he knows little or nothing and that therefore he needs protection against the dishonest maistri appears to overlook the fact that section 35 places a helpless maistri at a disadvantage who does his best to keep his labourers but who desert him because the planter on another estate offers better wages. Please see in this connection paragraph III of Sir George Forbes' note, dated the 23rd January 1906, in which he noted that it would often be quite impossible for the maistri to pursue deserting coolies and that it would be an enormous power in the hands of a planter who is a tyrannical master or whose estate possesses a pestilential climate.

Page 11 of notes to G.O. 558-60, Judicial, 28th March 1906.

6. The fifth argument advanced by Mr. Barber that section 35 is dependent on section 24 appears to call for no remarks The reference to section 33 is not relevant to the case of a maistri who is unable for no fault of his own to execute the contract. Section 33 will not help him in any way.

7. No remarks seem called for on the observations regarding the undesirability of giving a discretionary power to subordinate magistrates to issue an order to the maistri to complete his contract. If the subordinate magistrates cannot be trusted to do justice to planters, it may be provided as suggested by Mr. Knapp that an appeal should lie to a first-class magistrate against the subordinate magistrate's order. The last argument that section 35 is only a sop that was given instead of a clause for specific performance appears to be one-sided. As already pointed out in the office-note, dated the 29th February 1916, at page 11 ante, section 35 was intended to be similar to section 204 of the Assam Labour and Emigration Act, 1901, and that the section assumed the present form when the Bill was discused in the Council. There is nothing in the discussions to show that section 35 was adopted with a view to providing for specific performance by a maistri. So far as the maistri is concerned it is section 24 that was intended to provide for fulfilment of a contract by a maistri.

Cf. portion **M** at page 10 of notes to G.O. 558-60, Judicial, 28th March 1906.

8. It will be seen from the discussion at page 5 of notes to G.O. Nos. 1067-68, dated the 7th May 1902, that the Government of India were against applying criminal law to maistris except as under section 24. The Assam Labour and Emigration Act, or the Federated Malay States Code or the Ceylon Labour Ordinance does not contain any provision permitting an intermediary corresponding to the maistri to be prosecuted repeatedly in respect of a single offence. It may not be out of place to mention that the present policy with regard to indentured labour recruited to colonies outside India is the elimination of imprisonment as a penalty for offences against the labour laws.

9. Submitted for orders whether in the circumstances Mr. Barber has made out a case for not amending section 35 of the Act. The Special Officer points out that it would be a mistake to amend the Act now. The question of amendment may perhaps be taken up a year hence as suggested by Mr. Todhunter. The suggestion at the end of his note is for orders.

T.C.N.—29-9-16.

P.DER.—2-10-16.

Mr. Barber's arguments do not impress greatly by reason of their soundness and cogency. The argument that a section which is liable to abuse has not been abused, even if true is not sound. As soon as a flaw in a law is brought to light, it is necessary to amend the law so as to prevent the possibility of abuse. The Act gives the planting community valuable protection, without imposing on them very heavy obligations; certainly not as heavy as are imposed on Ceylon and Malay planters who employ Indian labour. It is extremely doubtful whether the consultation or modification in the way proposed of section 35 will induce the planters to reject the Act to the extent of asking for its repeal. The planters are likely to be well aware that the trend of legislation in these matters is not likely to be in the direction of lightening the responsibilities of planters in the next few years.

I refrain for the moment from examining in greater detail the pros and cons in regard to the proposed amendment of the section or its alternatives until orders are passed on Mr. Todhunter's suggestion that a decision in the case should lie over for the present.

E. A. HARVEY—3-10-16.

Please print up the current and note files and resubmit. I feel that I should mark these papers for general circulation.

P. RAJAGOPALA ACHARIYAR—5-10-16.

Submitted with reference to the Secretary's orders above.

M.D.R.—14-10-16.

Mr. Todhunter's suggestion at **A** on page 15 may be submitted for consideration along with the merits of the case. Will the Under Secretary please note in detail on the pros and cons of the proposed amendment and the alternatives suggested?

P.R.—18-10-16.

Please see the office note; I think the office has dealt faithfully with Mr. Barber's arguments and I have little to add. I add the following few remarks.—

Paragraph 2 of note.—Even if it was in doubt before, the recent High Court decision makes it clear that the defaulter is liable to almost continuous spells of imprisonment so long as he is recalcitrant, and subject to the limit laid down in the proviso. According to Sir George Forbes' opinion, it should, then, be amended at once (paragraph 24, page 12 of notes to G.O. Nos. 367-68, Judicial, dated 28th February 1908).

Paragraph 3.—Section 24 of the Act gives fairly drastic powers of punishment. The maximum fine is considerable and out of it compensation may be awarded to the employer; it may be noted however that, quite apart from the question of specific performance, the compensation may not always be adequate as it is understood that advances of thousands of rupees are occasionally given to maistris. It is very doubtful however whether more than Rs. 500 can ever be squeezed out of any defaulting maistri.

The omission of maistris form section 35 will not mutilate or dislocate the Act in such a way as to render it unworkable in the least. Of the two sections, 24 and 33, to which Mr. Barber refers in his fourth and fifth arguments, the latter seems to me to be very important and really to meet Mr. Barber's argument, his strongest, based on the Government's intention to exact by means of the Bill specific performance.

The chief objection raised to amending the Act by the omission of maistris from section 35 is that "specific performance" is not provided for: this is not the fact; specific performance of contract by maistris is provided for by section 33 (at present said to be rarely used). By this section the sentence of imprisonment may be conditionally remitted and the maistri sent back to perform his contract. If he does not perform it, he is sent back to serve the remainder of his sentence if necessary. This procedure if resorted to and used judiciously should be ample to prevent wilful and obstinate non-performance. To proceed beyond this stage, even if it

proves ineffective, will ordinarily be distasteful and savour of persecution. The District Magistrate, the Nilgiris, points out that section 35 is only operative when the substantive punishment is imprisonment, and is not so when fine only is in the first instance imposed; presumably if imprisonment in default of fine is also imposed, this will suffice to render operative the section. In this connection I may point out that, when the effect of Ayling J's. judgment has been generally recognised by magistrates, there will be a tendency among them to avoid the obligation to issue directions indefinitely under section 35 by imposing fine only under section 24. If the objection is that the deterrent effect of the Act is lost by excluding maistris from section 35, it may be pointed out on the other side that the maximum penalty, viz., three months' imprisonment + fine of Rs. 500 or imprisonment in default (apparently the imprisonment may be simple or rigorous) ought to be enough ordinarily to deter any man from intentional swindling and compel him to fulfil his contract, together with action under section 33 conditional remission or suspension. On the whole the best plan will be to cut out maistris from section 35 altogether.

The next best is to give discretion in the matter of issuing directions under section 35 to magistrates as suggested by Mr. Knapp with right of appeal to Sub-divisional Magistrates. This is obviously a second best as it will increase litigation and probably lead to friction. If this alternative is adopted, so may Mr. Knapp's suggestion that the section may operate whether the original punishment were fine or imprisonment. [Note that Ceylon Ordinance 65 containing corresponding provision insists on proof *of bad faith.*]

E. A. HARVEY—8-11-16.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—the Hon'bleMr. H. F. W. GILLMAN, I.C.S., Member of Council.
Dated—Ootacamund, the 2nd November 1916.

There was some talk about amending section 35 of the Madras Planters' Labour Act (I of 1903). Before he left I had some talks with Sir Harold on the matter and he told me he would do his best to stop any amendment.

2. As a matter of fact there would be a great deal of ill-feeling raised if that section were amended and as I believe it has never been abused, there would appear to be little need to do so.

* * * * * *

Please see the Hon'ble Sir Harold Stuart's note at pages 10 and 11 ante, the precis of the case prepared by me for His Excellency at page 11 ante, His Excellency's note at page 11 ante, and the subsequent notes and correspondence. Neither Mr. Barber nor the Planters Associations have, in my opinion, given adequate reasons why section 35 of the Act should not be amended. And Sir Harold Stuart's suggestion that either maistries should be cut out of section 35 or that action under that section should be made a matter of discretion with the Magistrate, holds the field.

As however it is inexpedient just now to take in hand legislation which is likely to be of a controversial character and which may possibly create bitterness of feeling, I would defer action for the present, and, as suggested by Mr. Todhunter at page 15 ante, wait and see what standard generally we are going to ask of Ceylon and the Federated Malay States. It is these two places which are in serious competition with our local planters; and it will be hardly fair to the latter that things should be made generally more difficult for them than they are in Ceylon and the Federated Malay States. On the whole it would be expedient to close this correspondence temporarily and take it up again after Mr. Marjoribanks' report is received and dealt with.

P. RAJAGOPALA ACHARIYAR—20-11-16.

I agree.

H. F. W. G[ILLMAN]—24-11-16.

There is a strong case for the amendment of the Act. We must, of course, wait for Messrs. Marjoribanks and Tambi's report. But we shall get that in a month or two and the file should not be *closed*, but should merely wait till the report on Ceylon and Straits Settlements is received and then be resubmitted.

P. S. S[IVASWAMI AYYAR]—21-12-16.

A. G. C[ARDEW]—18-12-16.

I agree with the Hon'ble Sir Alexander Cardew. We shall be handicapped in our dealings with the Straits Settlements and the Federated Malay States if we do not first put our own house in order. Instead of our trying to level our standard down to what we may be able to ask of the colonies, we should try to level up their standard of treatment of labour to ours, taking care of course to remove all blots in our own system. The arguments against the amendment of section 35 are most feeble and unconvincing. It would in my opinion be a great mistake to put off amendment till the whole question of treatment of emigrant labour in the colonies is settled. I don't mind the short postponement suggested by Sir Alexander Cardew.

P. S. S[IVASWAMI AYYAR]—21-12-16.

Agreed.

P[ENTLAND]—23-12-16.

To lie over till the 1st March 1917.

P. RAJAGOPALA ACHARIYAR—24-12-16.

The file is resubmitted.

2. In paragraph 22 of the confidential note of Messrs. Marjoribanks and Marakkayar they have stated that the Indian labourer should not be subject to any penal laws special to his case, that the same law must apply to him that it is considered proper to apply generally to the relation of master and servant in the particular colony concerned on the assumption that imprisonment will not find a place as a substantive punishment in such a law. This Government have accepted the above views—please see paragraph 8 of letter to the Government of India, No. 239, dated the 9th March 1917. It is stated in the report that managers of estates in the Federated Malay States are of the opinion that there would be no practical objection to the abolition of imprisonment at any rate as a punishment for labour offences (paragraph 38, page 36) and that most of the superintendents of estates in Ceylon are averse to have recourse to prosecution (paragraph 44, page 15). The report does not deal with the question of punishment of kanganies' who correspond more or less to maistries, for refusing to perform their contracts to supply labourers. For orders whether the views of Mr. Marjoribanks may be invited on the proposal to amend section 35 of the Madras Planters Labour Act.

T.C.N.—10-3-17.
P.DER.—13-3-17.

I should be very grateful for Mr. Marjoribanks' opinion on the specific question viz., amendment of the Act: and generally on the conditions of labour in South Indian estates as compared with Ceylon and Malaya.

E. A. HARVEY—14-3-17.

I am sorry that, owing to my having had to go to Delhi a second time, time has not permitted of my making a tour of inquiry among the estate districts in India.

Neither the Ceylon nor the Malay planters have any such protection as is given to the Indian planter by section 35 of the Indian Planters Labour Act. They protect themselves as far as they can by not giving large advances to any one maistry (kangany). No doubt there are in Ceylon some head kanganies who control very large bodies of labourers, but the connection has grown up with time and the interests of these kanganies are, I fancy, more intimately bound up with those of the estate than is the case in India.

2. The present time seems most inopportune for raising any question about the amendment of any estate labour law. Indian politicians as a whole view the subject through a fog of ignorance, sentiment and angry prejudice: and it would be better to wait till things calmed down. To stop the abuse of repeated prosecutions under section 35 Mr. Barber might be spoken to and given to understand that Government viewed such prosecutions with grave disfavour and that, if they continue, amendment of the Act will probably be forced on Government with consequences that will probably be most unpleasant for the planters. Mr. Barber is not likely to misunderstand.

P

N. E. MARJORIBANKS—28-3-17.

These papers show that section 35 of the Planters Labour Act is really indefensible; but, as Mr. Marjoribanks points out, legislation to amend it will be most inopportune now.

I submit that the case may now be closed by recording the papers which need not be communicated to anybody, and Mr. Barber might be written to demi-officially as at **P**; or perhaps Honourable Member would prefer to see Mr. Barber personally.

E. A. HARVEY—29-3-17.

Write demi-official to Mr. Barber in the sense indicated.

H. F. W. G[ILLMAN]—30-3-17.

A draft demi-official letter to the Hon'ble Mr. E. F. Barber is submitted for approval. After issue the papers will be recorded in a Government Order.

T.C.N.—2-4-17.
P.DER.—3-4-17.

Type the draft as modified please. Was it not the repeal rather than the amendment of section 35 that has been suggested?

E.A.H.—4-4-17.

Draft typed and submitted. Please see the Hon'ble Sir Harold Stuart's note, dated the 10th February 1916, at pages 10 and 11 ante, paragraph 1 of the Hon'ble Diwan Bahadur P. Rajagopala Achariyar's note, dated the 20th November 1916, at page 18 ante and portion **P** of Mr. Marjoribanks' note supra. Submitted that only an amendment of section 35 of the Act has been suggested.

T.C.N.—5-4-17.
P.DER.—5-4-17.

Issue and close the file. The papers should be printed as they will be wanted again some time.

E.A.H.—5-4-17.

Demi-official—from E. A. HARVEY, Esq., I.C.S., Under Secretary to Government, Home (Miscellaneous Department).
To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
Dated—the 5th April 1917
No.—318/16-2.

I am directed to invite a reference to the demi-official correspondence ending with your etter, dated the 2nd November 1916, addressed to the Hon'ble Mr. Gillman regarding the mendment of section 35 of the Madras Planters Labour Act, 1903, and to state that the Govrnment do not consider that section 35 is really needed as a protection by the planters and urther that it is liable to abuse. They agree with you however that the amendment of the ection would be at present inopportune, and no action of this kind now or in the near future is contemplated.

The Government however desire it to be understood that they view with grave disfavour repeated prosecutions under that section in respect of a single offence and that if any further instances of these prosecutions come to light the amendment of the Act will probably be forced on them with consequences that are not likely to be welcomed by the planting community.

[G.O. No. 358-A, Home (Miscellaneous), dated 5th April 1917.]

Sectt. II-10 (a)—12-1-15.

Home DEPARTMENT.

GOVERNMENT PRESS 21 JUN 19 MADRAS

Planters Labour Act, 1903

Recording papers relating to the amendment of section 35 of the Madras —

READ AGAIN G.O. No. ....., dated ..... 191 .

" " " " ....., " ..... 191 .

READ ALSO:—

C. No. ....., From the Papers in No. C. F., dated ..... 191 .

" " ....., " " ....., " ....., " ..... 191 .

" " ....., " " ....., " ....., " ..... 191 .

ORDER. No. 358A, dated 5-4 191 7.

P.S.

Recorded.

(Initialled in notes by Secy)

Not for E.T.

23 Mis 1113
8.11.16

Don't print this 18

GOVERNMENT OF MADRAS
9 NOV 1916
HOME DEPT.

For the Registrar, Home Department.

The H.M. wants the Office to send him any papers which may be in the office, if there are any, regarding the subject dealt with in the accompanying D.O. to him from the Hon'ble Mr. E.F. Barber.

8-11-16
Clerk to the Hon'ble
Mr. E.F. Barber.

P.S The H.M has directed me to send to Hon'ble the ~~accompanying~~ enclosed memorial & petition from one G. Balasubramania Pillai.

(Docket write separately)

I / have noted it / Thank the papers are with me. This may be added to the file.

9/11

Previous papers
1067-68 Jud Dy 7.5.02
80. 558-60 Jud Dy 28.3.06.
367 68 " Dy 20.2.08
2612 Jud Dy 16.12.13
1622 " Dy 4-8-13.

58 Jud Dy 10.1.14 8/6
589 " Dy 7.3.14
1073 " Dy 14.5.15
239 Home Dy (mis) Dy 9.3.17

19

NOTES CONNECTED WITH G.O No. 358-A, HOME (MISCELLANEOUS), DATED 5TH APRIL 1917.

[SUBJECT.—*Amendment of the Planters Labour Act*, 1903.]

Interpellation by the Hon'ble Mr. Kesava Pillai.

The Honourable Additional Member has forwarded with his question copies of records of the case in which Samy Dass, a maistri, was convicted by the Taluk Second-class Magistrate, Coonoor, under section 24 of the Planters Labour Act.

2. The facts enumerated in clause (*b*) are substantially correct. As regards item (6), it is submitted that the maistri was convicted not because the fact of the estate being in a feverish locality was fully known to him when he took the advance, but because the trying Magistrate was convinced that the accused had not fully accounted for the amount of advance received by him and that he did not try his best to get the coolies to the estate.

3. Under section 35 of the Planters Labour Act, the maistri is liable to be prosecuted and imprisoned again, and no conviction and imprisonment shall release him from the terms of the contract.

4. For orders whether the amendment of section 35 of the Act will be considered necessary. It is however submitted that in the present case the Magistrate must have been satisfied as to the culpability of the maistri or else he could merely have ordered the repayment of the advance money under section 23 of the Act. The estate is apparently not unfit for residence of labourers by reason of any sanitary defects, [the District Magistrate could have reported the matter to Government under section 17 (1)].

5. It may however be pointed out in this connection that, according to a recent decision in the Madras High Court, a maistri or a labourer can be prosecuted and imprisoned any number of times under section 35 of the Act until the terms of his contract are fulfilled.

A.R.—16-11-15.
M.J.—16-11-15.

Draft answers are submitted for consideration.

E. A. HARVEY—16-11-15.

The conflicting decisions as to the interpretation of section 35 are regrettable and the case in question certainly seems to be an instance of its harsh operation. It would be as well to have a full report of the facts from the District Magistrate.

C. G. TODHUNTER—16-11-15.

In limine I invite the attention of the Legislative Department to the excessive length of the question. Mr. Kesava Pillai is a frequent offender in this way and his question about the Hindupur Tahsildar is another instance on the present occasion. See clause (*b*) of rule 4 of the rules for asking questions. I suggest that the honourable gentleman be told to cut his question down and ask it at another meeting. If this is done, we may call for a report; but if the question is allowed to stand, I accept the draft answer as amended by me. I have mentioned that the accused had the right of appeal, for although this does not answer any specific question, it is relevant to the general suggestion that there has been injustice.

Extract sent to Legislative, 18th November 1915.

2. I dislike the whole system of quasi-forced labour and contracts enforceable by means of the criminal law, but I am not prepared to open up that large question on such a case as this.

H. A. S[TUART]—17-11-15.

Press
Please Strike Portion
instructions at p19.

19.6.17
Pressed
25/6/17

Extract from the "New India," dated 21st September 1915.

PLANTERS AND LABOUR.

Mr. T. Srinivasa Mudaliyar, B.A., B.L., High Court Vakil, and Municipal Chairman of Erode, writes :—

Now that the heat of controversy over the subject has subsided and each side has exhausted its vials of wrath over the head of the other, I would earnestly invite the attention of the Government to the condition of labour in the South Indian plantations and the law governing them with a view to remedy existing evils and to elevate the present status of the labourers.

If my criticism of labour conditions in such estates has quickened the conscience of the powers that be and the planters, I should consider it to be an appreciable step towards the amelioration of the condition of estate labourers. Under such circumstances I venture to suggest the following reforms :—

(1) The amendment of the Labour Act (I of 1903) on equitable terms, more especially the elimination of the enslaving sections of that Act, e.g., s. 35.

A maistri ought to be set at liberty when he is unable to supply the labour he had contracted for, and when he pays back the advance he had received from a planter, if need be with a penal rate of interest.

(2) The appointment of an official protector and non-official honorary visitors to safeguard the interests of estate labourers.

(3) The restriction of advances made to labourers.

At present a small amount may be allowed to hang over the head of a coolie so that he, as well as his maistri, may be hauled up at any moment before a magistrate for any default which may otherwise be pardonable because accidental or unintentional. A certain amount may be fixed, say Rs. 10, beyond which advances to labourers may be held to be irrecoverable.

(4) A more satisfactory method of keeping accounts in estates.

There seems to be much complaint against the way in which maistris are treated with regard to sums debited against them. When there is any hitch between the planter and the maistri, the ledger is sprung upon him to his utter dismay. The estate writers may not be the most honest accountants and the maistris are mostly illiterate. In the interests of both as well as their common master, it will be better to enact that a copy of the extract from the ledger should be granted every month to the maistri concerned.

(5) A more careful and conscientious enquiry into the grievances of labourers than the slipshod manner in which some of the sub-magistrates seem to indulge while dealing out justice in cases launched by planters against labourers.

Seeing that the poor coolies cannot defend themselves properly in outoftheway places, it behoves Divisional and District Magistrates to devote better attention to the calendars of such subordinate magistrates, who may often be found to be too weak-kneed to withstand the powerful personal influence of planters, to the prejudice of poor labourers. Hearsay evidence is easily let in and surmises unscrupulously drawn, and judgment is often based on such hearsay and inference, and the labourer is doomed.

(6) A thorough inspection and enquiry may be made as to the adequacy of accommodation provided for labourers in the plantations.

Many of the bodily ills, like malaria, that affect men working in the estates can be minimised by proper care being taken with regard to the necessary comforts that are indispensable in climatic conditions which are foreign to the labourers.

The extract may be sent demi-officially to Mr. Barber who should be asked whether he has any remarks to make on its allegations and proposals.

H. A. S[TUART]—29–9–15.

Demi-official—from the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.

To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

Dated—the 1st October 1915.

No.—2824 A.

I am desired to enclose herewith a copy of a cutting from *New India*, dated the 21st September 1915, on "Planters and Labour" and to ask you whether you have any remarks to make on the allegations and proposals contained therein.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

To—the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.

Dated—the 4th October 1915.

I thank you for your letter of 1st instant enclosing a copy of a cutting from *New India* on "Planters and Labour."

I had already seen this as it appeared in the *Madras Times* and recently I was asked if our Labour Department should take any steps to refute the insinuations. I thought this was inadvisable, for it seemed to me that this letter as well as the previous one by the same writer were but efforts at cheap advertisement. However, since the matter seems to have attracted the attention of the authorities, I will get Martin to deal with the points raised. I may say that there is very little in what has been written, and that whether the whole matter of "the Planter and his labour" is at fault or not, is being attended to by the Labour Department.

1. The Collectors of Malabar and the Nilgiris report annually on the working of the Act. The number of cases taken under the Act is distressing, but this proves I suppose that an Act of some sort is necessary.

What are called the enslaving sections should be deterrents, and prevent an honest man from taking on a contract he cannot perform. I agree that a maistry should be set at liberty when he is unable to fulfil his contract, provided he pays back the amount of his advance, and provided the advance is taken in good faith. A maistry may take an advance of Rs. 200 for 20 coolies, he may collect the coolies and may then accept an advance of Rs. 300 from a Strait's recruiter, even if he has a shred of honesty which makes him repay the original Rs. 200, still he has acted in bad faith.

2. The appointment of an official Protector should be unnecessary, while the appointment of non-official Honorary visitors would be resented by any planter. To put it on no higher ground, self-interest will make a planter look after the interests of his coolies, and systematic bad treatment and the lack of proper care will tell their own tale on an estate.

3. The restriction or limitation of advances is an integral part of the Labour Department scheme. Once internal competition is controlled the department will be able to deal with external competition. The advance system has been abused, coolies don't emigrate because they want to, but because they are bribed to. The worst abuses probably occur between the maistry and the cooly, but the Labour Department aims at returning to the patriarchal system that used to be in vogue, and if this can be brought about, public feeling in the villages will make it difficult for a maistry to do his coolies down.

4. As a rule I think the accounts on the estates are well kept. Every cooly's account, that is his pay and his food and cumbly advances, is kept in the roll book. A planter will always go through a cooly's account with him on pay day. The cooly will often keep his account by notching a stick for the days he does not work, and this sometimes leads to a disputed account in the month of February. I think Mr. Srinivasa Mudaliyar has an exaggerated idea of the position of a writer on an estate, but of course with dishonest subordinates trouble may occur.

The maistry can always check his account by keeping a pass book, which can be written up from the estate ledger.

5. I should hesitate to criticize the Sub-Magistrates as I have no acquaintance with them. I have heard some nasty things said about them at a Legislative Council Meeting, and not by Official Members, but by their compatriots. I have no doubt however about the District Magistrates, and I am pretty certain, because they have the passable honesty of an Englishman, that their influence is on the side of fairness and justice. I am glad to hear of the powerful personal influence of planters, they must have established this by rarely taking a wrong case, they could never have established it by talking down the defending vakil.

Mr. Srinivasa Mudaliyar's experience of the planter and his law cases was during the years he was at Pollachi, but I never heard that he was retained by any planter in a case, and it is possible that he had plenty of time to exercise his calling on behalf of the cooly in order to see justice done. I don't know that he ever did.

6. It is a general rule that planters treat their sick coolies. On large estates, perhaps, there is an apothecary, on smaller estates the verandah treatment is usual, this may be rough and ready, but it's the best that can be done with limited knowledge and the help of a hand book.

I should like to know how the treatment afforded by planters compares with that afforded by the Indian landowners, and I wonder if Mr. Srinivasa Mudaliyar can find a parallel to the devotion of a planter's wife, who nursed a case of cholera to recovery in her own verandah.

I am strongly in favour of better medical attendance, and I have already asked that medical stores may be issued at reduced rates to estates keeping dispensaries and apothecaries.

Accommodation is improving every year, but it is difficult to deal with a class that prefers kutcha houses and dirty surroundings to properly built houses and cleanliness. Any improvements that have been made recently may be said to be in spite of the cooly, not because of him.

The various points of Mr. Srinivasa Mudaliyar's article are dealt with below :—

(1) *Amendment of the Planters Labour Act on equitable terms.*—Reference is solicited to G.Os. Nos. 558–60, Judicial, dated 28th March 1906, and 367–368, dated 28th February 1908. The Government of Madras have already expressed their readiness to amend the Act, and though the Government of India were opposed to some of the amendments suggested it, was the planters themselves who induced the Government to postpone the question of the amendment. It is now open to the planters themselves to move in the matter if they consider the amendment of the Act to be an urgent necessity.

(2) *Appointment of an official protector and non-official honorary visitors to the estates.*—Mr. Barber considers that the former is unnecessary and that the latter would be resented by the planters whose self-interest would make them look after the interests of their coolies. It will be observed that in the case of factories (places for similar employment of labour) there are no non-official visitors, but Inspectors are appointed by Government to inspect those factories.

(3) *Restriction of advances to labourers.*—This question appears to be one for the internal management of the estates. Mr. Barber says that this is an integral part of the Labour Department scheme. The department aims at returning to the old system, and if this can be brought about, public feeling in the villages will make it difficult for a maistry to do his coolies down.

(4) *Satisfactory method of keeping accounts.*—As a rule the accounts are well kept, and the maistry can always check his account by keeping a passbook which can be written up from the estate ledger.

(5) *A more careful enquiry into the grievances of labourers.*—Mr. Barber hesitates to criticize the Sub-Magistrates and says that the influence of District Magistrates is always on the side of fairness and justice.

(6) *Accommodation and medical relief for labourers.*—These are improving year after year. Vide page 5 of G.O. No. 1622, Judicial, dated 11th August 1913, page 7 of G.O. No. 589, dated 7th March 1914, and page 7 of G.O. No. 1073, Judicial, dated 14th May 1915.

A.R.—25–10–15.
M.J.—25–10–15.

A case seems to be made out for the exercise of greater supervision over the condition of Indian labourers working in this Presidency, not that any case of ill-treatment or hardship has been brought to the notice of the Government; but it is only reasonable that conditions which we insist on in Malaya should be enforced here also. In the Malay States Labour Code and Straits Settlements Ordinance provision has been made for thorough supervision of estates by Government officers, and in both these enactments the right of inspection by an officer of this Government endowed with adequate power is secured. The Ceylon Government also makes arrangements for the thorough inspection of estates and the protection of labour. Of this however no details are available and it is not known whether special inspectors are appointed or not.

2. The question of the principle of appointing officers for the protection of the weaker classes and the security of the conditions under which they work is not likely at this time to be challenged. Analogous cases in this country are appointments such as the Protector of Emigrants, the Inspector of Factories, and the Registrar of Joint Stock Companies, one of whose duties is to protect the interest of shareholders. Under the Companies Act, Inspectors of Companies may be appointed (section 138). In the same way, under section 16 of the Planters Labour Act, Government have power to appoint an officer to enter and inspect all lands and houses wholly or partially used by or for labourers and to make any enquiries he thinks proper. This is a clear recognition of the principle that an Inspector (or Protector) of Labourers may in certain circumstances be proper. No one can doubt Mr. Barber's assertion that the coolies are well looked after and that the planters realise that the health and comfort of their coolies conduces to their own prosperity, and that they, being a body of intelligent men, are guided by motives of enlightened self-interest in such matters. Irregularities however occur in the best regulated professions and this would be no

reason for the State to refuse to step in and shoulder its responsibilities in a case in which a responsibility is usually held to devolve on it; such arguments as Mr. Barber uses might very well have been used against Government intervention in regard to Slavery in North America or Factory Legislation in Industrial England. It can hardly be denied that here in the estates if anywhere is an ignorant and industrious class of people, whose existence is to be encouraged, and who, more than others, require the support and protection of Government. It must be remembered that there is no such thing as organised union amongst these people and very little chance of their standing up against an unjust or tyrannical employer (and the potential existence of such employers must be admitted) except by spasmodic and sporadic strikes in which they would almost certainly come off second best. Nor is any such organization likely to come into existence, anyhow for a long time; in view of the poverty and ignorance of the labourers and the well-known disinclination of agriculturists, as distinct from the industrial workers, to combine and form protective unions, a trait which may perhaps be attributed to their working scattered over large areas and the nature of their work. It is true that District Magistrates, Sub-Divisional Magistrates and the District Medical and Sanitary Officers are ex-officio Inspectors under the Act. It is patent, however, that these officers with their multifarious duties are not in a position to pay more than transient attention to this work. It is a matter for consideration whether an officer with more leisure, if such a one can be found, or a non-official, if that be legal, should not be appointed to this office, one who can deal with this subject as a whole and not from the piece-meal and local point of view of a district officer, and can give at least a considerable amount of time to the study of the subject and to fairly thorough inspections. In these days, when any real or apparent exemption in favour of a European is made a pretext for exciting racial animosity, it is indispensable that the estates of planters who are mainly Europeans should be above suspicion. So long as the planters' estates are well-managed and manned by happy and healthy coolies, the racial agitator will find the miserable condition of many of the agricultural labourers working under the Indian village ryots and landed proprietors a certain stumbling block in his path of denunciation of European monopoly and ill-treatment of labour. I submit that before further steps are taken statistics of estates and labourers may be called for from local officers and also reports of the results and amount of inspection done by officers now empowered to inspect estates.

E. A. HARVEY—4-12-15.

II

From the District Magistrate, Malabar, dated 14th November 1915, D. No. 1805-M.

Reference is solicited to pages 13–17 of G.O. No. 367, Judicial, dated 28th February 1908, where a proposal to amend section 35 of the Planters Labour Act was considered but dropped at the suggestion of the United Planters' Association of Southern India.

2. A case of the abuse of the provisions of section 35 was recently brought to the notice of the Government by the District Magistrate, Malabar, in G.O. No. 2612, Judicial, dated 16th December 1913; but the High Court's ruling recorded in G.O. No. 58, dated 10th January 1914, was considered to be a sufficient safeguard, in that it was ordered that only one prosecution could be made under that section of the Act. The present ruling of the High Court conflicts with that referred to above and empowers a magistrate to issue repeated directions to maistries [and labourers, subject to the proviso] to complete the performance of the contract on pain of further prosecution and punishment.

A.R.—29-11-15.

W.B.S.—6-12-15.

Whatever Mr. Srinivasa Mudaliyar's motives may be, he has a fairly good case. His points may be taken in order.

(1) *Amendment of the Act, especially section* 35.—This is not a new question and cases of abuse are accumulating. Since Mr. Barber's letter was received, the District Magistrate, Malabar, has reported a case in his district. Proposals

for amendment were actually framed in 1907 and dropped because the planters, who had moved for amendment of the Act, asked for a postponement of the consideration of the question. Mr. Innes raised the question on a case of abuse in 1913, but again the question was dropped because yet another case had arisen in the Nilgiris, and on a reference to the High Court, Mr. Justice Sadasiva Ayyar had held that the Act did not authorise repeated sentences in respect of the same contract. Since then Ayling and Phillips, JJ., have reversed that ruling, the former holding that the Act needs amendment in that and other respects. Since that again we have the case from Coonoor about which a question was asked in Council.

The Honourable Member was not prepared to open up the large question involved in the Coonoor case. It is for orders whether the four cases cited make action necessary.

(2) *The appointment of an official protector and non-official visitors.*—We insist on official inspection in Ceylon and the Straits Settlements as well as in the colonies to which emigrants are sent under the Emigration Act. The Act also provides for such inspection. If the Inspector were, as in some of the colonies referred to in McNeill and Chimman Lal's report, given power also to settle disputes between planters and their labourers, in other words to try cases under the Act on the spot, that would go far towards meeting the planters' objection that no need for inspection had been shown to exist, since they would welcome anything that would save them from the necessity for journeying to magistrates' courts in the plains. No case for non-official visitors seems to be made out.

(3) *The restriction of advances.*—The office have not put up references, but I think a strong case on this head also could be made out. The following are two I remember. An Assam planter, Mr. Fraser, in writing about the scheme for emigrating Kalichedu criminals, mentioned that they would bind them by a nominal advance to serve for three years. Another Assam planter told the Excise committee that some planters liked the liquor shops because the coolies spent all their money there and were ready to re-engage. In an enquiry about recruiting in 1913 a case was given of a cooly taken to Ceylon who had found himself some hundreds in debt to the maistri practically as the price of his recruitment. Such instances could be multiplied, if it were necessary. An advance, generally by a maistri, to a recruited cooly, affords a substitute for an indenture, and a provision that there should be a maximum limit of recovery would afford a valuable protection to the cooly.

(4) *More satisfactory accounts.*—No doubt the majority of planters do keep their accounts fairly well and coolies generally know what they are about, but since the cooly by taking an advance binds himself to labour, I think something more is required. Something in the nature of a pass-book for each cooly seems to be desirable.

(5) *More careful enquiry into cases.*—Enquiry on the spot by a European magistrate would certainly be an improvement on present arrangements.

(6) *Inspection of accommodation.*—We insist on this in the colonies and the same arguments apply.

The fact that the United Planters' Association of Southern India are doing many of the things that Mr. Srinivasa Mudaliyar contends for, without being forced to do so, is no argument against his contentions. It shows on the other hand that the better class planters recognise their propriety. But the Act gives equal powers to less scrupulous persons who are not members of the association and who are liable to abuse them if they are not looked after.

C. G. Todhunter—6-12-15.

For the present, I think it will be sufficient to amend section 35 to prevent perpetual imprisonment. This can be done by giving the magistrate a discretion as proposed in 1907. But please consult the District Magistrates of Malabar and the Nilgiris first, and also Mr. Barber demi-officially.

H. A. S[TUART]—9–12–15.

[Memorandum No. 2824-A–4, dated 24th December 1915, to the District Magistrate, Malabar—III.]

[Memorandum No. 2824-A–5, dated 24th December 1915, to the District Magistrate, the Nilgiris—IV.]

Demi-official—from the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.

To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

Dated—the 24th December 1915.

No.—2824 A-3, Judicial.

I am desired to address you on the subject of the amendment of section 35 of the Madras Planters Labour Act I of 1903.

2. As it stands, section 35 of the Act provides that a convicted maistry or labourer may on the expiry of his sentence be directed to complete the performance of his contract "on pain of further prosecution and punishment." This has been interpreted to mean that the offender may, if he continues to fail to perform his contract, be repeatedly prosecuted and sentenced to imprisonment until the contract is finally completed.

3. In order to prevent the possibility of such repeated imprisonment, the Government propose to amend the Act by giving the magistrate a discretion in issuing directions for the completion of the contract.

4. A copy of the section as proposed to be amended is herewith enclosed and I am to request that the Government may be favoured at an early date with an expression of your opinion in the matter.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

To—the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.

Dated—Ootacamund, the 29th December 1915.

I am in receipt of your demi-official No. 2824 A–3, dated 24th instant.

2. In regard to section 35 of the Madras Planters Labour Act, No. I of 1903, I can only give you my personal opinion, and this is that the section should be amended.

3. It is manifestly unfair that a man, who has acted in good faith, and yet has failed to fulfil his contract, should be subject to constant imprisonment, for it is obvious that if he entered into the contract in good faith, and failed to complete it, no amount of punishment can make him make his failure good.

4. There must be some deterrent clause in an Act like this to prevent men from contracting rashly, but the deterrent clause should take a different form and should if possible inflict far severer punishment when *malâ fides* can be proved, and should be as lenient as possible when the case is one of bad luck, rather than of wrong doing.

5. It seems that it would be difficult to so word a clause that it might meet any case that might come before any magistrate, so it would appear that the only way is to give the magistrate some discretionary power under the section, but here again the discretionary power might be abused, and I think it should be exercised only after reference to the District Magistrate.

6. There is a class of man that makes a livelihood out of making contracts which it is never intended to fulfil, and there is no clause under the Act which can inflict a punishment severe enough for one of these.

7. Would it be possible for a magistrate, if he suspected a case of cheating, to order that the accused be tried under one of the sections of the Indian Penal Code that might meet the case?

8. I think that the reasons for this section 35 being as it stands in the Act should be carefully considered before it is amended. I know that the planters asked for a clause dealing with specific performance, which could not be allowed, and this section appears to be a compromise, and unsatisfactory at that.

9. The Government will realize that conditions have changed since the Act came into force. In order to secure labour it was necessary to advance maistries who were often unknown men and there were no means by which a planter could make enquiry and get information regarding the men who came forward and offered to supply labour. Big companies found it

cheaper to make some bad advances rather than to be short of labour and in many cases a superintendent was warned that he only kept his billet if he had sufficient labour. Thereby the evils of the system and the difficulties of the small company and the private proprietor were increased. The superintendent himself was tempted to be unscrupulous and the maistry was tempted to be dishonest.

10. Now if he cares to use it, any planter in South India can make enquiry about a maistry, before he advances him, through the labour department.

11. Even if he make enquiries, he may be let down, but if he do not make enquiries he has only himself to blame, and I have no sympathy with him if the Act fail to give him satisfaction.

12. I believe it would be a good thing if the amendment made it necessary for a planter to show that he had taken every reasonable precaution before entering into a contract with a maistry, by enquiring and satisfying himself that that maistry would be likely to fulfil his contract, before he could take proceedings against the maistry under this Act. If he had been swindled owing to false representation made by the maistry, surely he could have recourse to some provision of the Indian Penal Code.

13. I know that things will not be satisfactory if we are always taking the law against our maistries and warranting our labour, but if it has to be done the planter should be sure that the law and the warrants are effective.

14. As I have said I have given my personal view on the matter. I am sending a copy of this letter to the Chairman of the United Planters' Association of Southern India and if I may have more time I shall be able to put the views of my community before you.

Mr. Barber suggests that it is necessary, before proceeding against the maistry under this Act, that the planter should show that he had taken every precaution by enquiring and satisfying himself that the maistry would be likely to fulfil the contract.

2. Section 41 of the Planters Labour Act admits of action being taken under the Indian Penal Code, if a planter has been swindled by false representation.

A.R.—5-1-16.

W.B.S.—6-1-16.

D. N. Strathie—7-1-16.

Thank Mr. Barber for his letter and say that the further communication promised by him is awaited. Work up the whole history of the section meanwhile.

C. G. Todhunter—9-1-16.

Demi-official—from D. N. Strathie, Esq., I.C.S., Under Secretary to Government, Judicial Department.

To—the Hon'ble Mr. E. F. Barber, Additional Member of the Madras Legislative Council.

Dated—the 11th January 1916.

No.—2824-A-6, Judicial.

I am desired to acknowledge with thanks the receipt of your letter, dated the 29th ultimo, containing your views on the proposed amendment of section 35 of the Planters Labour Act, 1903, and to say that the further communication promised by you is awaited.

Demi-official—from the Hon'ble Mr. E. F. Barber, Additional Member of the Madras Legislative Council.

To—D. N. Strathie, Esq., I.C.S., Under Secretary to Government, Judicial Department.

Dated—Ootacamund, the 15th January 1916.

I am in receipt of your letter of 11th instant.

2. You will notice that Mr. Todhunter's letter, to which mine of 29th ultimo was a reply, is headed "confidential," so I did not think it was a matter which I could put before the associations of the districts concerned. However I have taken it upon myself to consult two or three men who are working labour under the Act.

3. They quite see that, in view of what Mr. Justice Ayling said in his judgment in a recent High Court case, Government may feel obliged to take some action. This case was taken up to the High Court at the instance of the Wynaad Planters' Association in order to get a ruling.

4. My friends point out that section 35 is the keystone of the Act, it was drafted by the Legal Advisers of the Governments of India and Madras after a prolonged discussion, and it ought not to be lightly put aside or altered in a hurry.

5. I would ask that before any action be taken, the Associations of the Wynaad and Nilgiris be consulted and that they should have full information of what Government propose to do.

6. This might perhaps best be done by arranging a joint meeting of the associations at which the Collectors of the Nilgiris and Malabar might be present.

7. There is one point on which planters are generally agreed, to which I should like to call the attention of the Government.

8. There appears to be an idea that if a defaulter offers to pay back his money he ought not to be punished, but in reality a man who takes an advance on the off chance of being able to fulfil the contract he has undertaken is a danger to the industry and ought to be punished.

9. We might put the maistries who would come under this section of the Act under three heads:—

(1) The maistry who takes an advance with the full intention of not fulfilling his contract.

(2) The maistry who takes an advance with no certainty and very little chance of fulfilling his contract.

(3) The maistry who takes his advance and fails through sheer bad luck.

10. Apparently we have one instance of No. 3 in what is known as the Glenburn case, but I believe that such a case is very rare and that few planters would be found to press such a case for punishment.

11. No. 2 is a speculator who tries to secure a certain standing with no risk to himself, and since risk is an element of speculation that spice should be added in some very certain way.

12. The following supposition has been given to me and I can say that it is no exaggeration.

Suppose a maistry to take an advance of Rs. 2,000 in March to bring in 200 coolies in June. He uses the money on business or gets a better offer from some other estate and sends his coolies there nominally under a relative. A warrant is issued but he is not arrested till December when he offers to repay the money. An entire year's coffee crop might be lost, or the bulk of the year's tea crop. Rupees 2,000 would not represent a fraction of the actual loss and damage to the estate.

13. Apart from this, those whom I have consulted are against giving the ordinary magistrate who tries cases under the Act, discretionary powers.

V

From the District Magistrate, Malabar, dated 27th January 1916,
No. D. 11/*Confdl.*

The earliest reference to the provision corresponding to section 35 of the Planters Labour Act, 1903, will be found in clause 32 of the Planters Labour Bill as drafted in 1900 and forwarded to India with letter No. 443, dated the 23rd March 1900. This clause was based on section 204 of the Assam Labour and Emigration Act, VI of 1901, and, in spite of the numerous phases which many of the other clauses passed through, appears to have undergone no change at all until it was finally discussed in the Legislative Council in 1903 when it settled down in its present shape. The discussions on the Bill as far as this section is concerned will be found in pages 81 and 82 of the Proceedings of the Council.

The clause of the Bill as amended by the Select Committee as well as section 204 of the Assam Labour and Emigration Act are submitted below for purposes of comparison:—

Planters Labour Bill.	Assam Act.
32. On the expiry of any sentence of imprisonment for any offence under this Act the Magistrate shall, subject to the provisions of section 34, make over such labourer to any person appointed on the part of the employer to take charge of him, and no conviction under this Act or imprisonment under such conviction shall operate as a release to any labourer from the terms of his labour contract.	204. On the expiry of any sentence of imprisonment passed on a labourer for any offence under this Act, the Magistrate shall, subject to the provisions of section 200, make the labourer over to any person appointed on the part of his employer to take charge of him; and no conviction under this Act or imprisonment thereon shall, save as aforesaid, operate as a release to any labourer from the terms of his labour contract.
Section 34 provides that if the terms of imprisonment endorsed on a labour contract amount to a total of nine months the contract should be cancelled.	Section 200 provides that if a labourer has actually suffered imprisonment for six months for desertion from his employer's service his labour contract is to be cancelled.

It will thus be observed that under the provisions of the Bill before it was amended by the Council, only labourers (not maistries) were liable to be made over to the employer, and there was a limit of imprisonment which freed the labourer from his contract. The provision when it became law was not only extended to the maistry but also removed the protection which a term of imprisonment gave to the accused. [Reference is in this connection solicited to paragraph 25 et seq. of Mr. (now Sir) G. S. Forbes' note on pages 12 and 13 of notes to G.O. No. 367, dated 28th February 1908.]

2. Mr. Barber suggests that the Wyanad and the Nilgiri Planters' Associations should be consulted and that the best way to do this is to arrange for a joint meeting of the two Associations at which the two Collectors also might be present. For orders.

A.R.—27-1-16.

W.B.S.—4-2-16.

From Mr. Barber's reply it is apparent that the planters will not be satisfied with the amendment giving discretion to Sub-Magistrates. It does seem necessary to consult the Associations.

2. The case of a dishonest or speculative maistry could of course be taken up under the Indian Penal Code [section 41 of the Planters Act]. The instance put forward by Mr. Barber in paragraph 12 of his letter might occur in any business.

D. N. STRATHIE—6-2-16.

I certainly think that the Associations should be consulted and Mr. Barber may be told to consult those of Wynaad and the Nilgiris.

P. RAJAGOPALA ACHARIYAR—8-2-16.

I think the best course will be for us to direct the District Magistrates of Malabar and the Nilgiris to consult their respective Planters' Associations. The District Magistrate should invite the Association's attention to the correspondence that took place in 1907 and he should say that the Government are of opinion that it is necessary that section 35 of the Act should be amended either by excluding maistries from its operation or by giving the magistrate a discretion in the matter of making an order to complete the performance of the contract. This will not commit us to adopting the exact form of words accepted by the Government of 1907. My personal opinion is that maistries should be excluded from the operation of section 35, for I think the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of the fine, are sufficient; but I should be willing to accept as a compromise the amendment of section 35 by substituting "may" for "shall" in lines 3 and 4.

2. The case should be sent to His Excellency at this stage before orders are issued, as the matter is one of some importance. A short précis of the case should be prepared for His Excellency's information.

H. A. S[TUART]—10-2-16.

This file relates to the amendment of section 35 of the Madras Planters Labour Act, 1903. When the Planters Labour Bill was first drafted by this Government in 1899, a provision similar to the present section 35 was not included. It was afterwards inserted on the suggestion of the planters, one of them remarking that "Any Labour Act should provide that punishment by imprisonment when convicted "of breach of contract shall not act as a release from the performance of the "contract, but that the maistry or labourer convicted should, at the end of his term "of imprisonment, be compelled to perform his contract." A clause (similar to section 204 of the Assam Labour Act, 1901) was accordingly inserted in the Bill, providing that a labourer should at the expiry of his term of imprisonment be made

over to his employer and that neither conviction nor imprisonment should operate as a release from the labour contract. It was also provided that, if the term of imprisonment endorsed on a labour contract amounted to a total of nine months, the contract should be cancelled. This latter provision was deleted when the Bill was discussed in the Council, and the original clause 32 was altered into its present form (section 35 of the Act).

2. Cases have been brought to notice in which maistries have been prosecuted and imprisoned under section 35 of the Planters Labour Act. In 1912 Mr. Justice Sadasiva Ayyar held that the Act does not authorize the infliction of repeated sentences of imprisonment in respect of the same contract and remarked that the meaning is merely that the civil contractual obligation does not cease by the criminal court's punishment. In October 1915 Ayling and Phillips, JJ., differed from the above ruling as they were unable to agree that the magistrate could issue only a single direction. [As regards the labourer the proviso to section 35 is some safeguard, but it is not so in the case of the maistry.] Proposals for the amendment of the Act with a view to protect maistries from this liability to repeated imprisonment were considered by the Government in 1907. The planting community were not quite in favour of the proposals then made by the Government and the question of amending the Act was finally dropped because the planters who had at first moved for an amendment of certain other sections of the Act asked for a postponement of the consideration of the whole question. In 1907 it was proposed to separate the provisions relating to maistries from those relating to labourers and to enact that the magistrate *may* on application direct, in his judgment or order of acquittal or discharge, that the maistry shall present himself at the estate on a specified date and remain there for a specified time. Failure to comply with this order will then be deemed to be an offence punishable under section 24 (*a*) or 24 (*b*).

3. Honourable Member (Judicial) is now of opinion that maistries should be excluded from the operation of section 35, as the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of this fine, are sufficient. A similar proposal was put before the Planters' Association in 1907, but the planters considered it essential that maistries should continue to find a place under section 35. The Honourable Member is willing to accept as a compromise the amendment of section 35 by substituting the word "may" for "shall" in lines 3 and 4, thus giving the magistrate a discretion in the matter of making an order to complete the performance of the contract. Honourable Member wants to direct the District Magistrates of Malabar and the Nilgiris to consult their respective Planters' Associations.

A.R.—29-2-16.
W.B.S.—29-2-16.

P. RAJAGOPALA ACHARIYAR—2-3-16.

I am disposed to think with Sir Harold Stuart that in the case of maistries the remedies provided by section 24 are sufficient, but I reserve a final opinion until the Collectors of Malabar and the Nilgiris report as proposed.

P[ENTLAND]—3-3-16.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.
To—the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Judicial Department.
Dated—the 2nd March 1916.

At a meeting of the Committee of the United Planters Association of Southern India held on 29th ultimo I was instructed to find out if Government propose to make any amendment to section 35 of the Madras Planters Labour Act, and if so, to request that the text of the amendment may be sent to those districts that are interested in the Act, for full consideration.

2. The Committee of the labour department would deprecate any action being taken by Government that might lead to any difference of opinion among planters themselves, for the department is young and the most difficult part of the work in front of it is to harmonize the views of planters on the matter of labour and to regularize, as far as local conditions will permit, the terms of service on estates.

3. Of course self-interest is at the bottom of it all, for you would not expect a body of men to tax themselves heavily otherwise, but I think that it is obvious that planters want happy and contented labour forces, so it may be taken that the ultimate aim of the department is to improve the lot and status of the estate labourer.

4. In connection with this matter, I would remind you that I told you in Madras that my demi-official to Todhunter is not for publication.

Memorandum No. 2824-*A*-7, *dated* 9*th March* 1916, *to the District Magistrates of Malabar and the Nilgiris*—**VI.**

Demi-official—from the Hon'ble Diwan Bahadur P. Rajagopala Achariyar Avargal, C.I.E., Secretary to Government, Judicial Department.

To—the Hon'ble Mr. E. F. Barber, Additional Member of the Madras Legislative Council.

Dated—the 9th March 1916.

No.—2824-A-8.

In reply to your letter, dated the 2nd instant, regarding the proposed amendment of section 35 of the Planters Labour Act, 1903, I am desired to forward herewith a copy of memorandum, No. 2824-A-7 of this date, in which the District Magistrates of Malabar and the Nilgiris are being asked to consult their respective Planters' Associations in the matter.

VII

From the District Magistrate, the Nilgiris, No. 1, *dated* 19*th March* 1916.

From the District Magistrate, Malabar, No. D. 826/*M.*, *dated* 20*th April* 1916.

A draft demi-official to Mr. Barber is submitted in accordance with the oral instructions of the Secretary.

A.R.—4-7-16.

W.B.S.—4-7-16.

P. RAJAGOPALA ACHARIYAR—4-7-16.

Demi-official—from the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Judicial Department.

To—the Hon'ble Mr. E. F. BARBER, Ootacamund.

Dated—the 4th July 1916.

No.—2824-A-9.

With reference to our conversation today and in continuation of my demi-official letter No. 2524-A-8, dated the 9th March 1916, I am desired to inform you that the Wynaad Planters' Association has expressed itself against the proposal to amend section 35 of the Madras Planters Labour Act, 1913, in the manner suggested in Memorandum No. 2824-A-7, Judicial, dated the 9th March 1916, while the views of the Nilgiri Association have not yet been received. Copies of letters addressed by the Wynaad Association to the District Magistrate, Malabar, on the subject are enclosed.

From the District Magistrate, Nilgiris, No. 1-*Confdl., dated* 2*nd August* 1916.

Both the Nilgiri and the Wynaad Planters Associations are against the amendment of section 35 of the Planters' Labour Act. They say that the section is a decided deterrent to deliberate fraudulent breach of contract and that it has not been misused. Mr. Evans reports that the arguments advanced do not appear to be of great validity against the amendment proposed; and Mr. Knapp doubts whether the amendment would prove a satisfactory solution of the difficulty and suggests that provision should be made for appeals against the sub-magistrate's decision to a first-class magistrate.

On the whole it would appear that the District Magistrates concerned are inclined to accept the views of the planters that there is no need for the amendment of the Act. Both the District Magistrates certify that the provisions of the section have not been abused.

It appears that the Hon'ble Mr. Barber is also preparing a case against the proposed amendment of the Act. For orders whether it should be awaited.

[Attention is invited to His Excellency's note, dated 13th March 1916, on page 11 *supra*.]

A.R.—16-8-16.

W.B.S.—19-8-16.

Perhaps Mr. Barber may be asked demi-officially whether he has any further remarks to add to his demi-official letter, dated 29th December 1915, with reference to subsequent correspondence. Opinion so far evoked, whether planting or official, is on the whole hostile.

E. A. HARVEY—22-8-16.

Yes: let us ask Mr. Barber whether he has anything further to say. Ask him to treat the matter as urgent. Mr. Barber should not of course be told what the District Magistrates say.

P.R.—24-8-16.

Draft demi-official submitted. The opinions of the District Magistrates were not communicated to Mr. Barber. But the letters addressed to the District Magistrate, Malabar, by the Wynaad Planters' Association (pages 10-14, current file) were communicated to him (page 13 ante).

A.R.—24-8-16.

W.B.S.—24-8-16.

E. A. HARVEY—25-8-16.

Demi-official—from E. A. HARVEY, Esq., I.C.S., Under Secretary to Government, Home (Judicial) Department.

To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

Dated—the 28th August 1916.

No.—2824-A-10.

I am desired to invite a reference to the correspondence ending with my demi-official letter No. 1966 A-1., dated the 10th ultimo, regarding the proposed amendment of section 35 of the Madras Planters Labour Act, 1903, and to enquire whether you have anything further to add to your previous remarks on the subject. The Government would be glad if you will kindly treat the matter as urgent.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

To—E. A. HARVEY, Esq., I.C.S., Under Secretary to Government, Home (Judicial) Department.

Dated—Pundalur, the 30th August 1916.

I have to thank you for your demi-official No. 2824 A-10 of 28th instant.

Without reference to my file I cannot say if I have anything to add regarding the amendment of section 35 of the Madras Planters Labour Act.

Certainly I can have little to add to what I have said in conversation with the Honourable Member.

The Wynaad Association has had both official and demi-official correspondence with the Collector of Malabar, all of which I trust will be placed before Government. The Nilgiris Association holds a similar view to the Wynaad.

If the section be amended and if discretionary power be given to the magistrate who try these cases, it will cause some dissatisfaction among planters and for this reason I venture to hope that the Government will find no pressing reason to amend this section.

Demi-official—from the Hon'ble Sir HAROLD A. STUART, K.C.V.O., K.C.S.I., I.C.S., Member of Council.

To—the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Home (Judicial) Department.

Dated—Ootacamund, the 2nd September 1916.

I enclose a letter from Barber about the amendment of the Planters Act. I have asked him to give me a brief note of his reasons for recommending the abandonment of the proposal and when they are received, I will send them to you.

ENCLOSURE.

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

To—the Hon'ble Sir HAROLD A. STUART, K.C.V.O., K.C.S.I., I.C.S., Member of Council.

Dated—Pundalur, the 30th August 1916.

I have just had a letter from Harvey asking me if I have anything further to say on the question of amending Act I of 1903, section 35. If it can be avoided, I think it would be a great mistake to stir up this Act again. There was always some dissatisfaction about it and it has caused more bitter feeling among planters themselves than anything else I know of.

As there is no proof of abuse of that section, can't it be left alone especially as planters on the whole are trying to work out their own salvation satisfactorily, without having recourse to law?

The enclosed letter from the Hon'ble Mr. Barber should be examined. He is very anxious that we should drop the proposal to amend section 35 of the Planters Act.

H. A. S[TUART]—19-9-16.

(i)

Demi-official—from the Hon'ble Mr. E. F. BARBER, Additional Member of the Madras Legislative Council.

To—the Hon'ble Sir HAROLD STUART, K.C.V.O., K.C.S.I., I.C.S., Member of Council.

Dated—Ootacamund, the 5th September 1916.

Thanks for yours of 2nd September which I found on my return here yesterday.

The reasons against the amendment of section 35 are—

(1) That the section has never been abused.

(2) That the section as it stands should be a deterrent to a man who, though honest, is too weak to resist a doubtful opportunity of getting rich quickly.

(3) That as it stands the section, if it be brought into operation, does provide a more adequate punishment for swindling, leaving the onus of proving good faith with the accused, than it would be possible to obtain under the Criminal Procedure Code where proof of bad faith has to be adduced by the complainant.

(4) That the planter, by force of circumstances and conditions ruling in the country, has to advance sums of money to people he knows little or nothing about, and that in consequence he needs protection against the dishonest middleman or maistri. The conditions are not of the planter's making, they have been in existence for years. They have not been aggravated by internal competition, but by competition from the Straits and Ceylon, the former especially during the last few years, has forced the pace considerably, and not only that, has also afforded a safe heaven of refuge to a maistry or a cooly who wishes to escape his liabilities in this country.

(5) That there is nothing in the section, or for that matter in the whole Act, that need give an honest man a qualm. The section itself is dependent on section 24, it cannot be used until some penalty under that section has been enforced, but though, to this extent, it amplifies section 24, it also modifies it in conjunction with section 33 which allows a sentence for imprisonment under section 24 to be cancelled. This gives the man a further chance, and in accepting that chance, he should have to accept a further risk.

(6) That the planters are against any discretionary power being given to the class of magistrates who try these cases. I do not know if this feeling is justifiable, any way this feeling of mistrust seems to be shared by some of my non-official Indian colleagues on the Legislative Council. The exercise of such discretionary power will not be on the matter of any evidence at the time before the magistrate, but merely leaves it to his personal opinion as to whether the accused has been punished enough or not.

(7) That although a lot of trouble was taken over the drafting and passing of this Act, it was not generally acceptable to planters. The planters wanted a clause for specific performance. This could not be given. This clause was I believe the sop, that was given instead. The districts were then asked if they would accept the Act. The Shevaroys and the Anamallais refused. The Wynaad and Nilgiris accepted, in each case I believe by the casting vote of the Chairman, and I think it was only on the strength of this section 35, that the Act found any to support it at all.

(8) The final reason is more general than specific. There is a cheap politician, in search for cheaper popularity, usually a disappointed vakil, who is always holding up the treatment of labour by planters to obloquy and that the Government should see fit to amend a section that has never been abused might be looked on as a further incitation to mud throwing.

Will the Home Department be so good as to let me have for perusal the file regarding the proposed amendment of section 35 of the Madras Planters Labour Act?

C. G. TODHUNTER—28-9-16.

Mr. Todhunter u.o.

E. A. HARVEY—29-9-16.

Perused and returned with thanks. I should be glad to have a spare proof of as much of the file as has been printed up, and of the rest as soon as it comes from the press.

A I hope the suggestion that the revision of the local law should lie over till we know what standard we are going to ask of the colonies will be pressed. It will be difficult to ask of the colonies more than we are ready to do ourselves and it would be a mistake to amend the Act now and then take it up again for general revision next year.

If an intermediate remedy is desired it might be found in making Divisional Magistrates try planters' cases in the locality.

C.G.T.—29-9-16.

The department may concur in the Special Officer's opinion marked **A** above.

E.A.H.—3-10-16.

The arguments advanced by Mr. Barber against the amendment of section 35 of the Act are examined below.

2. The statement of Mr. Barber that the section has never been abused is not quite correct. Please see Mr. Todhunter's note, dated the 6th December 1915, in which he stated that cases of abuse were accumulating. The District Magistrate, the Nilgiris, states that there has been only one case of the kind during the three years, but the District Magistrate, Malabar, states that in 1915 there were 23 second prosecutions against maistris under section 35 of the Act. It might be contended that only occasionally resort is had to the provisions of section 35 in a prosecution against a maistri. The retention of the provisions of the section in so far as they permit of repeated prosecutions against a maistri in respect of a particular offence seems objectionable in view of the following consideration urged by Sir George Forbes:—

Paragraph 24, page 12 of notes to G.O. 367-8, Judicial, 28th February 1908.

If the section can be construed to render the unfortunate defaulter liable to continuous spells of imprisonment so long "as he is recalcitrant, it must be amended at once."

The ruling of the High Court that section 35 allows of repeated prosecutions against a maistri is only recent and cases of abuse might arise in future.

3. *Second argument of Mr. Barber.*—If as Mr. Barber states a person is too weak to resist a doubtful opportunity of getting rich quickly, the planter may take action to recover the amount of advance from the maistri under section 23 of the Act though he may not always be successful. Honourable Member has already pointed out that the remedies provided by section 24, including as they do a power to fine up to Rs. 500 and to give the planter compensation out of the fine, are sufficient.

4. *Third argument of Mr. Barber.*—The third argument that the section provides a more adequate punishment for swindling appears to be a sound one so far as the interests of the planters are concerned.

5. *Fourth argument of Mr. Barber.*—The fourth argument that the planter has to advance large sums of money to a maistri of whom he knows little or nothing and that therefore he needs protection against the dishonest maistri appears to overlook the fact that section 35 places a helpless maistri at a disadvantage who does his best to keep his labourers but who desert him because the planter on another estate offers better wages. Please see in this connection paragraph III of Sir George Forbes' note, dated the 23rd January 1906, in which he noted that it would often be quite impossible for the maistri to pursue deserting coolies and that it would be an enormous power in the hands of a planter who is a tyrannical master or whose estate possesses a pestilential climate.

Page 11 of notes to G.O. 558-60, Judicial, 28th March 1906.

6. The fifth argument advanced by Mr. Barber that section 35 is dependent on section 24 appears to call for no remarks. The reference to section 33 is not relevant to the case of a maistri who is unable for no fault of his own to execute the contract. Section 33 will not help him in any way.

7. No remarks seem called for on the observations regarding the undesirability of giving a discretionary power to subordinate magistrates to issue an order to the maistri to complete his contract. If the subordinate magistrates cannot be trusted to do justice to planters, it may be provided as suggested by Mr. Knapp that an appeal should lie to a first-class magistrate against the subordinate magistrate's order. The last argument that section 35 is only a sop that was given instead of a clause for specific performance appears to be one-sided. As already pointed out in the office-note, dated the 29th February 1916, at pages 10–11 ante, section 35 was intended to be similar to section 204 of the Assam Labour and Emigration Act, 1901, and that the section assumed the present form when the Bill was discused in the Council. There is nothing in the discussions to show that section 35 was adopted with a view to providing for specific performance by a maistri. So far as the maistri is concerned it is section 24 that was intended to provide for fulfilment of a contract by a maistri.

Cf. portion **M** at page 10 of notes to G.O. 558–60, Judicial, 28th March 1906.

8. It will be seen from the discussion at page 5 of notes to G.O. Nos. 1067–68, dated the 7th May 1902, that the Government of India were against applying criminal law to maistris except as under section 24. The Assam Labour and Emigration Act, or the Federated Malay States Code or the Ceylon Labour Ordinance does not contain any provision permitting an intermediary corresponding to the maistri to be prosecuted repeatedly in respect of a single offence. It may not be out of place to mention that the present policy with regard to indentured labour recruited to colonies outside India is the elimination of imprisonment as a penalty for offences against the labour laws.

9. Submitted for orders whether in the circumstances Mr. Barber has made out a case for not amending section 35 of the Act. The Special Officer points out that it would be a mistake to amend the Act now. The question of amendment may perhaps be taken up a year hence as suggested by Mr. Todhunter. The suggestion at the end of his note is for orders.

T.C.N.—29–9–16.

P.DER.—2–10–16.

Mr. Barber's arguments do not impress greatly by reason of their soundness and cogency. The argument that a section which is liable to abuse has not been abused, even if true is not sound. As soon as a flaw in a law is brought to light, it is necessary to amend the law so as to prevent the possibility of abuse. The Act gives the planting community valuable protection, without imposing on them very heavy obligations; certainly not as heavy as are imposed on Ceylon and Malay planters who employ Indian labour. It is extremely doubtful whether the consultation or modification in the way proposed of section 35 will induce the planters to reject the Act to the extent of asking for its repeal. The planters are likely to be well aware that the trend of legislation in these matters is not likely to be in the direction of lightening the responsibilities of planters in the next few years.

I refrain for the moment from examining in greater detail the pros and cons in regard to the proposed amendment of the section or its alternatives until orders are passed on Mr. Todhunter's suggestion that a decision in the case should lie over for the present.

E. A. HARVEY—3–10–16.

Please print up the current and note files and resubmit. I feel that I should mark these papers for general circulation.

P. RAJAGOPALA ACHARIYAR—5–10–16.

Submitted with reference to the Secretary's orders on the previous page.
M.D.R.—14-10-16.

Mr. Todhunter's suggestion at **A** on page 16 may be submitted for consideration along with the merits of the case. Will the Under Secretary please note in detail the pros and cons of the proposed amendment and the alternatives suggested?

P. RAJAGOPALA ACHARIYAR—18-10-16.

Please see the office note; I think the office has dealt faithfully with Mr. Barber's arguments and I have little to add. I add the following few remarks.—

Paragraph 2 of note.—Even if it was in doubt before, the recent High Court decision makes it clear that the defaulter is liable to almost continuous spells of imprisonment so long as he is recalcitrant, and subject to the limit laid down in the proviso. According to Sir George Forbes' opinion, it should, then, be amended at once (paragraph 24, page 12 of notes to G.O. Nos. 367-8, Judicial, dated 28th February 1908.

Paragraph 3.—Section 24 of the Act gives fairly drastic powers of punishment. The maximum fine is considerable and out of it compensation may be awarded to the employer; it may be noted however that, quite apart from the question of specific performance, the compensation may not always be adequate as it is understood that advances of thousands of rupees are occasionally given to maistris. It is very doubtful however whether more than Rs. 500 can ever be squeezed out of any defaulting maistri.

The omission of maistris form section 35 will not mutilate or dislocate the Act in such a way as to render it unworkable in the least. Of the two sections, 24 and 33, to which Mr. Barber refers in his fourth and fifth arguments, the latter seems to me to be very important and really to meet Mr. Barber's argument, his strongest, based on the Government's intention to exact by means of the Bill specific performance.

The chief objection raised to amending the Act by the omission of maistris from section 35 is that "specific performance" is not provided for: this is not the fact; specific performance of contract by maistris is provided for by section 33 (at present said to be rarely used). By this section the sentence of imprisonment may be conditionally remitted and the maistri sent back to perform his contract. If he does not perform it, he is sent back to serve the remainder of his sentence if necessary. This procedure if resorted to and used judiciously should be ample to prevent wilful and obstinate non-performance. To proceed beyond this stage, even if it proves ineffective, will ordinarily be distasteful and savour of persecution. The District Magistrate, the Nilgiris, points out that section 35 is only operative when the substantive punishment is imprisonment, and is not so when fine only is in the first instance imposed; presumably if imprisonment in default of fine is also imposed, this will suffice to render operative the section. In this connection I may point out that, when the effect of Ayling J's., judgment has been generally recognised by magistrates, there will be a tendency among them to avoid the obligation to issue directions indefinitely under section 35 by imposing fine only under section 24. If the objection is that the deterrent effect of the Act is lost by excluding maistris from section 35, it may be pointed out on the other side that the maximum penalty, viz., three months' imprisonment + fine of Rs. 500 or imprisonment in default (apparently the imprisonment may be simple or rigorous!) ought to be enough ordinarily to deter any man from intentional swindling and compel him to fulfil his contract, together with action under section 33 conditional remission or suspension. On the whole the best plan will be to cut out maistris from section 35 altogether.

The next best is to give discretion in the matter of issuing directions under section 35 to magistrates as suggested by Mr. Knapp with right of appeal to Subdivisional Magistrates. This is obviously a second best as it will increase litigation

and probably lead to friction. If this alternative is adopted, so may Mr. Knapp's suggestion that the section may operate whether the original punishment were fine or imprisonment. [Note that Ceylon Ordinance 65 containing corresponding provision insists on proof *of bad faith*.]

E. A. HARVEY—8-11-16.

Please see the Hon'ble Sir Harold Stuart's note at page 10 ante, the precis of the case prepared by me for His Excellency at pages 10 and 11, His Excellency's note at page 11, and the subsequent notes and correspondence. Neither Mr. Barber nor the Planters' Associations have, in my opinion, given adequate reasons why section 35 of the Act should not be amended. And Sir Harold Stuart's suggestion that either maistries should be cut out of section 35 or that action under that section should be made a matter of discretion with the Magistrate, holds the field.

As however it is inexpedient just now to take in hand legislation which is likely to be of a controversial character and which may possibly create bitterness of feeling, I would defer action for the present, and, as suggested by Mr. Todhunter at page 16 ante, wait and see what standard generally we are going to ask of Ceylon and the Federated Malay States. It is these two places which are in serious competition with our local planters; and it will be hardly fair to the latter that things should be made generally more difficult for them than they are in Ceylon and the Federated Malay States. On the whole it would be expedient to close this correspondence temporarily and take it up again after Mr. Marjoribanks' report is received and dealt with.

P. RAJAGOPALA ACHARIYAR—20-11-16.

I agree.

H. F. W. G[ILLMAN]—24-11-16.

There is a strong case for the amendment of the Act. We must, of course, wait for Mr. Marjoribanks and Tambi's report. But we shall get that in a month or two and the file should not be *closed*, but should merely wait till the report on Ceylon and Straits Settlement is received and then be resubmitted.

P. S. S[IVASWAMI AYYAR]—21-12-16.

A. G. C[ARDEW]—18-12-16.

I agree with the Hon'ble Sir Alexander Cardew. We shall be handicapped in our dealings with the Straits Settlements and the Federated Malay States if we do not first put our own house in order. Instead of our trying to level our standard down to what we may be able to ask of the colonies, we should try to level up their standard of treatment of labour to ours, taking care of course to remove all blots in our own system. The arguments against the amendment of section 35 are most feeble and unconvincing. It would in my opinion be a great mistake to put off amendment till the whole question of treatment of emigrant labour in the colonies is settled. I don't mind the short postponement suggested by Sir Alexander Cardew.

P. S. S[IVASWAMI AYYAR]—21-12-16.

Agreed.

P[ENTLAND]—23-12-16.

To lie over till the 1st March 1917.

P.R.—24-12-16.

The file is resubmitted.

2. In paragraph 22 of the confidential note of Messrs. Marjoribanks and Marakkayar they have stated that the Indian labourer should not be subject to any penal laws special to his case, that the same law must apply to him that it is considered proper to apply generally to the relation of master and servant in the

particular colony concerned on the assumption that imprisonment will not find a place as a substantive punishment in such a law. This Government have accepted the above views—please see paragraph 8 of letter to the Government of India, No. 239, dated the 9th March 1917. It is stated in the report that managers of estates in the Federated Malay States are of the opinion that there would be no practical objection to the abolition of imprisonment at any rate as a punishment for labour offences (paragraph 38, page 36) and that most of the superintendents of estates in Ceylon are averse to have recourse to prosecution (paragraph 44, page 15). The report does not deal with the question of punishment of kanganies who correspond more or less to maistries, for refusing to perform their contracts to supply labourers. For orders whether the views of Mr. Marjoribanks may be invited on the proposal to amend section 35 of the Madras Planters' Labour Act.

T.C.N.—10-3-17.

P.DER.—13-3-17.

I should be very grateful for Mr. Marjoribanks' opinion on the specific question viz., amendment of the Act: and generally on the conditions of labour in South Indian estates as compared with Ceylon and Malaya.

E. A. HARVEY—14-3-17.

I am sorry that, owing to my having had to go to Delhi a second time, time has not permitted of my making a tour of enquiry among the estate districts in India.

Neither the Ceylon nor the Malay planters have any such protection as is given to the Indian planter by section 35 of the Indian Planters Labour Act. They protect themselves as far as they can by not giving large advances to any one maistry (kangany). No doubt there are in Ceylon some head kanganies who control very large bodies of labourers, but the connection has grown up with time and the interests of these kanganies are, I fancy, more intimately bound up with those of the estate than is the case in India.

2. The present time seems most inopportune for raising any question about the amendment of any estate labour law. Indian politicians as a whole view the subject through a fog of ignorance, sentiment and angry prejudice: and it would be better to wait till things calmed down. To stop the abuse of repeated prosecutions under section 35 Mr. Barber might be spoken to and given to understand that Government viewed such prosecutions with grave disfavour and that, if they continue, amendment of the Act will probably be forced on Government with consequences that will probably be most unpleasant for the planters. Mr. Barber is not likely to misunderstand.

P

N. E. MARJORIBANKS—28-3-17.

These papers show that section 35 of the Planters Labour Act is really indefensible; but, as Mr. Marjoribanks points out, legislation to amend it will be most inopportune now.

I submit that the case may now be closed by recording the papers which need not be communicated to anybody, and Mr. Barber might be written to demi-officially as at **P**; or perhaps Honourable Member would prefer to see Mr. Barber personally.

E.A.H.—29-3-17.

Write demi-official to Mr. Barber in the sense indicated.

H. F. W. G[ILLMAN]—30-3-17.

A draft demi-official letter to the Hon'ble Mr. E. F. Barber is submitted for approval. After issue the papers will be recorded in a Government Order.

T.C.N.—2-4-17.

P.DER.—3-4-17.

Type the draft as modified please. Was it not the repeal rather than the amendment of section 35 that has been suggested?

E.A.H.—4-4-17.

Draft typed and submitted. Please see the Hon'ble Sir Harold Stuart's note, dated the 10th February 1916, at page 10 ante, paragraph 1 of the Hon'ble Diwan Bahadur P. Rajagopala Achariyar's note, dated the 20th November 1916, at page 19 ante and portion P of Mr. Marjoribanks' note at page 20 ante. Submitted that only an amendment of section 35 of the Act has been suggested.

T.C.N.—5-4-17.

P.DER.—5-4-17.

Issue and close the file. The papers should be printed as they will be wanted again some time.

E. A. HARVEY—5-4-17.

Demi-official—from E. A. HARVEY, Esq., I.C.S., Under Secretary to Government Home (Miscellaneous Department).

To—the Hon'ble Mr. E. F. BARBER, Additional Member of the Legislative Council.

Dated—the 5th April 1917.

No.—318/16-2.

I am directed to invite a reference to the demi-official correspondence ending with your letter, dated the 2nd November 1916, addressed to the Hon'ble Mr. Gillman regarding the amendment of section 35 of the Madras Planters Labour Act, 1903, and to state that the Government do not consider that section 35 is really needed as a protection by the planters and further that it is liable to abuse. They agree with you however that the amendment of the section would be at present inopportune, and no action of this kind now or in the near future is contemplated.

The Government however desire it to be understood that they view with grave disfavour repeated prosecutions under that section in respect of a single offence and that if any further instances of these prosecutions come to light the amendment of the Act will probably be forced on them with consequences that are not likely to be welcomed by the planting community.

[G.O. No. 358-A, Home (Miscellaneous), dated 5th April 1917.]

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(c) Signature copies of letters to the Secretary of State or to the Government of India should be printed on hand-made paper.

(d) This slip should be returned by the Press to the Secretariat when proofs are furnished; it will be sent back to the Press when proofs are returned corrected and should be finally returned to the Secretariat when struck-off copies are supplied.

(e) The names of the Secretary and Members should be printed in full when they occur on the right hand side, only the first time when they appear on the left side, the initials alone being printed later.

10. for notice 15

P.T.O.

TO PRESS, MADRAS ~~OOTY.~~

A

Pleasee send proof in duplicate. The papers have been carefully edited.

Referencer.
Clerk.

Supdt.

B

Proof returned corrected. Please strike off and send number of copies as indicated.

Type may be released $\frac{\text{after usual interval.}}{\text{at once.}}$

Referencer.
Clerk.

Supdt.

C

As the matter is clear manuscript and has been carefully edited, (*b*) proof need not be sent. Please print and supply number of copies as indicated.

Type may be released after usual interval.

Referencer.
Clerk.

Supdt.

SPECIAL INSTRUCTIONS.

TO BE FILLED IN BY THE PRESS.

Diary.	Initials of Press official.
Received in Press on.....	.....
First proof furnished on.....	.....
Call for revised proof received on.....	.....
Revised proof furnished on.....	.....
Corrected proof received for striking on.....	.....
Final copies supplied on.....	.....

Account of copies.	Complete copies.	Notes.	Issue copies.	Special E.T. edition.
Supplied to Secretariat for Record.....	.....	.....	.....	.....
" " " Issue.....	.....	.....	.....	.....
" " " for Extra E.T. copies to supply requisitions for sale to the public.	.....	.....	.....	4
For Volumes.....	.....	.....	.....	.....
For supply to newspapers and institutions admitted to the privileges of the E.T.	.....	.....	.....	.....
Total ...				