

Legislative (1895) Department.

ORDINARY PRINTED.

G.O., No 15

Dated 25<sup>th</sup> Feb. 1895

[Despatch Abstract.]

A BILL TO CONFER UPON PERSONS FOLLOWING THE MARUMAKKATAYAM  
AND ALIYASANTANA LAW OF INHERITANCE TESTAMENTARY POWER OVER THEIR  
SEPARATE AND SELF-ACQUIRED PROPERTY.

Forwarding for remarks to the Honourable the Judges of the  
High Court, the Advocate-General and the Honourable C. Sankaran Nayar  
the draft of --.

# BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

# FURTHER PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

Abstract

Sauk

revis

draft

follo

g

[G.]  
[25.]  
10-21-12-94.

leg: DEPARTMENT.

No. 33

From

the Govt. Sec.

Dated 4 Feb

1895

## FOR ORDERS.

This Bill does not require the prior sanction of the Governor-General & it seems to carry out the intentions of Govt.  
It might perhaps be referred to the Hon C. Sankar Nayar for remarks.  
But, if this is thought unnecessary, I will draft a Statement of Objects & Reasons & submit it for the approval of H.E.S.  
It has to be decided who is to take charge of the Bill. The Hon. Sankar Nayar's term of office expires in August next, so perhaps one of the ordinary members of Council or the Adv. Sec. might take charge of it.

Yes - better to  
w

BM  
13/2/95

I think the a.g.  
Jg w  
14/2

Approved  
w

The Bill needs alterations  
shown in blue  
bring it in & ge who is (a)  
governor

the General Clauses Act, 1891:  
 "person" should also be  
 substituted for "Hindu", as  
 the Moplahs (in some parts  
 at all events) follow the  
 Marumakkattayam law  
 & it also seems advisable  
 to substitute "separate and  
 self-acquired property" for  
 "separate or self-acquired  
 property".

1/4  
 7 Feb  
 9/2/95

Testamentary P.  
 Bill

Date.

Why did "separate" property  
 be mentioned at all?

25

To cover Stridhanam +  
 Hindu property

1/4

1/4

A. E. Keire

(For Order)

Read  
 (A) Again 80.2 30 Oct 94, No 117, Leg.  
 (B) C. No 33

Order

But see.

The Govt accepts, with certain  
 modifications, the Advocate  
 General's Draft Bill

20/2/95

A Bill s. o. c.

Abstract. 40 & 30710/94 No 117, Leg.

Returning with remarks to the Honble C  
 Subbarao  
 Sankarad Nayak the Draft Marriage Bill for  
 revision and requesting the Advocate General to  
 draft a Bill (1) declaring the right of persons who  
 follow the Marumakkattayam and Aliyasantana  
 Laws to dispose by Will of such property as they  
 are able to transfer by means of <sup>inter vivos</sup> gifts and (2)  
 extending the provisions of Hindu Wills  
 Act, 1870, to the wills made by such  
 persons.

14/11/95 257/95

<sup>Madras</sup>  
 A Bill to confer upon <sup>persons</sup> ~~Hindus~~ in the Presidency of Fort Saint George who are governed by the Marnakkatayam or the Aliya Santana Law of Inheritance Testamentary power over their separate <sup>and</sup> self acquired property

Whereas it is expedient to confer upon <sup>persons</sup> ~~Hindus~~ in the Presidency of Fort <sup>Madras</sup> ~~S<sup>t</sup> George~~ who are governed by the Marnakkatayam or Aliya Santana Law of Inheritance Testamentary power over their separate <sup>and</sup> self acquired property; -

It is hereby enacted as follows. -

1. This Act extends to the whole of the Presidency of Fort <sup>Madras</sup> ~~S<sup>t</sup> George~~ and shall come into force on the passing thereof.
2. On and <sup>after</sup> from the date of the <sup>commencement</sup> ~~Coming into force~~ of the Act, it shall be lawful for every <sup>person</sup> ~~Hindu~~ in the Presidency of Fort <sup>Madras</sup> ~~S<sup>t</sup> George~~ who is (a) <sup>governor</sup>

governed by the *Charumattaka*.  
- *Kyam* or *Aliya Dautana*  
Law of Inheritance (b) of  
sound mind, and (c) not  
a minor,

to dispose of his separate  
or self acquired property  
by Will.

3. The provisions of the Hindu  
Wills Act, 1870, shall apply to  
all Wills and Codicils made  
under the power hereby  
conferred.

(S<sup>d</sup>) J. H. Spring Thawson  
Advocate General

Madras  
2<sup>nd</sup> Feby  
1895

(True Copy)

Ernst Barclay  
Government Solicitor

(1895) Department

From  
Ernest Barclay  
Government Solicitor  
Madras.

To  
The Chief Secretary  
to Government  
Madras.

Dated 4<sup>th</sup> February 1895  
Received 4<sup>th</sup> Feb  
Recd 5<sup>th</sup> Feb

N<sup>o</sup> 52.

4 FEB 1895  
GOVERNMENT OF MADRAS

Forwarded with reference  
to the Order of Government dated  
30<sup>th</sup> October 1894 N<sup>o</sup> 117. Legio-  
lative.

Ernest Barclay  
Government Solicitor

Papers to be read in Proceedings:—

Again G.O., dated 30 Oct

1894, No. 117, Leg.

Again G.O., dated

18, No.

Current No. 33

of 1895, dated

4 Feb

from the Govt. Sol<sup>r</sup>

Current No.

of 18, dated

from 25<sup>th</sup> Feb 1895  
D.S. 16/5.

19 Feb

### Note

It seems advisable to consult  
the High Court also & to insert  
para. 2. The draft statement of  
O. & R. is rather long, but it  
seems as well to have the  
history of the measure on  
record. When replies to this  
G.O. are received the Adv. Gen.  
can be asked to take charge  
of the Bill.

The Hon. Mr. G. asks "why should  
separate property be mentioned  
at all?" I believe that property  
acquired by partition & also  
stridhanam are classed as self-  
acquired property, but it seems  
more correct to term them  
separate property. If the terms  
are incorrect, the High Court will  
doubtless point it out.

16/2

The draft prepared by the  
Adv. Gen. needs certain slight  
amendments which have been  
carried out in the Bill forming  
the Appendix to this Proceedings.  
A statement of Objects &  
Reasons has also been  
prepared. It appears advisable,  
that, before any further steps are taken,  
the opinions of the Hon. the  
Judges of the High Court &  
the Hon. C. Sankaran Nayan  
should be obtained & they  
will be requested to favour  
Govt. with their views at an  
early date.

2. As revised by Govt., the  
Bill applies to Muhammadans  
(Muslimes) as well as  
Hindus & the authorities  
consulted, including  
the Adv. Gen., will be requested  
to consider whether Act XXI of  
1870 can be applied (as pro-  
vided in the Bill) without modi-  
fications; their attention  
will also be invited to the  
in para 7 of Mr. Dyall's

(From orders)  
18/2/95  
16 Feb  
Letter from the C.S. to the C. & J. with copies  
of G.O. & of Govt. Sol.  
Govt. Sol.  
Hon. C. Sankaran Nayan  
Appendix  
[Here enter Bill as amended  
in blue chalk & also the  
following—]

Statement of Objects & Reasons  
This Bill declares

SP

of reputation to devise by Will property which they can deal with by gifts inter vivos. The history of the proposed measure is, briefly, as follows. In 1881 Mr. Logan, then Collector of Malabar, was placed on special duty to enquire into the condition of the agricultural classes of Malabar. In para. 483-486 of his report he touched on succession to property; remarking that, as the law stands, the self-acquisition of a follower of the Marumakkathayam law devolve, on his death, on the karawad & expressing the opinion that the power of regulating by Will the succession to self-acquired property should be conferred upon all adults. In 1884 Mr. Logan's report was referred for consideration to a Committee. That body incorporated its views in four Bills of which one dealt with the subject of marriage in Malabar & contained provisions conferring the testamentary right. ~~The Committee recommended that the provisions of the Bill should be confined to those persons who were to the effect that, when a marriage had been contracted in accordance with the terms of the Malabar Marriage Act; the parties should have~~

SP

subject to the condition that the provision was made by the husband for his widow & children;

- (2) property so devised should be treated as the self-acquired property of the devisee;
- (3) certain formalities should be observed in the making of Wills.

This Bill was referred to the High Court for opinion & was favourably received by that authority. For some years after this no action was taken but, in 1890, the Hon. C. Sankaran Nayar obtained permission to introduce into the Local Legislature a Malabar Marriage Bill which contained provisions on the subject of succession similar to those appearing in the Bill prepared by the Committee of 1884. Doubt having been felt whether the Hon. Sankaran Nayar's Bill did not require the prior sanction of the Governor-General, the question was referred to the G. of I. & that authority directed that further information as to the matrimonial custom of Malabar should be obtained. Accordingly a Commission

the matter in 1891 & in para.  
84 of their report, the  
Commissioners ~~also~~ stated  
that they & practically following  
all the Marumakkattayam law  
educated people were  
agreed as to the advisability  
of conferring testamentary  
power as proposed.  
In reporting on the subject  
to the G. of I., this Govt. ex-  
pressed concurrence with  
the views of the Commissioners  
but added that the privilege  
sought should not be restricted  
to persons who contract  
marriages under the proposed  
marriage law & that the  
best way of dealing with  
the matter would probably  
be to pass a separate Act  
declaring the existence of  
the testamentary power  
among all Hindus & extending  
the provisions of the Hindu  
Wills Act, 1870, to the whole  
of the Presidency.  
In reply the G. of I. stated that  
it had no objection to the  
course proposed so far  
as it related to the West  
Coast only.  
Accordingly this Govt. <sup>suggested</sup> ~~and~~  
~~proposed~~ to  
the M. Sankaran Nayar that  
provisions on the subject  
of testamentary succession  
should appear in the  
revised draft of the Marumakkattayam  
marriage Bill; but, on  
consideration, Mr. the

658 that the matter could be  
most suitably dealt with  
by means of a separate  
enactment.  
The present draft Bill  
has accordingly been pre-  
pared with the object of  
conferring upon the  
followers of the Marumakka-  
tayan & Aliyasautana  
the privilege which they  
appear to generally desire.

16/2  
18/2/95

28 [Govt. not Mr. Sankaran Nayar  
in a paper with the G. of I. Govt. then  
cut his name out of para 1  
of addn para 3. The paper  
will also be communicated to  
the Hon. C. S. N. for any remarks  
he may have to make.]  
H.S.

*Malabar*  
*Succession Bill*

*H. & C.*

*P.S.*

*(Zemindar)*

*Sp as altered  
in  
22/2*

*1001*

*Proof 28/2*

25TH FEBRUARY 1895, No. 15, LEGISLATIVE.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—again the following paper:—

G.O., dated 30th October 1894, No. 117, Legislative.

ABSTRACT.—Returning, with remarks, to the Hon'ble C. Sankaran Nayar the draft Malabar Marriage Bill for revision, and requesting the Advocate-General to draft a Bill (1) declaring the right of persons who follow the Marumakkatayam and Aliyasantana laws to dispose by will of such property as they are able to transfer by means of gifts *inter vivos* and (2) extending the provisions of Hindu Wills Act, 1870, to the wills made by such persons.

*Read also the following paper from the Govt. dated 4 July 1895  
No. 52. Government of Madras. Conference of persons in the Province of Madras  
who are governed by the Marumakkatayam or the Aliyasantana law of inheritance.*

ORDER—dated 25th February 1895, No. 15, Legislative.

The draft prepared by the Advocate-General needs certain slight amendments which have been carried out in the Bill forming the appendix to this Proceedings. A statement of objects and reasons has also been prepared. It appears advisable, however, that, before any further steps are taken, the opinions of the Honorable the Judges of the High Court should be obtained and they will, accordingly, be requested to favour Government with their views at an early date.

2. As revised by Government, the Bill applies to Muhammadans (Moplahs) as well as Hindus and the Honorable the Judges and the Advocate-General will be requested to consider whether Act XXI of 1870 can be applied (as provided in the Bill) without modifications; their attention will be invited to the remarks in paragraph 7 of Mr. Lyall's letter read in G.O., dated 1st March 1894, No. 42, Legislative.

3. The papers will also be communicated to the Hon'ble C. Sankaran Nayar for any remarks which he may have to offer.

(True Extract.)

*Under Secretary.*

To the Hon'ble the Chief Justice, with C.L. 2 *with copies to*  
" Government Solicitor. *G.O. 2/3/94*  
" Hon'ble C. Sankaran Nayar. *for 22/2/95*

Exd. R. Jenkins.

[Appendix.

## APPENDIX.

A Bill to confer upon persons in the Presidency of Madras who are governed by the Marumakkatayam or the Aliyasantana Law of Inheritance testamentary power over their separate and self-acquired property.

WHEREAS it is expedient to confer upon persons in the Presidency of Madras who are governed by the Marumakkatayam or Aliyasantana Law of Inheritance testamentary power over their separate and self-acquired property, it is hereby enacted as follows:—

- (1) This Act extends to the whole of the Presidency of Madras.
- (2) On and after the commencement of this Act, it shall be lawful for every person in the Presidency of Madras who is (a) governed by the Marumakkatayam or Aliyasantana Law of Inheritance, (b) of sound mind and (c) not a minor to dispose of his separate and self-acquired property by will.
- (3) The provisions of the Hindu Wills Act, 1870, shall apply to all Wills and codicils made under the power hereby conferred.

## STATEMENT OF OBJECTS AND REASONS.

This Bill declares the power of persons following the law of nepotism to devise by will property which they can deal with by gifts *inter vivos*. The history of the proposed measure is, briefly, as follows:—

In 1881 Mr. Logan, then Collector of Malabar, was placed on special duty to enquire into the condition of the agricultural classes of Malabar. In paragraphs 483-486 of his report he touched on succession to property, remarking that, as the law stands, the self-acquisitions of a follower of the Marumakkatayam law devolve, on his death, on the tarawad and expressing the opinion that the power of regulating by will the succession to self-acquired property should be conferred upon all adults.

In 1884 Mr. Logan's report was referred for consideration to a Committee. That body incorporated its views in four Bills, of which one, dealt with the subject of marriage in Malabar and contained provisions conferring the testamentary right. These provisions were to the effect that, when a marriage had been contracted in accordance with the terms of the Malabar Marriage Act—

- (1) the parties should have power to dispose of their self-acquisitions by will, subject to the condition that due provision was made by the husband for his widow and children;
- (2) property so devised should be treated as the self-acquired property of the devisee;
- (3) certain formalities should be observed in the making of wills.

This Bill was referred to the High Court for opinion and was favorably received by that authority.

For some years after this no action was taken but, in 1890, the Hon'ble C. Sankaran Nayar obtained permission to introduce into the Local Legislature a Malabar Marriage Bill which contained provisions on the subject of succession similar to those appearing in the Bill prepared by the Committee of 1884.

Doubt having been felt whether the Hon'ble Sankaran Nayar's Bill did not require the prior sanction of the Governor-General, the question was referred to the Government of India and that authority directed that further information as to the matrimonial customs of Malabar should be obtained.

Accordingly a Commission was appointed to consider the matter in 1891 and, in paragraph 84 of their report, the Commissioners stated that they and practically all educated people following the Marumakkatayam law were agreed as to the advisability of conferring testamentary power as proposed.

In reporting on the subject to the Government of India, this Government expressed concurrence with the views of the Commissioners but added that the privilege sought should not be restricted to persons who contract marriages under the proposed marriage law and that the best

way of dealing with the matter would probably be to pass a separate Act declaring the existence of the testamentary power among all Hindus and extending the provisions of the Hindu Wills Act, 1870, to the whole of the Presidency.

In reply the Government of India stated that it had no objection to the course proposed so far as it related to the West Coast only.

Accordingly this Government suggested to the Hon'ble Sankaran Nayar that provisions on the subject of testamentary succession should appear in the revised draft of the Malabar Marriage Bill; but, on reconsideration, His Excellency the Governor in Council came to the conclusion that the matter could be most suitably dealt with by means of a separate enactment.

The present draft Bill has accordingly been prepared with the object of conferring upon the followers of the Marumakkatayam and Aliyasantana laws the privilege which they appear to generally desire.

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This Bill declares the power of persons following the law of nepotism to devise by will property which they can deal with by gifts *inter vivos*. The history of the proposed measure is, briefly, as follows:—

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Gobt. of {1895} Madras.  
LEGISLATIVE.

Issued

Recd.

Encl.

G.O., 25th February 1895, No. 15.

FEBRUARY.

A Bill to confer upon persons following the Marumukkatayam and Aliyasantana Law of Inheritance testamentary power over their separate and self-acquired property.

Forwarding, for remarks, to the Honorable the Judges of the High Court, the Advocate-General and the Hon'ble C. Sankaran Nayar the draft of —

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LEGISLATIVE DEPARTMENT.

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ABSTRACT.—Returning, with remarks, to the Hon'ble C. Sankaran Nayar the draft Malabar Marriage Bill for revision, and requesting the Advocate-General to draft a Bill (1) declaring the right of persons who follow the Marumakkatayam and Aliyasantana laws to dispose by will of such property as they are able to transfer by means of gifts *inter vivos* and (2) extending the provisions of Hindu Wills Act, 1870, to the wills made by such persons.

READ—also the following paper:—

From the Government Solicitor, dated 4th February 1895, No. 52.

ABSTRACT.—Forwarding a Bill to confer upon persons in the Presidency of Madras who are governed by the Marumakkatayam or the Aliyasantana law of inheritance testamentary power over their separate and self-acquired property.

ORDER—dated 25th February 1895, No. 15, Legislative.

The draft prepared by the Advocate-General needs certain slight amendments which have been carried out in the Bill forming the appendix to this Proceedings. A statement of objects and reasons has also been prepared. It appears advisable, however, that, before any further steps are taken, the opinions of the Honorable the Judges of the High Court should be obtained and they will, accordingly, be requested to favour Government with their views at an early date.

2. As revised by Government, the Bill applies to Muhammadans (Moplahs) as well as Hindus and the Honorable the Judges and the Advocate-General will be requested to consider whether Act XXI of 1870 can be applied (as provided in the Bill) without modifications; their attention will be invited to the remarks in paragraph 7 of Mr. Lyall's letter read in G.O., dated 1st March 1894, No. 42, Legislative.

3. The papers will also be communicated to the Hon'ble C. Sankaran Nayar for any remarks which he may have to offer.

(True Extract.)

A. BUTTERWORTH,  
*Under Secretary.*

To the Hon'ble the Chief Justice, with C.L., } with copies of G.O., dated 1st March 1894,  
" Government Solicitor, } No. 42, Legislative.  
" Hon'ble C. Sankaran Nayar.

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[Appendix.]

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- (1) This Act extends to the whole of the Presidency of Madras.
- (2) On and after the commencement of this Act, it shall be lawful for every person in the Presidency of Madras who is (a) governed by the Marumakkatáyam or Aliyasantána Law of Inheritance, (b) of sound mind and (c) not a minor to dispose of his separate and self-acquired property by will.
- (3) The provisions of the Hindu Wills Act, 1870, shall apply to all Wills and codicils made under the power hereby conferred.

### STATEMENT OF OBJECTS AND REASONS.

This Bill declares the power of persons following the law of nepotism to devise by will property which they can deal with by gifts *inter vivos*. The history of the proposed measure is, briefly, as follows :—

In 1881 Mr. Logan, then Collector of Malabar, was placed on special duty to enquire into the condition of the agricultural classes of Malabar. In paragraphs 483-486 of his report he touched on succession to property, remarking that, as the law stands, the self-acquisitions of a follower of the Marumakkatáyam law devolve, on his death, on the tarawád and expressing the opinion that the power of regulating by will the succession to self-acquired property should be conferred upon all adults.

In 1884 Mr. Logan's report was referred for consideration to a Committee. That body incorporated its views in four Bills, of which one dealt with the subject of marriage in Malabar and contained provisions conferring the testamentary right. These provisions were to the effect that, when a marriage had been contracted in accordance with the terms of the Malabar Marriage Act—

- (1) the parties should have power to dispose of their self-acquisitions by will, subject to the condition that due provision was made by the husband for his widow and children;
- (2) property so devised should be treated as the self-acquired property of the devisee;
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This Bill was referred to the High Court for opinion and was favorably received by that authority.

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Doubt having been felt whether the Hon'ble Sankaran Nayar's Bill did not require the prior sanction of the Governor-General, the question was referred to the Government of India and that authority directed that further information as to the matrimonial customs of Malabar should be obtained.

Accordingly a Commission was appointed to consider the matter in 1891 and, in paragraph 84 of their report, the Commissioners stated that they and practically all educated people following the Marumakkatáyam law were agreed as to the advisability of conferring testamentary power as proposed.

In reporting on the subject to the Government of India, this Government expressed concurrence with the views of the Commissioners but added that the privilege sought should not be restricted to persons who contract marriages under the proposed marriage law and that the best

way of dealing with the matter would probably be to pass a separate Act declaring the existence of the testamentary power among all Hindus and extending the provisions of the Hindu Wills Act, 1870, to the whole of the Presidency.

In reply the Government of India stated that it had no objection to the course proposed so far as it related to the West Coast only.]

Accordingly this Government suggested to the Hon'ble Sankaran Nayar that provisions on the subject of testamentary succession should appear in the revised draft of the Malabar Marriage Bill; but, on reconsideration, His Excellency the Governor in Council came to the conclusion that the matter could be most suitably dealt with by means of a separate enactment.

The present draft Bill has accordingly been prepared with the object of conferring upon the followers of the Marumakkatáyam and Aliyasantána laws the privilege which they appear to generally desire.

Gobt. of {1895} Madras.  
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READ AND ORDER OF GOVERNMENT, DATED  
18 No.

BACK PAPER, No.

OF 13

FURTHER PAPER, No.

OF 13

ENCLOSURE

CURRENT No.

STATEMENT WITH DITTO.

ORDER, &c., OF GOVERNMENT—A.

PAPERS KEPT OUT OF FILE FOR DESPATCH IN ORIGINAL  
(not pagged).

NUMBER OF COPIES  
REQUIRED. { Order complete.  
Letter only.  
Order complete with Letter.

N.B.—

A = Print in full.  
B = Not to be printed.  
P = Print abstract only.  
Q = Print heading only.  
R = Print, but not for monthly volume.

ORDINARY, PRINTED.

Legislative DEPARTMENT.

G.O. DATED 25<sup>th</sup> February/95

No. 15

INDEXED.

First copy sent to Press. 25/2

Returned for signature. 2/3/95

Despatched in print. 2/3/95

[Despatch Abstract.]

*A Bill to confer upon persons follow-  
ing the Marumakkattayam and  
Miyasattana law of inheritance  
testamentary power over their  
separate and self-acquired property.  
Forwarding for remarks to the  
Honble the Judges of the  
High Court, the Advocate General  
and the Honble C Sankaran Nayar.  
The Draft of —*

First copy sent to Press.

Returned for signature.

Despatched in print.

LEAD AGAIN G.O. No.  
132

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

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