

Govt of Ant steam
Legislative Dept.

(No 4)

Papers

Relative to

I will give thee to amend
the Madras Rent Recovery
Act ~~that~~ of 1865.

[Communicated to the Select Committee].

Legislative (1897). Department.

ORDINARY PRINTED.

G.O., No. 22

DATED 5. 3. 97

[Despatch Abstract.]

Malabar Testamentary Bill

long to the ~~Honble V B Sastri~~ Select Committee on the
by ~~Advocate General, member in charge of the~~
_____, despatch from Her Majesty's
Secretary of State for India containing
certain suggestions with reference to
the provisions of the bill.

Go. 21 Septe & 4 March 1897.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government (1897) of Madras. LEGISLATIVE.

Recd.

Regd.

1897.

Enclosures

Spare copies

G.O., No. 22, 5th March 1897.

MARCH.

Malabar Testamentary Bill.

Communicating to the Select Committee on the — despatch from Her Majesty's Secretary of State for India containing certain suggestions with reference to the provisions of the Bill.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper :—

Despatch from the Right Hon'ble Lord GEORGE HAMILTON, Her Majesty's Secretary of State for India, to His Excellency the Honourable the Governor in Council, Fort St. George, dated India Office, London, 24th December 1896, No. 1, Legislative.

I forward, for the information of your Excellency in Council, a copy of a despatch which I have this day addressed to the Government of India in regard to a Bill pending before your Excellency's Council for making Laws and Regulations.

ENCLOSURE.

Despatch from the Right Hon'ble Lord GEORGE HAMILTON, Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the Governor-General of India in Council, dated India Office, London, 24th December 1896, No. 48, Legislative.

Having considered in Council the revised Bill to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana Law of Inheritance, submitted with your Government's Legislative letter, No. 43, of the 28th October last, I desire that the following observations may be brought to the notice of the Government of Madras.

2. The second section is to have effect from the date upon which the Act shall come into force, but nothing is said as to the date from which the first section is to operate. It is possibly intended to be a merely declaratory enactment and retrospective, but, whatever may be the intention, it ought to be clearly expressed.

3. The second section speaks of "every testator," which would cover every will made in the Madras Presidency, whereas the Bill is not intended to apply to any persons but those of a special and limited class. Subsequent sections also contain the same word or speak of "wills" in equally general language. It is necessary therefore to introduce, at the beginning of the Bill, a clause of the usual kind, defining its application as limited to persons of the special class.

ORDER—No. 22, Legislative, dated 5th March 1897.

The despatch from Her Majesty's Secretary of State for India will be communicated to the Select Committee on the Bill to declare the testamentary powers of persons following the Marumakkatayam or the Aliyasantana Law of Inheritance.

(True Extract.)

Secretary to Government.

To the Hon'ble the Acting Advocate-General,
in charge of the Malabar Testamentary Bill.

Exd. C. M. Thumbarwamy.

Legislative (1897) Department.

CURRENT No. 57

Telegram

From

The Govt. of India

Legislative Dept.

Order No 22 Legv 5 March 1897
P.S.

Communicated

No. E

The despatch from Her Majesty's Secretary of State for India will be communicated to the Select Committee on the Bill to declare the testamentary powers of persons following the Marumakkatayam or the Aliyasantana Law of Inheritance.

Dated	3	} 3-97
Received	4	
Registered	4	
Enclosures	—	
Spare copies	—	

SUBJECT.

Reporting that the Govt of India does not propose to offer any remarks upon the despatch from the Secy of State re the Malabar Testamentary Bill.

To the Hon. Secy to the Govt of India in charge of the Malabar Testamentary Bill
V. Ashwameeswari, C. R. Divan, Secy to the Govt of India
Note.

Please see notes on C no. 18 below.

The Govt of India does not propose to offer any remarks upon the despatch from the Secy.

C.R.
1897.

Copies with paper docket
furnished to other members
of the Select Committee 11/3/97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

11788
CURRENT No. 57
INDIAN TELEGRAPHS. Monthly Number.

Code Class. *LS*
To *Madras*
From *Calcutta*
Words *39-3-3* Day *17* Hour *24* Minute *24*
To *Madras*
From *Legislative*
CHIEF SECRETARY
GOVERNMENT OF MADRAS
4 MAR. 1897

64 Word Form.
your telegram 130 of
second instant government
of India do not
propose offering remarks
upon secretary of states
despatch at this stage
the criticisms therein
are for consideration
of madras government
in first instance

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MADRAS 3-3-97
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Legislative (1897) Department.

CURRENT No. 18

From

The India office

For Orders.

In this current the Secretary of State
forward for information copy of a despatch
addressed to the Govt of India on the subject
of the revised Malabar Testamentary Bill,
forwarded to him the necessary correspondence
as stated in para 2 of Mr Carnuff's letter
No. 2112 of 22.10.96, recorded in G.O. 77 Lepre.
5.11.96.

The Secretary of State suggests two amendments in
the Bill - viz -

(1) Nothing is said as to the date from which
the first section is to take effect, the second
section is to take effect from the date on which
the Act shall come into force, & the intention as
to this point should be clearly expressed.
As to this it may be pointed out that the
intention is as the Secretary of State says that
the enactment should be a merely declaratory
one & retrospective, as will be seen from the
last para of the Statement of Objects and
Reasons

No. /

Dated 24-12-96

Received 11-1-97

Registered 16-1-97

Enclosures - 1

Spare copies -

SUBJECT.

Forwarding copy of
despatch addressed to the
Govt. of India re the
Bill to declare the
testamentary power of
persons governed by the
Mabarumakattayam or the
Malyalam law of
inheritance.

BACK PAPERS.

G.O.	No.	Department.	Date.
	77	Leg	5/1/96.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

reasons attached to the Bill. This being so, the necessary amendments will have to be made in the Bill in view of the Secretary of State's remark, that "whatever may be the intention, it ought to be clearly expressed."

(2) "As the Bill is intended to apply ^{only} to persons of a special and limited class, it is necessary to insert at the beginning ^{the usual} a restrictive clause defining its application." in view of the general language employed in the Second & Subsequent sections "

with regard to this suggestion, it is submitted that the Malabar Marriage Act IV of 1896, Section 1, contains the clause of the usual kind referred to, + a similar Section with the word ^(Malabar) Testamentary Powers Act, 1897, substituted for the word 'Malabar Marriage Act, 1896,' will be sufficient.

The Govt. of India, has however not yet formally communicated the above despatch to this Govt. with their remarks, and when ^{Govt. of India's letter} this is received the correspondence may be referred to the Advocate-General for remarks, or communicated to the Select Committee on the Bill with the observations of this Govt. thereupon, + orders are therefore solicited as to whether this current may be over till then.

15/1/97 H.E. When the Govt. of India letter received the papers will be communicated to the Comtee already appointed at the meeting of Council on 9th Dec., where the amendments to give effect to the omissions indicated by the Govt. can be considered.

Enclosure

258

India Office,
London, 24th December 1896.

Legislative,
No. 48.

To His Excellency The Right Honourable The Governor General of India in Council.

MY LORD,

Bill to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana Law of Inheritance.

Having considered in Council the revised Bill to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana Law of Inheritance, submitted with your Government's Legislative Letter, No. 43, of the 28th October last, I desire that the following observations may be brought to the notice of the Government of Madras.

2. The second section is to have effect from the date upon which the Act shall come into force, but nothing is said as to the date from which the first section is to operate. It is possibly intended to be a merely declaratory enactment and retrospective, but whatever may be the intention it ought to be clearly expressed.

3. The second section speaks of "every testator," which would cover every will made in the Madras Presidency, whereas the Bill is not intended to apply to any persons but those of a special and limited class. Subsequent sections also contain the same word or speak of "wills" in equally general language. It is necessary therefore to introduce, at the beginning of the Bill, a clause of the usual kind, defining its application as limited to persons of the special class.

I have the honour to be,

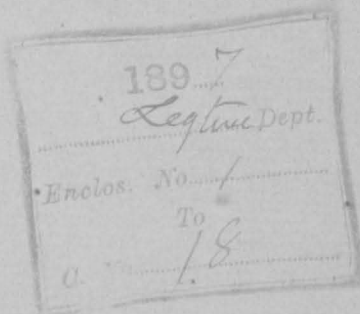
My Lord,

Your Lordship's most obedient humble Servant,

(Signed) GEORGE HAMILTON.

No 10.

Copy Legislative
Despatch to the Govt
of India No 48 Dated
24th Dec. 1896.



Received in Madras
Legislative Despatch
No 1 Dated 24th Dec. 1896.

CURRENT No. 18

18.

1317.

INDIA OFFICE,

LONDON. 24th DECEMBER 1896.

LEGISLATIVE,

No. 1.

TO HIS EXCELLENCY THE HONOURABLE THE GOVERNOR
IN COUNCIL FORT ST. GEORGE.

Sir,

I forward, for the information of
Your Excellency in Council, a copy of a
despatch which I have this day addressed
to the Government of India in regard to a
Bill pending before Your Excellency's
Council for making Laws and Regulations.

I have the honour to be,

Sir,

Your most obedient humble Servant,

George Hamilton



Bill to be introduced into the Council of the Governor of Fort St. George
for making Laws and Regulations.

The following Bill, together with the Statement of Objects and Reasons accompanying it, is published for general information under Rule 33 of the Rules for the conduct of business at Meetings of the Council of the Governor of Fort St. George for making Laws and Regulations:—

No. 5 of 1896.

A Bill to declare the testamentary powers of persons governed by the Marumakkatayam, or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

WHEREAS doubts have arisen regarding the powers of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance to dispose of their separate or self-acquired property by will; and whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons; It is hereby enacted as follows:—

1. Every person in the Presidency of Madras who is governed by the Marumakkatayam or the Aliyasantana law of inheritance and who is (a) of sound mind and (b) not a minor is competent to dispose of his separate or self-acquired property by will.

2. From the date upon which this Act shall come into force, every testator must execute his will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed, that

it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

3. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

4. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

5. No will or codicil, nor any part thereof, shall be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to

be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

6. No obliteration, interlineation or other alteration made in any will after the execution thereof, shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to

such alteration, and written at the end or some other part of the will.

7. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

8. Nothing contained in sections 2 to 7 (inclusive) shall apply to wills made under this Act by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea.

STATEMENT OF OBJECTS AND REASONS.

This Bill declares the powers 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 tarwad, 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 favourably 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 Legislative Council 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 powers 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 most suitably be dealt with by a separate enactment.

The Hon'ble the Judges of the High Court and the Hon'ble the Advocate-General were consulted as to the form which such an enactment should take, and after a consideration of their opinions the Government came to the conclusion that it was inadvisable to extend the provisions of the Hindu Wills Act, 1870, to the district of Malabar; because that Act has obviously been framed for communities having a legal form of marriage and would be difficult to apply in the case of classes governed by the Marumakkatayam or the Aliasantana Law of Inheritance.

A Bill was accordingly drafted on the lines recommended by Mr. Justice Parker, and introduced into the Council on the 8th April 1896.

His Lordship the Secretary of State to whom the Bill and connected papers were submitted in due course suggested that the expediency of recognising nuncupative wills or any wills made without some such simple formalities as are prescribed by section 56 of the Indian Succession Act should be considered, and expressed the opinion that, whenever it is proposed to concede, or place beyond doubt, the power of testamentary disposition, it is but reasonable to enact that all testaments shall be in writing and duly attested.

To give effect to the suggestion made, it has been found expedient to redraft the Bill, and to incorporate therein rules relating to the revocation of wills which seem no less necessary than rules prescribing the formalities of execution and attestation. It will be seen from the provisions of the Bill in its present form that they have been taken almost *verbatim* from the Indian Succession Act, the sections which have been copied being 50, 51, 55, 57, 58 and 60, which correspond to sections 2 to 7 of the Bill. Section 8 of the Bill has been inserted with a view to secure to soldiers and sailors belonging to the Marumakkatayam or the Aliasantana community similar privileges in regard to the execution of oral wills to those which are enjoyed by members of other communities who follow these callings. It has not been thought necessary to import into the Bill special provisions regarding privileged wills, such as are contained in sections 52 and 53 of the Act.

This Bill, like the one previously introduced, does not purport to confer the privilege of testation on persons following the Marumakkatayam or the Aliasantana Law of Inheritance in view of the fact that the ruling of the High Court in ** Alami v. Komu* goes to show that wills have occasionally been made in Malabar

** I.L.R. XII Madras, p. 126.*

in regard to self-acquired property. It is therefore essential that the Bill as revised should also be merely declaratory in form, as otherwise it might be construed so as to throw doubts on the validity of wills made prior to its passing. Practically speaking, it will, however, confer upon persons following the Marumakkatayam or the Aliasantana Law of Inheritance the privilege of testation which they desire inasmuch as their general impression is that they have no testamentary power over their separate or self-acquired property and this belief almost universally prevents the execution of wills.

(By order.)

LIONEL DAVIDSON,
Secretary to the Council.

CURRENT No. 57
Legislative

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The 3rd March 1897.

SERVICE TELEGRAM.

File this in the
S.O. 22 Leg
5.3.97

13/3/97

FROM Calcutta.

FROM LEGISLATIVE



TO Madras

TO Madras.

Your telegram 130 of second instant. Government of India do not propose offering remarks upon Secretary of State's despatch at this stage. The criticisms therein are for consideration of Madras Government in first instance.

sd/ A. Wilson,
Registrar,
Legislative Department.

No. 474

Copy forwarded by post.

A. Wilson
Registrar,
Legislative Department.

Recd 72 3 97.
Regd 81

copy sent to Press. 5/3/97.

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Despatched in print.

MADE 1911 G.O. No. 192

DATED

PRESENT No. 18 — a

ENCLOSURES TO C. No. 18 — a

ORDER OF GOVERNMENT — a

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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