

Legislative (1899) Department.

ORDINARY MS.

G.O., No. 112

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[Despatch Abstract.]

Recording memorandum from the
judicial dept forwarding a collection
of papers to be furnished to the
members of the Legislative Council
on the subject of the Bill
to amend the Madras Coffee-Stealing
Prevention Act, 1878.

T. J. J.

BACK PAPERS.

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

FURTHER PAPERS.

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

Legislative (1899) Department.

CURRENT No. 411

From The Judicial dep

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Memo. No 2600

Dated 14-10-99

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Enclosures

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SUBJECT.

Forwarding a collection of the papers that have been furnished to the Honble Member of the Legislative Council on the subject of the Bill to amend the Madras Coffee Stealing Prevention Act.

Note. The collection of papers now forwarded by the Judicial Dept. will be numbered as paper No. 1 relating to the Bill & furnished to members of the Legislative Council.

BACK PAPERS.

G.O.	No.	Department.	Date.
	90	Leg	2nd Aug 11

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EXTRACT from the REPORT of the SOUTH of INDIA PLANTERS' ENQUIRY COMMITTEE.

149. The last subject into which the committee have to enquire is (as regards the prevention of coffee-stealing) whether the conditions under which coffee is produced and brought to market are such as to render it desirable (1) to extend to 'parchment' and 'cherry-dried' coffee the legislative provisions now applying by section 9 of Madras Act VIII of 1878 to 'green-gathered' coffee; and (2) to amend that section by substituting the word 'person' for the words 'coolly, maistry or other labourer employed on a coffee estate.' Before proceeding to consider the views expressed by the planters and other witnesses examined by the committee on these amendments, and the evidence adduced in support of them, it may not be out of place to state briefly the circumstances under which the Act was passed and its history from that date up to the present.

150. In the latter part of 1874, the Wynaad and North Wynaad Planters' Associations presented addresses to Lord Hobart, the then Governor of Madras, chiefly on the subject of the appointment of an additional European Magistrate in the Wynaad, but they mentioned incidentally that the crime of coffee-stealing was 'increasing terribly' and prayed that a special law might be passed to cope with it similar to the Ceylon Ordinance on the subject, as the existing law was inadequate. The Madras Government in G.O., No. 35, Judicial, dated 7th January 1875, stated that the planters were in error in supposing that a Coffee-stealing Ordinance had passed the Ceylon Legislature, but admitted that there was a Bill on the subject before the Council at Colombo. If this was passed and proved satisfactory, the planters were permitted to again address Government on the point, but till then the Government was averse to entertaining a project for legislating in that direction. The proposal then appears to have been shelved for about two years.

151. At a conference of coffee planters, representing nearly the whole planting industry of Southern India, held at Manantoddy in the Malabar district in the beginning of 1877, the subject was re-opened and a resolution was passed to the effect that, "considering the prevalence of coffee-stealing and the inadequacy of the existing laws to check or suppress it, the Government be solicited to pass an Act similar to the Ceylon Act entitled 'an Ordinance to check Coffee-stealing'" (Ceylon Ordinance 8 of 1874). In addressing Government in support of this proposition, the Honorary Secretaries of the Wynaad and North Wynaad Planting Associations (Messrs. J. W. Ditmas and H. B. Winterbotham) made the following remarks:—

"There can be no doubt that coffee-stealing in Wynaad is assuming very large proportions. Situated as are the estates with a jungle boundary of miles, it is clearly impossible to guard ourselves from direct robbery from the trees at night, and a great deal doubtless is lost in this way. The value of our staple is so great compared with its bulk that a small quantity easily concealed about the person of a labourer during the day, and taken off at night to the nearest bazaar, will make a coolly comparatively rich during the season. The temptation to this kind of robbery is very strong, and the light sentences passed by the district courts on the few offenders who have been caught have greatly increased the practice.

"We have strong grounds for believing that almost every way-side bazaar or arrack shop-keeper is now a receiver of coffee stolen in this way, and towards the end of the season carts may be seen openly loading up with coffee (pounded out clean, so as to escape any chance of identification) from these way-side places, where a few dozen coffee trees are grown as an excuse in case of enquiry. And not only is the European's estate plundered by night and day, and the native population demoralised by the ease and impunity with which such robbery can be effected, but a system of stealing, changing, and mixing with rubbish the estate produce in

transport to the curing houses on the coast is now being carried out on a large scale by the cartmen and their connexions on the line of road in the low country. Owing to the difficulty of identifying any particular sample of coffee, it is almost impossible to obtain satisfaction in these cases, and unless the parties found in possession of coffee can be called on to prove that it was honestly obtained, we greatly fear our industry will be seriously crippled. With a fair up a stolen coffee-receiving establishment, there is even greater need than in Ceylon of special protection of the description which has been found to work so satisfactorily in that colony.

"The Government of Madras in G.O., No. 35 of 1875 (before referred to) promised to favourably consider this matter 'if the Ceylon Ordinance to check coffee-stealing was found to trial time had expired, but it was declared absolutely necessary for the protection of the coffee industry.' This is so far the case that not only was the Ordinance re-enacted when its industry."

In support of the latter statement, an extract from a speech made by Sir William Gregory on leaving Ceylon was quoted, in which he testified to the necessity for and efficacy of the Ordinance. Mr. Logan, who was then Collector of Malabar, in forwarding the planters' petition, supported very strongly the proposal thus made. He stated that coffee-stealing was the regular occupation of certain classes, and that the law in its then state could not deal effectually with the matter.

152. On the strength of these representations the Madras Government obtained from Ceylon copies of the Ordinance then in force and a Bill was drafted, which the Collector of Malabar and the Planting Associations most concerned were invited to criticize. The main provisions of the Bill as originally drafted were as follow: Within certain localities to be notified it was to be declared unlawful for any person to deal in coffee without a license from a Magistrate, who could refuse to grant one if he was not satisfied that the applicant was a fit and proper person to be so licensed; every licensed dealer was to be bound to keep books and accounts, showing details of every transaction in coffee made by him. Breaches of these provisions were made penal. Penalties were attached also to—

- (1) the dealing in coffee by any person other than a licensed dealer;
- (2) the selling or bartering coffee to any person other than a dealer;
- (3) the buying of green coffee from any other person than a licensed dealer or owner of a coffee estate or some person duly authorized in writing to act for him;
- (4) the possession of green coffee by a labourer employed on a coffee estate, who fails to account satisfactorily for such possession;
- (5) the removal of coffee from any premises without the express permission in writing of the owner or his authorized agent; such permission to specify the quantity, number, description and marks of the packages, date of removal, destination and names of consignor and consignee; and
- (6) the gathering, removal, or loading and unloading of coffee on any estate between sunset and sunrise.

It was provided that flogging should be awardable on second conviction for certain of the offences above specified; saving clauses were inserted to exempt from the operation of the Act the purchase of coffee for purely private or domestic consumption from a licensed dealer, and the receiving, carrying or delivering of coffee by or to any officer or servant of a Railway Company in the course of his employment as such.

These provisions were much wider than those contained in the Ceylon Ordinance and as will be seen later on, the Select Committee to whom the Bill was entrusted finally recommended that the Act for Madras should practically be in the same form as that for Ceylon.

There was considerable difference of opinion as to the suitability of the system of licenses proposed in the Bill as a means of stopping the offence of coffee-stealing. The Planting Associations were in favour of it, and wished that the fee to be charged for each license should be sufficiently heavy to prevent the cultivation of small

patches by persons who would thus become entitled to licenses and would "take advantage of any defect in the Act on the working of it by the police which might hereafter appear." But, as Mr. Logan pointed out, there were in the Malabar district hundreds of small cultivators whom such a provision would compel to throw up their lands, which would be both unjust and impolitic.

153. With reference to the section * now under discussion, the Associations considered that the word 'green' should be altogether omitted. "The coffee berry, as taken from the tree, may be red, black or green, and after having been dried is of a grey colour, and coffee is stolen by estate coolies and other natives of the neighbourhood in every state and condition—'parchment,' 'tails,' 'cherry-dried' or 'clean.'" It may safely be assumed, they said, that whenever coffee of any description is found on estate coolies or any other persons who cannot satisfactorily account for it, such has been taken for dishonest purposes.

The planters' criticism of section 9. The section read as follows:—
"Any cooly, maistry or other labourer employed on a coffee estate found with green coffee in his possession and failing to account satisfactorily for such possession shall be liable, on conviction by a Magistrate, to a penalty not exceeding Rs. 500."

It was proposed further that, to protect coffee in transit, a provision should be made, that on proof of short delivery at the curing works, or that the quality of coffee received did not agree with the sample sent, the carrier may be taken to the nearest Magistrate and compelled to pay the value of the amount short delivered, or tampered with, together with a fine of at least equal amount. Mr. Logan considered the omission of the word "green" in section 9 to be necessary and was in favour of adopting the addition suggested by the Association and described above. In reference to the preamble to the Bill, he proposed to omit the words "in the neighbourhood of coffee plantations or estates" on the ground that the Act, if it was to be of any use, "would have to take effect in all but one of the taluks of the district and in places 50 miles from the nearest estate." The worst receivers, he alleged, were located in the towns on the coast.

Other criticisms and suggestions were offered, but it is unnecessary to do more than refer to them, as they in no way affect the matter now under consideration.

154. After considering the views of the Collector of Malabar and the Planting Associations, and consulting with the Executive Government, the Select Committee arrived at the decision that the "special protection which the coffee-planting industry might fairly demand could not properly extend beyond the crop on the ground and the harvested crop in transit through the coffee-growing districts." They were unable to see any reason why, after the crop had been garnered or had reached the regions of regular trade, coffee should be given greater protection than any other product of the soil. The provisions as to licensing were therefore omitted, and the provisions of the Ceylon Ordinance substituted, prohibiting the receiving of coffee from any labourer on an estate, and regulating the purchase of coffee from any other person, specially providing for purchase from carriers. The provision in the original Bill making penal the possession of "green" coffee by any labourer employed on an estate was retained with a slight alteration, viz., "green" was altered into "green-gathered."

155. The Select Committee's report and Bill were taken into consideration at a meeting of the Council of Fort St. George on 16th August 1878, the Hon'ble Mr. W. Hudleston being in charge. A few alterations, not affecting section 9 as drawn up by the Select Committee and as it now stands, were made and the Bill was then passed. The Act received the assent of the Governor-General, which was communicated to the Madras Government in letter No. 1269, dated Simla, 3rd October 1878, from the Secretary to the Government of India, Legislative Department, to the Assistant Secretary to the Government of Madras, Legislative department.

G.O., No. 168, Legislative, 18th October 1878.

156. The Act was at first extended

The Act first extended to the Nilgiris and the Wynaad portion of Malabar. The Wynaad Planters' request for an extension of the Act to the whole of Malabar refused by the Madras Government in 1878.

* G.O., No. 2119, Judicial, 13th October 1878.

† G.O., No. 2288, Judicial, 12th November 1878.

the proposal, stating that they were prepared to extend the Act wherever special facilities might exist for tampering with the produce and beyond the owners' power of protection, but not elsewhere.

The Collector of Malabar reported that he agreed entirely with the Wynaad planters. The distances over which the

G.O., No. 2587, Judicial, 21st December 1878.

tions in one day. Wherever they halted at nights, Moplah receivers made a practice of levying small quantities of coffee; a process known as 'sweating' was resorted to by which the bulk of the coffee left in the bags from which coffee had been abstracted was increased so as to make it up to the original bulk. Besides these Moplah receivers, there were on the coast a number of dealers who were not particular whence the coffee, which they were in the habit of buying, came, and the law in the state in which it then was, was powerless to touch such persons.

The Madras Government, however, were unable to accept the proposal and held that what the Collector described was ordinary theft which might occur similarly to all goods in transit, and for which the ordinary law and the precautions taken by owners themselves must and should suffice.

157. The question was again raised in January 1879 by Messrs. Parry & Co. of Madras. They stated that when the

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Malabar, but that since they had discovered that this was not the case, they had

‡ G.O., No. 133, Judicial, 22nd January 1879.

& Co. to the reply they had given to the Wynaad Association. Messrs. Parry & Co.,

§ G.O., No. 171, Judicial, 29th January 1879.

while the coffee was in transit from the ghâts to the coast; while in the coffee-growing districts, the carrier was constantly liable to supervision by Europeans, but not so once he had descended the ghâts. This letter was recorded by the Madras Government with the observation that nothing in the statement now made took the case out of the category of ordinary theft.

158. The Wynaad Planters' Association in January 1879 made another attempt

Petition to the Government of India by the Wynaad Planters' Association and order thereon resulting in the Madras Government's calling for a report from the Malabar Collector on the working of the Act.

|| G.O., No. 233, Judicial, 5th February 1879.

¶ G.O., No. 1371, Judicial, 11th June 1879.

the special protection granted by the Act up to the foot of the ghâts was from that point suddenly withdrawn, was only calculated to foster a feeling of security among

to the Nilgiri district and the Wynaad portion of Malabar.* In November 1878

the Wynaad Planters' Association† expressed to Government their regret that the Act had not been extended to the whole of Malabar, and asked that as the estate produce was still unprotected between the ghâts and the coast, the Act might be extended accordingly. Thereon the Madras Government directed the Collector of Malabar to report on the

proposal, stating that they were prepared to extend the Act wherever special facilities might exist for tampering with the produce and beyond the owners' power of

protection, but not elsewhere.

The Collector of Malabar reported that he agreed entirely with the Wynaad planters. The distances over which the

coffee had to be conveyed were so great that carts could not reach their destinations in one day. Wherever they halted at nights, Moplah receivers made a practice

of levying small quantities of coffee; a process known as 'sweating' was resorted to by which the bulk of the coffee left in the bags from which coffee had been abstracted was increased so as to make it up to the original bulk. Besides these Moplah receivers, there were on the coast a number of dealers who were not particular whence the coffee, which they were in the habit of buying, came, and the law in the state in which it then was, was powerless to touch such persons.

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Act was first introduced into the Wynaad, the native receivers had imagined that its operation extended to the whole of

Malabar, but that since they had discovered that this was not the case, they had

returned to their systematic robberies with increased confidence. The Madras

Government‡ referred Messrs. Parry & Co. to the reply they had given to the

Wynaad Association. Messrs. Parry & Co., in reply, pointed out§ that, if special

facilities existed for tampering with coffee in any place more than another, it was

while the coffee was in transit from the ghâts to the coast; while in the coffee-growing districts, the carrier was constantly liable to supervision by Europeans, but

not so once he had descended the ghâts. This letter was recorded by the Madras Government with the observation that nothing in the statement now made took the

case out of the category of ordinary theft.

158. The Wynaad Planters' Association in January 1879 made another attempt

to have the Act extended to the low country in Malabar, but the Madras

Government|| again referred them to the answers already given. The Association

then informed¶ the Madras Government of its intention to address the Govern-

ment of India which it did in a petition, dated 26th June 1879. In this petition,

after recapitulating the facts stated above, it was pointed out that the mere fact that

the low-country thieves and bazaarmen and thereby embolden them in their operations, and that the ordinary law in the opinion of the Police authorities of Malabar

* G.O., No. 1583, Judicial, 5th July 1879, pp. 4 and 5.

they had already informed the Association that they saw no necessity for further extension of the Act. In replying to the

† G.O., No. 3193, Judicial, 16th December 1879, page 3.

further year's working, the Collector of Malabar still thought the extension of the Act necessary, the decision of Government conveyed in G.O., No. 2587 of 21st

December 1878, might perhaps be reconsidered. Accordingly, the Madras Govern-

ment directed the Collector of Malabar to report after the expiry of one year on the working of Act VIII of 1878.

Report of the Collector supporting the request for the extension of the Act.

‡ G.O., No. 1982, Judicial, 16th August 1880.

"5. There is a consensus of opinion among the officers of the district that the Act in its

restricted application to Wynaad only has been of little practical advantage. Its object is to pre-

vent coffee stealing, and stealing and wetting the coffee to make bulk occur where the Act is not

in force. The operation of the Act was simply to pass the bulk of the coffee crop down one or

other of the three main outlets to the coast under cover of a pass. Between the heads of the

ghâts where the constables were stationed and the coast there was, of course, no special check

of any kind, except as against ordinary crime. The result was, as the agents at Calicut and

other places can abundantly testify to, that an enormous quantity of coffee was tampered with

before reaching its destination, and not so much its quantity diminished as its quality destroyed.

For mere short deliveries, the contractors are held liable; but the planters have no practical

remedy for the market value of their crop having been so seriously affected. No matter what

precautions the planters take to see that their coffee is carefully packed and despatched in the

most favourable weather, their agents, as a rule, characterize the consignments on arriving at

the coast as 'musty,' 'discolored,' 'damp,' 'not equal to sample,' &c., &c., all owing to its

having been doctored or tampered with on the road between Wynaad and the Coast."

Mr. McWatters asserted that a host of receivers of stolen coffee was springing

up on the main line of road whom the ordinary law was powerless to touch. Only

five cases out of probably hundreds had been detected during the year. Out of the

36 cases actually tried under the Act, not one had been under section 9.

The Government took the opinions of the Advocate-General and the Inspector-

General of Police on the Collector's

was insufficient to meet the requirements of the case. The Government of Madras*

in forwarding this petition said that they had already informed the Association that they saw no necessity for further

extension of the Act. In replying to the Madras Government on this petition, the

Government of India† remarked that a strong case had been made out for the

extension of the Act and that if, after a further year's working, the Collector of Malabar still thought the extension of the

Act necessary, the decision of Government conveyed in G.O., No. 2587 of 21st

December 1878, might perhaps be reconsidered. Accordingly, the Madras Govern-

ment directed the Collector of Malabar to report after the expiry of one year on the

working of Act VIII of 1878.

159. A report‡ was submitted in July 1880 by Mr. McWatters, then

Collector of Malabar, in accordance with the order of the Madras Government

above referred to. The portion of his report specially important is quoted in

extenso.

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the coast as 'musty,' 'discolored,' 'damp,' 'not equal to sample,' &c., &c., all owing to its

having been doctored or tampered with on the road between Wynaad and the Coast."

Mr. McWatters asserted that a host of receivers of stolen coffee was springing

was carried on between native dealers and bandymen at these places. He urged the advisability of extending the Act to the districts between the Wynaad and the Coast.

The Government observed that the state of things described by Mr. Grant was not creditable to the local authorities and desired the District Officers concerned to show better results in future.

161. In view of the repeated refusal of Government to extend the operation of the Act, the Malabar Collector reported * in January 1881 that, if the offence of coffee stealing was to be suppressed at all under the ordinary law, the efficiency of the police supervision in the parts not covered by the Act must be increased and that by an increase in the police force, involving an additional annual expenditure of over Rs. 14,000 at least. When the matter was thus stated, the Government of Madras appears to have thought it advisable to reconsider the decisions it had passed and adhered to since the commencement of 1879; it was decided to extend the Act to the roads leading from the Wynaad to the Coast. As however the Collector pointed out that there were many bye-paths also used by receivers and thieves for removing their booty as well as the main roads to which the Government now proposed to extend the Act, the Madras Government agreed to extend to the Act to the taluks of Chirakkal, Kóttayam, Kurumbranád, Calicut and Ernád. The grounds on which this change of opinion on the part of the Government was based are not stated.

162. The history of the extension of the Act to the lowland tracts of Malabar has been gone into at length to show that it was the intention of the Madras Government in framing the Coffee-Stealing Prevention Act, merely to afford to the coffee industry protection against thefts of coffee while the crop was still on the ground, or in the coffee-growing tracts in transit, because while in those stages, special facilities existed for the commission of thefts, which necessitated or rendered justifiable special provisions to enable the planter to protect himself from loss. Once passed through these stages, the coffee was to be regarded as any other product of the soil, which it was the owner's business to take adequate steps to protect.

163. The Act was extended to the Upper and Lower Palnis and Sirumalais in the Madura district in October 1878; to portions of the Tinnevely district in January 1879; to the South Canara district in April 1882; to portions of the Salem district in March 1884; and to parts of Coimbatore district in September 1887.

164. It was not till 1893, that the question of amending the provisions of section 9 of the Act was raised. It has been pointed out above that when the Bill was under consideration, the Wynaad Association and the then Collector of Malabar were in accord as to the inadvisability of restricting the kind of coffee to which the section was to be made applicable to 'green' or 'green-gathered,' and limiting the class of offenders to 'cooly, maistry or other labourer employed on an estate,' and that at the same time it was suggested that clauses rendering the carrier liable to certain penalties for short delivery or tampering with coffee entrusted to him should be embodied in the Act. These proposals, however, appear to have been negatived, probably after due consideration (though the grounds for rejecting the proposals are not expressly stated), inasmuch as the section of the Ceylon Ordinance (8 of 1874) on which the Madras section was based runs as follows:—

"5. When green-gathered coffee shall be found in the possession of any person, such person may be presumed to have stolen such coffee or unlawfully received it, knowing it to have been stolen, unless such person shall satisfactorily account for his possession thereof."

It will be seen therefore that besides retaining the expression 'green-gathered coffee,' the Select Committee introduced a further restriction by limiting the applicability of the section to 'a cooly, maistry, or other labourer employed on an estate,' unable satisfactorily to account for such possession.

165. In a petition, dated 18th March 1893, the Nilgiri Planters' Association pointed out that cases of theft by persons outside the class above defined could only be dealt under the Indian Penal Code, and as in these cases the *onus probandi* lay on the prosecutor, conviction was almost impossible of attainment unless the accused was caught in the Act. A case was quoted in which a railway cooly was detected with freshly-gathered coffee in his possession near the edge of a field of coffee. The case could not be dealt with under the Act, and the accused was acquitted. It was proposed therefore that instead of the words 'labourer employed on a coffee estate' the words 'person found with' should be substituted. They proposed also to omit the words 'green-gathered' before the word 'coffee,' as the expression 'green-gathered coffee' would prevent the other and much more abundant forms of the produce, such as red cherry, dry cherry, parchment coffee, &c., from inclusion in the section. The District Magistrates of the Nilgiris, Malabar, South Canara, Madura, Tinnevely, Salem and Coimbatore were directed to report on these suggestions.

Proposal by the Nilgiri Planters' Association to amend section 9 of the Act. Steps taken by the Madras Government thereon.

G.O., No. 806, Judicial, 20th April 1893.

Views of the District Magistrates consulted by the Madras Government on the proposal and the drafting of a Bill by the Madras Government to amend the section.

* G.O., No. 1722, Judicial, 24th August 1893.

166. The District Magistrate of the Nilgiris * (then Mr. Wolfe-Murray) alone was in favour of adopting in their entirety the proposals of the Nilgiri Association. The others considered that the amendments suggested were too wide and would give room for serious abuse, but at the same time made various suggestions for extending the operation of the section in a less degree. The proposals made were as follows:—

(1) To extend the section by substituting 'any cooly, maistry, or other person found with' for 'any cooly, maistry, or other labourer employed on an estate,' while retaining the restriction to 'green-gathered' coffee, meaning thereby to include all coffee freshly gathered, irrespective of the precise tinge of colour (District Magistrate, Coimbatore).

(2) To omit 'green-gathered,' and add after 'any cooly, maistry, or other labourer employed on a coffee estate' the words 'or any person in any locality to which the Act applies, and which the Governor in Council may, from time to time, specify by notification published in the official Gazette' (District Magistrate, Salem).

(3) To accept the amendments suggested by the Nilgiri Planters' Association, but limit the operation of the section to persons found within a certain radius of a coffee estate (District Magistrate, Tinnevely).

(4) To substitute 'any person' for 'any cooly, maistry, or other labourer employed on an estate,' but limit the kind of coffee to 'green-gathered or red cherry' (District Magistrate, Malabar.)

(5) To read the section as follows:—"Any person found with freshly-gathered coffee in his possession within ten miles of a coffee estate and failing, &c." (District Magistrate, South Canara.)

The Madras Government remarked that the Nilgiri Planters' Association appeared to put an unduly restricted meaning on the phrase 'green-gathered coffee' in section 9, but that its meaning might no doubt be made clearer and in pursuance of the consensus of opinion that the section was unduly restricted in its operation, prepared a Bill to amend it by including all coffee in parchment and substituting 'any person' for 'any cooly, maistry, or other labourer employed on an estate.' The new section read as follows:—

"Any person, who is found with freshly-gathered or parchment coffee in his possession and who fails to account satisfactorily for such possession, &c."

167. When, however, the Bill was submitted to the Government of India for sanction in reference to the penal clause, the Governor-General in Council was of opinion that the existing provisions should not be enlarged. It was observed that the coffee industry already had very exceptional protection, and any further legislation in its interests seemed undesirable.

Letter from Government of India, Home Department, dated 1st June 1894, No. 587.

168. In 1895, the United Planters' Associations of Southern India asked the Madras Government to press the Government of India for a reconsideration of the decision above quoted. The grounds * on which the Madras Government supported the request were that the Act failed to reach the receiver, and did not protect coffee *en route* to the curing houses or the coast. To deal with the receiver, as well as the professional thieves who habitually loitered about coffee estates, the substitution of the word 'person' for the words 'coolie, maistry, or other labourer employed on an estate' was necessary, and as coffee was not generally in its green or freshly-gathered state while in transit, the inclusion of 'parchment' coffee was proposed. The Madras Government did not attach much weight to the theoretical objections urged against throwing the burden of proof on the accused in these cases, as it was alleged that 'parchment' coffee was not commonly, or indeed ever, possessed by any one but the grower and the curer. Hence if such possession was not accounted for, the presumption of dishonesty was overwhelming.

The second attempt to get the section amended also a failure.

* G.O., No. 564, Judicial, 13th March 1895.

The Government of India were however unable to alter their previous opinion. They considered that while the straining of the ordinary principles of the law in regard to the burden of proof as against plantation coolies might be justifiable, the same could not be said of the proposal to place the whole public under the same special provisions.

169. The questions therefore on which we are now to submit a report have been twice laid before the Government of India, and on each occasion the proposed extensions of the section have been declared to be undesirable.

170. Dealing now with the questions on which we have been desired to submit a report, the first is whether or not it is desirable to amend section 9 of the Act by extending to 'parchment and cherry-dried' coffee the legislative provisions now applying by that section to 'green-gathered' coffee.

171. In order to a clearer understanding of the case, we think it necessary briefly to describe the processes through which the coffee berry passes before despatch from the estates. To produce parchment coffee (in which condition coffee is generally despatched from European estates) the berry is not gathered while green, but is allowed to ripen on the trees. When ripe the berries assume various tinges of red, and in this state coffee is known as 'cherry.' It is then gathered in successive pickings, as sufficient quantities of the crop ripen, passed through a 'pulper' to get rid of the outer covering of the berry and washed to remove mucilage. The produce is then spread out in barbecues, often an acre or more in extent, to dry—a process which lasts from 4 to 8 days. The result is parchment coffee.

A point is always reached on the estates which resort chiefly to this process, where it is not worth while to wait for what is left of the crop to ripen in order to convert it into parchment. The whole of the crop remaining is, in this case, collected, green or ripe, and dried as it is, without being passed through the pulping machine. The result is known as 'cherry-dried' coffee. This latter process is almost invariably adopted by native estates, few of which possess pulping machines. To convert green or cherry coffee into cherry-dried the process of drying takes from 2 to 3 weeks (perhaps 5 to 6, if the weather is wet or cloudy) during the whole of which period

the produce has to be left on the barbecues night and day. Of the two kinds of coffee (parchment and cherry-dried) the former when cured, *i.e.*, cleaned or pounded, produces the more valuable coffee as it consists of the ripe berry entirely, whereas cherry-dried contains both the ripe and unripe berry dried.

In these stages coffee is not fit for consumption, nor does it become an article of consumption until it has been cleaned. To reach the curing houses, it has in every case to be transported over considerable—and in some cases great—distances.

172. It is under these circumstances that planters urge there are as great facilities for stealing "parchment and cherry-dried" coffee on the estate as for stealing "green-gathered" coffee, and that while in transit also, coffee in these forms is liable to theft and requires special protection. There is no doubt that, as contended by planters, parchment coffee and cherry-dried coffee are not articles of retail sale and that they can only rightfully be possessed by certain distinct classes, *viz.*, the grower, the carrier, the curer and the *bona fide* dealer, all of whom can account for their possession. This being so, it is said, the unexplained possession of parchment and cherry-dried coffee by persons outside these classes is a matter which justifies a demand for explanation. But we think that when the produce has once been stored, it is within the owner's power to protect it and that it is no longer in the same category as "green" coffee. So far, therefore, no alteration of the section is necessary. It has been pointed out, however, that green-gathered coffee can easily be converted into parchment or cherry-dried, so that even estate employes, unless actually caught in the act of stealing green coffee, can easily evade the provisions of the section, for within a short time the stolen green coffee becomes cherry-dried or it can be reduced to parchment by the simple process of treading on it and then the burden of proving his title to possession no longer lies on the guilty person. On this ground we are inclined to attach some weight to the representation that the section as it stands does not adequately protect planters against thefts by their own employes. As against estate employes therefore we think that, the principle having been admitted that special protection is justifiable in the case of green-gathered coffee, the extension of that special protection to parchment and cherry-dried coffee also is not only free from objection, but also justifiable. We recommend the amendment of the section by the addition of the words "parchment and cherry-dried coffee."

Conclusion.

173. The second question which we have to discuss is whether or not it is desirable to substitute in section 9 the word "person" for the words "coolie, maistry or other labourer employed on a coffee estate." The reason for the amendment proposed by the planters is that the section does not throw the burden of proof either on thieves or receivers who are not employes of an estate. But in the first place we have no evidence (beyond vague statements) of substantial losses incurred through thefts of green coffee by persons other than estate employes, and certainly no evidence of any such acts of theft which cannot be reached by the ordinary law. In the next place, we have remarked that, when once coffee has been gathered, it is, or ought to be, well within the power of the planter to protect it by suitable arrangements. Then as to the existence of thieves and receivers on the road, coffee in transit is no doubt exposed to danger, but we are not prepared to say that the danger is greater than in the case of other harvested produce. It is argued that coffee is an article of great value in small bulk and that the offences of theft and receiving are at once easy and remunerative. But one argument against any alteration in the law, giving special protection to coffee in transit is that although general complaints of short delivery and tampering with coffee *en route* to the curing yards have been made, very few specific instances of such malpractices have been given. Another argument is that contractors can always be got who are willing to take the risk of losses and bind themselves to pay at penal rates the value of coffee short delivered or of a quality inferior to the sample, which is almost invariably sent with each consignment. But the strongest argument of all is to be found in the fact that the Nilgiri and Wynad

planters, who were loudest in their complaints of coffee theft, now declare that owing to the efficient arrangements made by the present Superintendent of Police in Malabar, Mr. Fawcett, such thefts are reduced to a minimum. At the United Planters' Association meeting in 1895, the following passage was read aloud from Mr. Fawcett's report to the Inspector-General of Police, Madras, dated 10th January 1895, No. 832:—

"The planters have it in their power, it may be added, to prevent all thieving on the road, a kind of thieving by which they have always lost very largely and which the police can never cope with quite successfully unless the planters do more to help themselves."

As to this, Mr. Fawcett says in answer to our question regarding the precautions taken by planters to prevent thefts of coffee in transit.

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"Some take none, sending coffee in carts in bulk just as if it were gravel; some seal the bags, common gunny bags easily broken into; and some few use the seamless bags sealed and packed within other bags, a plan which renders theft without discovery impossible. Some send part of a consignment thus, part in ordinary gunny bags, that in the seamless bags being available for check for the rest."

As to the methods by which he has put down coffee thefts, Mr. Fawcett stated as follows in his oral evidence:—

"The measures we have taken are as follow:—Before the picking season begins, the police open a register in each police station in the form which I produce. In this there is recorded

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the name of estate, owner, number of trees, and probable crop. A watch is kept by the police in their ordinary beats. They ascertain when the coffee is plucked and what the amount is; and this is recorded in the register. The final disposal of the crop is also ascertained and noted, the amount sold and the purchaser's name being entered. Before such registers were opened, it was never possible to ascertain how much each man grew. This enables us to know with tolerable exactness how much each grower has produced. The register is used for purposes of check. The check goes on from the time coffee is gathered in until all the coffee has been sent to the coast. With the facts in our possession, it is possible to check effectively the books of the people who deal in coffee. I refer to the books ordered to be kept under section 5, and which the police can examine under section 6 of the Act. We can also thus verify the correctness of passes in transit given under section 10.

"These registers were started by me in 1894-95. Previous to that there was nothing of the kind. They are kept, although there is a very large number of small gardens in Malabar-Wynaad."

This system has, to quote Mr. Fawcett again, resulted in the disappearance of an immense swarm of thieves and receivers.

174. The conclusion at which we arrive, therefore, on this question is that the evidence adduced is not sufficient to justify the extension of the provisions of the section to all persons.

175. Nevertheless, it cannot be said that receivers of stolen coffee have altogether disappeared, and Mr. Fawcett's remarks, of course, only apply to the Malabar district. There is evidence to show that receivers of coffee almost always have a few trees, which they use as a screen under cover of which they can carry on illicit trade. Mr. Fawcett himself quotes the following instance:—

"A man in Vayittiri in the season 1893-94 possessed coffee which he said was the produce of his garden. According to his account the rate of production would have been 1½ tons

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per acre. His garden was a very small one (about 1/10th of an acre) and the trees were in bad condition. I remember the assessment on his garden was three annas. The police were unable to do anything in this case."

Hence to enable the police to deal with cases of this kind, we recommend that the provisions of sections 5, 6 and 7 of the Act, which apply only to purchasers of coffee, should also be made applicable to sellers. Then all growers who also deal in

coffee would be bound to keep registers showing particulars in reference to sales of coffee corresponding to those now required for purchases, and it would be easy to ascertain the amount said to have been obtained by the dealer from his own garden or by purchase, and its disposal. But in order to give full efficacy to such provisions it would also be necessary to ascertain the amount really produced in the dealers' garden. At present under Regulation XXIX of 1802, Madras (Office of Karnam) section 11, sub-section 9, karnams are required to keep registers of the land cultivated in gardens, but there is, so far as we are aware, no provision of law empowering karnams or other officials to enter coffee gardens, and ascertain the probable outturn of such gardens—many of which are mere backyards attached to the owners' houses. To obviate this difficulty we propose that a section should be added to the Madras Act (VIII of 1878) similar to section 155 (e) of the Punjab Land Revenue Act (XVII of 1887) by which the Madras Government may take power to prescribe forms for such books, entries, statistics and accounts as it may think necessary to be kept, made or compiled in Revenue offices or submitted to any authority, and by which also provision may be made for compelling the owners of all coffee gardens to submit returns of coffee crop and to afford all reasonable facilities to karnams and others properly empowered for verifying such estimates and obtaining the information required in the forms referred to above.

Extract from letter of the Government of Madras, to the Secretary to the Government of India, Revenue and Agricultural Department, dated Fort St. George, 28th January 1898, No. 168, Judicial.

In chapter XI of the report, the Committee deals with certain questions connected with coffee-stealing and the desirability of amending Madras Act VIII of 1878. The alterations proposed are not new and have already in substance been under the consideration of the Government of India. The extension of section 9 of the Act so as to include not only coolies, &c., working in the estate but all persons, is not recommended by the Committee and this decision is acquiesced in by the United Planters' Association, Southern India. On the other hand, the amendment of the section by the addition of the words "parchment and cherry-dried" coffee, is recommended by the Committee for reasons which appear to His Excellency the Governor in Council to be of considerable force. With regard to the suggestion in paragraph 175 of the report, I am to say that this Government would be glad to see the provisions of paragraphs 5, 6 and 7 of Act VIII of 1878 applied to sellers as well as purchasers of coffee and would also welcome the proposed section permitting the Government to take power to compel owners of coffee gardens to submit returns of their crops, and to afford facilities for verifying their statements.

G.O., Mis. No. 1083, Judicial, dated 10th July 1899.

READ—the following papers:—

From the Government of India, Department of Revenue and Agriculture (Emigration), No. 3—36-17, dated 21st January 1899.

There remains the question of amending Madras Act VIII of 1878, the Coffee-stealing Prevention Act. The Committee deal with this question at length in the last Chapter (XI) of their report, in which after tracing the history of Madras Act VIII of 1878, it is recommended—

(1) that section 9 of that Act be amended by the addition of the words "parchment and cherry-dried" coffee;

(2) that sections 5, 6 and 7 of the Act, which apply only to purchasers of coffee, be also made applicable to sellers;

(3) that power be given to the Government to prescribe forms of books and accounts for recording sales of coffee, to require returns of produce, and to verify them by entry and inspection.

These recommendations have the support of the Government of Madras who are prepared to give effect to them by legislation in the local Legislative Council. A communication on the subject of the proposed legislation is being made to Her Majesty's Secretary of State for India.

From the Government of India, Department of Revenue and Agriculture, No. 849—28-3, dated 1st May 1899.

With reference to the resolution of the Government of India in the Department of Revenue and Agriculture, No. 3—36-17, dated 21st January 1899, on the subject of the regulation of labour on the tea and coffee estates in Southern India, I am directed to forward for the information of His Excellency the Governor the accompanying copy of correspondence with the Secretary of State. In accordance with the sanction conveyed in paragraph 3 of His Lordship's despatch of the 9th March last, a Bill to amend Madras Act VIII of 1878 may now be prepared for introduction in the local Legislative Council. If the Bill contains penal clauses, the sanction of the Government of India thereto in the Legislative Department should under standing instructions be applied for before introduction.

ENCLOSURES.

Copy of despatch to the Right Honourable the Secretary of State for India, No. 6, Department of Revenue and Agriculture, dated 26th January 1899.

In paragraphs 172 to 175 of the report the Committee recommend the amendment of section 9 of Madras Act VIII of 1878 with the object of extending to "parchment" and "cherry-dried" coffee the protection given to "green" coffee: also of sections 5, 6 and 7 with the object of extending their provisions to sellers of coffee within the local areas in which the Act is in force. They recommend further that power be taken to prescribe forms of books and accounts for recording sales of coffee, to require returns of produce, and to verify them by entry and inspection. The Government of Madras support these recommendations, and we agree with that Government in considering that the necessity for amending the present Act has been established. With your Lordship's concurrence we propose to authorize the Government of Madras to introduce a Bill for the purpose in the local Legislative Council.

Copy of despatch from the Right Honourable the Secretary of State for India, No. 34, Public (Emigration), dated 9th March 1899.

3. I see no objection to the introduction in the Legislative Council of the Governor of Madras of a Bill to amend Madras Act VIII of 1878, as recommended by the Committee, in the manner explained in the third paragraph of your letter.

A Bill to amend Madras Act VIII of 1878 (Coffee-stealing).

WHEREAS it is expedient to amend Act VIII of 1878 (Coffee-stealing) it is hereby enacted as follows:—

1. This Act may be called the Coffee-stealing Act Amendment Act.

2. It shall come into force at once.

3. After section 5 of the Act the following shall be inserted:—

5-A. Every person in occupation and enjoyment of a coffee estate who sells, barter or gives in exchange, any coffee shall at the time enter or cause to be entered in a book to be kept by him a true record of such transactions specifying—

- (a) the name, residence and occupation of the person to whom such coffee was so sold, bartered or given in exchange,
- (b) the date of the transaction and
- (c) the quantity and description of the coffee so sold, bartered or given in exchange.

4. In section 6 of the Act for the words "Section 5" the words "Sections 5 and 5-A" shall be substituted, and after the word "purchasing" the words "or selling" shall be added.

5. In section 8 of the Act after the figure 5 the figure and letter 5-A shall be inserted.

6. In section 9 of the Act after the words "green-gathered" the words "parchment or cherry-dried" shall be added.

STATEMENT OF OBJECTS AND REASONS.

This Bill, which embodies the recommendations of the Committee appointed in 1896 to enquire into the grievances of coffee planters in the Madras Presidency, provides for rendering more efficacious the protective provisions of section 5 of Act VIII of 1878, by imposing on possessors of coffee estates who are sellers of coffee the duty of keeping registers of their transactions. It aims at protecting from theft by labourers on coffee estates "parchment" and "cherry-dried" coffee which, like "green-gathered coffee," are not articles of retail sale, and can only rightfully be possessed by growers, carriers, curers or bona-fide dealers. The Bill also gives power to Government to provide forms of books and accounts, and to compel owners of estates to afford the information necessary for the inspection and examination of such books and accounts.

7. After section 14 of the Act the following sections shall be added, namely:—

(15) It shall be the duty of every person in occupation and enjoyment of a coffee estate situated within the local area to which this Act applies to submit such returns as may be prescribed by the Governor of Fort St. George in Council and to afford to Karnams, or other officers duly empowered by the Collector of the district in that behalf all reasonable facilities for verifying the correctness of such returns, and for obtaining such other information as may be required for the preparation of any books, entries, statistics or accounts, which the Governor of Fort St. George in Council may direct to be prepared.

(16) The Governor of Fort St. George in Council may from time to time make rules (a) for prescribing forms for such books, entries, statistics and accounts as he may think necessary to be kept, made or compiled in public offices, or submitted to any authority for the purposes of this Act, (b) for regulating the manner of compilation and preparation of such books, entries, statistics and accounts, (c) for regulating the time for and the person to whom such books, entries, statistics and accounts are to be submitted, (d) for regulating the inspections and examinations of such books, entries, statistics and accounts and (e) generally for carrying out the purposes of this Act.

(17) Any person failing to comply with the provisions of section 15 of this Act shall be liable on conviction by a Magistrate to pay a fine not exceeding one hundred rupees.

Order—Mis. No. 1083, Judicial, dated 10th July 1899.

Recorded.

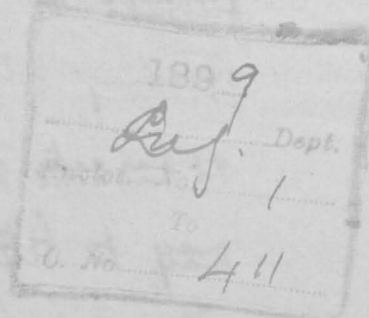
2. The draft Bill to amend Madras Act VIII of 1878 (Coffee-stealing) prepared in the Judicial Department, will be transferred to the Legislative Department in which the further necessary action will be taken.

(True Extract.)

(Signed) G. STOKES,
Chief Secretary.

To the Legislative Department.

Copy to the United Planters' Association, Southern India.



Legislative Dept

Office note

Order no 452 of 6/9/99
T.

The Judicial Department.

The undersigned has the honour to request that the Legislative Department may be furnished with a spare copy of each of the papers that can be furnished to members of the Legislative Council on the subject of the Bill to amend the Madras Coffee-stealing Prevention Act, 1878, forwarded with
Despatch no. 1083 Judicial, 10 July 1899.

also
4/9/99.

2/9/99

Note when circulating copies of the Bill + statement of objects + reasons after publication in the gazette it is usual to furnish the ^{Honble} members with copies of paper relating to the Bill so that the object + character of the proposed legislation may be better understood.

The Judicial Department is the Execu

the Department concerned with the Bill mentioned in the office note in which all correspondence ^{about it} was conducted.

At the same time orders are respectfully requested whether a circular memo may issue to the departments of the Secretariat stating that whenever a Secretariat department forwards a Bill or any project of legislation to the Legislative Department of this Govt for the necessary action, a set of papers that can be furnished to Honble members of the Legislative Council ^{as soon as possible} should follow. This will put an end to the necessity of issuing a request to an Executive Dept. every time a Bill is forwarded by it to this Dept.

Seen
also
4/9/99.

1/9/99.

PJH

2/9/99

Not necessary.
The Bills are not frequent &
the request will probably be
made looked each time a
Bill is sent
if 5.11.99

[69]
500-12-8-09.

CURRENT No. 411

Judicial DEPARTMENT.



Memorandum No. 2600

Read the following paper.

With reference to Office-note No. 452 dated 6th September 1899 from the Legislative Department, the undersigned has the honour to forward a collection of the papers that can be furnished to the Honourable Members of the Legislative Council on the subject of the Bill to amend the Madras Coffee-Stealing Prevention Act 1873.

O O T A C A M U N D,
14th October 1899.

[Signature]
For Chief Secretary.

CO.
17.10.99

To

The Legislative Department.

* spare copies can be had from the Press.

When given for copying _____
 When copied _____
 When examined _____
 When signed _____

189

AGAIN G.O., No.
 189

DATED

ENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B. -
 A = Copy in full.
 B = Not to be copied
 P = Copy abstract only.
 Q = Copy heading only.