

1924

KENYA

C. O.  
49083  
17 OCT 24

262

DATE

15th September 1924.

GOVERNOR CORYNDON. 1231

CIRCULATION:

*Wachley*  
*Thompson*  
*Baker*

st. U.S. of S.

*L. G. Erindley*

st. U.S. of S.

st. U.S. of S.

Secretary of State.

*3/4*

COCONUT INDUSTRY ORDINANCE.

Submits explanations. Trusts sanction may now be given.

Previous Paper

*Sec. 6041*

MINUTES

In para 4 and 5 of their despatch, the Governor makes a very strong case against the arguments on 10 Sec. 4 of the Ord. which were put forward in C.O. despatch. It is evident that the application of this section is not only understood but actively desired by the natives. The question remains however, whether the legal precedents put up are sufficient to discharge of the criticism that the placing of the onus of proof on the accused is generally objectionable. Subject to legal views on this point I would let this part Section stand.

Section 5.

The answer on this point is not convincing. This section is still too wide or it would be better to restrict the cases in which arrest may be made by owners.

Subsequent Paper

*Sec 5212*

*In the file...*

*Proctor*

those given in the 9th Licence Ord<sup>n</sup>  
(E 49 of No 13 - copy on 6041/24) namely,  
Trenhays without lawful excuse

Section 8.

We can agree to the Gov's  
suggestion, to omit this section  
and rely on the provision in the  
Native Liquor Ordinance. This  
will have the effect of abolishing  
the objectionable powers conferred  
upon the Brit. Commissioner in  
subsection (3). Inasmuch as E 9  
will also go  
Section 14

The Gov says there can be  
no promise for anticipations that  
the former given in the section  
will be exercised without adequate  
reason. At the same time it  
would be much better, for  
attendance sake, to delete  
the words "with out giving any  
reason" and to insert at  
~~beginning~~ ~~the~~ ~~beginning~~  
~~of the section~~ ~~without~~ ~~consider~~  
"if he has reason to believe that  
the licence will be used for  
the purpose of dealing in unlawfully  
obtained spirits."

Section 16. The limitation

will be a great improvement  
and may be accepted.

Subject to legal opinion

? reply on the above lines,  
and sanction the Ordinance  
but direct an amendment  
Ord<sup>n</sup> as to Section 7, 8 & 14.

S.M.

27/10/24

Gov 28/10/24

L. J. J.

A.L.

28/10/24

I am inclined to leave  
Gov's draft as the Gov says,  
it is not out  
unusually, and a change  
in every case in which Gov does  
not wish to be insisted

[Kenya and generally  
realize that it is more  
convenient to explain  
Ord<sup>n</sup> at the outset]

Gov 28/10/24

L. J. J.

Should be given a trial.

The system of licensed dealers  
is the one which after  
many years of experiment  
we have been driven to  
adopt in the U.S. (and  
elsewhere) for the protection  
of agricultural produce.

Again we have been driven  
to place the onus of  
proving lawful possession  
on the accused in order to  
check practical larceny.

I have never come across  
any complaint of injustice  
having been done in  
practice as a result of  
such means.

29/10/11 G.S.

I agree - I think that the former  
letter with his case except  
the legend to G.S. where he says  
I don't see what I can do  
at all.

In relation to rewritten Order which  
is I think now with you I have  
suggested calling the Gov's attention to  
his failure to give us adequate  
information - this case should be added  
to the indictment

W.S. 5/10/11  
A.S. 11/11/11

(Master's Orders) Home  
Amendment Order 1911  
44954/11

KENYA.  
No.1231.



3083

J.  
GOVERNMENT HOUSE,  
NAIROBI. 261  
KENYA.

JUL 24

15th September, 1924.

Sir,

900  
6041  
Senior Coast  
Commissioner:  
25-7-24:

On Resident  
Commissioner:  
12-7-24:

I have the honour to acknowledge the receipt of your despatch No.348 of the 2nd of April, 1924, and to furnish the following explanations which will meet the points raised therein:-

2. Section 4: While the placing of the onus of proof of lawful possession upon the accused may be a departure from a general rule of law, this step has been rendered imperative by the peculiar circumstances in which losses by theft have gravely hampered what should otherwise be the most flourishing and profitable industry on the Coast. I agree that it is generally objectionable to place onus of proof of innocence on the accused person, but the circumstances are such that the interests of the community as a whole require special legislation to meet what is rapidly becoming a widespread evil. The manager of the coconut plantations of the East African Estates, which is the biggest estate on the Coast, told me that he estimated his losses of nuts by theft at 25% of his production. I am satisfied that there is no serious risk of abuses.

3. In this connection I venture to draw your attention to Section 369 of the Criminal Code of St. Lucia forwarded under -

RIGHT HONOURABLE

J. H. THOMAS, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

805  
8.6.15  
under your despatch No.573 of this year and also to Ceylon Ordinance No.8 of 1904 - an Ordinance to prevent thefts of Cocoa and in particular to Section 17 of this Ordinance which it is understood has proved very effective in preventing cocoa thefts which were threatening the existence of this cultivation in Ceylon.

I would also refer you to 24-5 Vic Ch.110, S.4 and Russell on Crimes VII Ed. 1311-1312. Further, in Section 14 (3) of the Game Ordinance of this Colony the burden of proving any fact which would be a defense is placed upon the accused person. With reference to the first lines of the second page of your despatch under reply, I believe that the Coast natives will very well understand this principle.

4. I am informed by the Administrative Officers at the Coast that the change in the incidence of proof has been explained both to the Arabs and native population and that no objections to the principle have been made. On the contrary it has been hailed with satisfaction by all respectable Coast natives who see in it a hope for the revival of a staple industry. During my recent tour of the Coast towns from Kismayu to Mombasa this point was raised at every baraza, and in every case I was asked to impose the provisions which are embodied in this Ordinance.

I annex copies of Reports from the Senior Commissioner for the Coast and the Resident Commissioner, Mombasa.

5. A test investigation was made by the District Commissioner, Lamu, to establish the ownership of all coconuts on sale on a certain day in the market, and all were traced without difficulty, a fact which would appear to dispose of the suggestion that the only possible proof of lawful possession is a written receipt. All the nuts in question were traced without any documentary evidence, nor did the

necessity -

necessity for such evidence arise.

6. Section 7: If a man is found passing through or near a coconut estate with coconuts in his possession, and there are no shops or coconut trees belonging to him near the spot a definite presumption of guilt is suggested. The strength of this presumption would depend to some extent upon the distance from the plantation at which the accused was found. The accused would always of course be given an opportunity of calling evidence to corroborate any statements made by him as to the source from which the nuts were obtained.

7. Section 8: This section with the exception of subsection (3) reproduces section 25 (1,2,3 and 4) of the Native Liquor Ordinance, 1921, and I am now advised that it more properly belongs to that Ordinance. I agree, therefore, that it should be deleted from this Ordinance, but in view of the necessity for controlling the manufacture and sale of tembo, I consider that the existing provisions in the Native Liquor Ordinance should be maintained.

8. Section 14: There is a precedent in Section 17 (1) of the Game Ordinance, as well as in the Liquor Ordinance, for investing a licensing authority with discretionary power to refuse licences. I am of opinion that there is special need for investing District Commissioners with this power, as well as that of cancellation, in respect of licences to deal in coconuts. It is a truism to say that if there were no receivers of stolen property there would be but little scope for thieves. In the case of coconut dealers, it is to be borne in mind that once nuts are thrown on to a heap on their premises the thief is safe, for the nuts cannot be identified. Investigations may prove that the dealer has nuts far in excess of what he can account for by legitimate purchases, but no one can say which were stolen or from whom they were stolen. The only safeguard is to give power to cancel the licence. There can be no grounds for anticipating that -

CO. 111 / 113  
 ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
 DATE 08-11-2011 BY 60322 UCBAW

( 4 )  
 that such a power would be exercised without adequate reason and I trust that you will permit this provision to be retained in the Ordinance.

9. Section 16: follows section 12 of the Coconut Trade Ordinance, 1915. It is I believe the general practice under English law for the offences of larceny and possession of stolen property to be the subject of prosecutions by the Police on behalf of the State. I agree, however, that the functions of the Police in this respect should be limited to sections 4 and 11 and propose that the words "against the provisions of sections 4 and 11 of" be substituted for the word "under" in Section 16.

10. In conclusion I would say again that this Ordinance has been rendered necessary to save the coconut industry from the fate with which it was threatened through the ever increasing thefts, for the laws hitherto in force afford no practical protection to plantation owners. It is very rarely that a thief is actually caught in the act of taking coconuts and although a single coconut is of comparatively little value, the cumulative loss from thefts is enormous. The native as well as non-native owners of both large and small plantations have alike pressed for the application of the Ordinance. The following is an extract from one of several petitions, which I received from Coast Natives on my recent tour:-

"Coconut thieves have greatly increased in number and now infest all our plantations. Our plantations are our sole means of livelihood, and we are now losing heavily owing to the depredations of these thieves; it seems probable that but little will be left to us from this year's crop. We therefore pray Your Excellency to safeguard our interests and to issue instructions that the Coconut Ordinance, 1923, be applied to this District."

11. The Resident Commissioner, Mombasa, reports that in Mombasa where the Ordinance has been applied, there has been

( 4 )

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11. The Resident Commissioner, Mombasa, reports that in Mombasa where the Ordinance has been applied, there has been



one prosecution and conviction under section 4, and that this step has had a very marked effect in reducing the number of thefts in the neighbourhood. It is confidently expected that on the application of the Ordinance to the other Coast districts, thefts of coconuts from plantations will practically cease. I believe that the Ordinance will be successful in securing the objects aimed at, and I am satisfied that there is no risk of serious abuse as suggested in the second paragraph of your despatch. I trust that you will now agree to the Ordinance.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*R. T. Couper*

GOVERNOR.

INCLOSURES

In Despatch No. 23 of 15-7-1924

269

The Honourable,  
The Chief Native Commissioner,  
N. A. I. R. O. B. I.

COCONUT INDUSTRY ORDINANCE 1923.  
Re: your No. 123/5/1/10 of the 17th instant  
and enclosures

I am in favour of the Ordinance being applied in its present form and given a trial.

I do not anticipate any difficulty in applying same to the Coast Belt nor do I think its application will lead to any serious abuses or act harshly either on Shamba owners or the natives.

Wide publicity has been given to the provisions of the Ordinance among Arabs and the native population and no serious objections have been lodged.

Re. para 3 (a) of the Secretary of State's letter. Thefts from coconut shambas have been on the increase and under present laws it is almost impossible to deal with the matter. Under the Ordinance I honestly believe that after one or two convictions have been obtained the nuisance will cease.

People in honest possession of accounts need not fear molestation as suggested in para 3 (b).

Re para 3 (c) The Lamu people who are the only ones to my knowledge who have raised any

objection

objection to Section 8 (1) agreed in Baraza that a fee of Shs.2/- for a licence to tap "Tembo Tamu" was reasonable.

As to Section 8 (2) and (3) <sup>270</sup> if a District Commissioner is not an expert he can always obtain expert advice if necessary nor is a District Commissioner likely to abuse his power or use it without reason.

Re. para 3 (d) I am of the opinion that the section 16 should stand.

Sd: A. J. Maclean.

SENIOR COMMISSIONER COAST.

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Sd: A. J. Maclean.

SENIOR COMMISSIONER COAST.

Ref: NO. 114/57.

RESIDENT COMMISSIONER'S OFFICE,

Mombasa.

12th. July 1924.

271

The Hon. Colonial Secretary,

NAIROBI.

The Coconut Industry Ordinance, 1923.

Ref: Your No. S10114/4/47 of the 28th ultimo.

Reference Sections 4, 6 and 7.

There has been one conviction for an offence under Section 4, and I am informed that it has had a marked effect in reducing the number of thefts in the neighbourhood (the Likoni Area). The change in the incidence of the onus of proof has been explained to the natives in Barasa. No protest has been brought to this Office from any quarter either in regard to this particular conviction or to the principle involved.

2 Reference Section 11.

Although this Section was applied to the Mombasa District on March 12th last to date as from January 1st 1924, no Licence Books have yet been received. Unlicensed dealing is still proceeding unchecked.

3. At least six months trial will be necessary after the Licence Books have been received before a reliable opinion can be formed as to the success of the system.

4. A decrease in the volume of the local Trade in Coconuts, which might be consequent upon these restrictions, would not greatly affect the larger Plantations, which make their profits by exporting copra. On the other hand they again enormously by having their nuts safeguarded. Owners of smaller Plantations have been equally prominent

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prejudiced

prominent in pressing for the Ordinance to be applied, and evidently expect to gain by it. They were prompted to this belief by the fact that up to now they have been losing at least half their nuts by thefts. 272

5 Reference Section 8.

This Section is of the greatest utility in suppressing drunkenness, which is very prevalent among the Wa-Nyika natives and is becoming increasingly common among the Swahilis and younger Arabs.

6. The fact that Section 8 (1) prevents a man from tapping even his own trees without a licence is more an apparent than a real hardship. For Coconut owners on the Coast are almost all either Europeans or Mohamedans. The former do not tap their trees, and the latter mostly profess to be teetotalers. At the same time I am of opinion that a provision that a man might tap tembo tam for his own use and that of his friends (to be consumed on the premises) would do no harm, if carefully worded, and the concession would be appreciated. But there are owners who would attempt to twist such a concession into a permission to pay their labour in Tembo. Wa-Nyika natives will work for anybody who will make them drunk.

Ed: S. H. FARAN  
RESIDENT COMMISSIONER

PUBLIC RECORD OFFICE LONDON

File 49083/24 Kenya

7-2-24

83

6 Nov 1924

Sir,

DRAFT.

1131

For Comptroller  
MINUTE.

Brett Nov 5

Heckley

Bokumby 5 J

Adonis

G. Grindley

H. Reid

Masterman Smith

Arnold

Thomas

on 160 24/24

I have to act the rest of  
your despatch No 1231 of the 15<sup>th</sup>  
of Sept, in which you submit  
explanations of the points

raised in my despatch No

3 of the 7<sup>th</sup> of April, in

reply to the Comptroller's

Ordinance, 1923, & to make

the following further observations

thereon:-

Section 4. In view of your



explanation I am prepared  
to agree to the retention of this  
section

Section 7 I ~~am not satisfied~~ <sup>have considered</sup>

with your explanation of this

Section, but I <sup>still</sup> consider that the

Section is still too wide & that

it would be better to restrict

the cases in which arrest may

be made by owners to those

given in Section 49 of Ord. No.

13 of the Revised Ordinances of

Lucas, 1916, namely, trespass

without lawful excuse.

Section I agree to your suggestion

to omit this Section and

rely

2  
rely on the provision

the Native Title Ordinance

Section 9. This section

with the proposed amendments

also be omitted.

Section 14. In view of

explanation I agree to the

retention of this Section

Section 16. I approve of

retention of this section

amended as now proposed

~~to be inserted in the Ordinance~~

~~2. The Ordinance will be~~

advised to exercise the

power of disallowance

in respect of the Ordinance

having regard to the proposed

DRAFT.

MINUTE.

Dr.

Mr.

Mr.

Mr. C. Davis.

Mr. T. ...

Mr. H. Read.

Mr. J. Masterton Smith.

Mr. Arnold.

Mr. Thomas.

~~amendments.~~

On the understanding that

3. I shall be satisfied

you will arrange for the  
enactment of an amending  
Order as to Sections 7, 8,  
9 & 16.

JH

(SIGNED) J. H. THOMAS.

SW  
49083/24

Change 275

VC  
R GNOM  
D 6

9<sup>nd</sup>

6 Nov. 1924

DRAFT.

Sir,

ya Conf. (2)  
R. Logue

In a subject referred  
I have replied to your  
despatch no: 1231 of the

MINUTE.

- Mr. Robertson
- Mr. 5/11/24
- Mr.
- Sir C. Duce
- Sir C. Grindle
- Sir H. Read
- Sir J. Braderton Smith
- Lord Arnold
- Mr. Thomas

15<sup>th</sup> of Sept. on the  
for subject of the Account  
Inventory Ordinance, 1923.  
2. I would invite your  
attention to the fact that  
this Ordinance affords  
an illustration of the  
features, which are

ccy Sir

in my care deposits of the

4<sup>th</sup> of NOV. with care of the (1909/10)

Hostess and Servants

(Amendment) Dec 2, 1924,

of ensuring that the

S. of S. is fully informed of

the objects and words of

legislation which is

submitted to him

}

(SIGNED) J. H. THOMAS.

1924

4

276

KENYA

C. O.  
49084  
17 OCT 24

DATE

15th September 1924.

ERNOR CORYNDON. 1233

REGULATION :-

E.A. ESTATES LTD. EXCHANGE OF LAND.

Fwds further particulars regarding proposed exchange and trusts approval may now be given. Native question does not arise.

U.S. of S.

U.S. of S.

U.S. of S.

Secretary of State

Previous Papers

M. 3

46028

MINUTES

The Secy. has had the approval in writing in connection of 23 Sept. or 43985.

I see nothing in this document to alter the intention but it is necessary that the report of the RC, dated 20 Sept. that is concerned, we are where we were on 43985.

All. recd., upon 6th approval given on 43985.

Subsequent Papers

505/514/16