

1924
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KENYA

C. C. 259
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7 FEB 24

Sar
Correspondence 66

DATE
17th Jan, 1924

CIRCULATION :-
~~100 Copies~~
Bureau of the
Botany
at U.S. of S.
U.S. of S.
U.S. of S.
Secretary of State.

Ord. no. 33, 1923
Coconut Industry

Submits -

Have copies to be
MINUTES

Previous Paper

800
70683
19

§ 4 seems to go further than § 3 of the 1919 Amending Ordinance to widen the range of people who may be compelled to prove their innocence to escape penalties under the Ordinance. Subject to legal advice of Sanction L.F.

F. W. W. 17. 2. 23

I feel very doubtful about this. The registration system was abandoned because of "difficulties of staff and the fact that a large number of persons who trade in coconuts at the coast are illiterate." (7013/1) How are such persons ("non-affirming") to prove their innocence under section 4 if in the course of their trade they

Letter 11316 Novice 19083

Subsequent Paper

805
49083

find with accounts, in their possession
"in the immediate vicinity of any
account plantation," or if they are
found anywhere "keeping accounts
which may be reasonably suspected
to have been stolen." Probably
nothing short of a written receipt
would suffice to establish their
innocence. And how are they to
get that if the person from
whom the notes were acquired is
deceased?

Para 7 is especially objectionable.

Mr. Lucia Ordinance quoted only
the arrest by an owner or his
agents of a person found
having on his plantations.

The King's Ordinance gives such
powers of arrest to owners or
their agents not only in their
plantations and in the immediate
vicinity but anywhere if the
notes are "reasonably
suspected of having been

stolen" from the plantation. It
offers affording opportunity
above to an unscrupulous
plantation owner or to his agents
They could arrest, illustrate
destruction of accounts all over the
place, and indict them if
caught in consideration of not
staying them to court.

Section 8 will probably prove
inadequate, although they say
licences are already required.

If the D.C. refused a private owner
a licence on the ground that
the plantation was not kept
satisfactorily, the owner would be
trapped as soon as the D.C. moved
on to another district.

Section 14 seems the dramatic.

I do not think D.Cs should be
invested with such extensive
powers as to enable them to
deprive a dealer of his means of
livelihood without giving any
reason.

Section 16 is also objectionable
but it is becoming a regular
feature in King's laws.

I think we must put

Sayer

As

Sayer

As

Sayer

As

these objections to the Governor
and ask him if he is satisfied
that such drastic provisions
are necessary and that there is
not serious danger of abuse.

JH
1916

I share Mr. Calder's doubts as to
this Ord. & think it should not be sanctioned
until an adequate reason is given for
its introduction with a sufficient de-
fence of its merits, arbitrary & possibly
oppressive provisions. The purpose of
the Ord. is stated to be to develop the
coconut industry. Its provisions seem
to me likely to have the opposite effect.
They render it dangerous or at least
unwelcome to possess or deal in coconuts,
or even to have a plot of land on
which coconuts are standing or to be
seen with a coconut. Strengthening the
criminal law by creating new offences
& increasing penalties may be necessary
but it will hardly help to develop an
industry. There does not seem any ground
for believing that practical larceny is so
prevalent in K. as to hamper the industry
& call for legislation like that of S. Leone,
much less more stringent Ord.

See Report of 1916
C...
JH

We can put the Ord. to the
Gov. but I am confident to different owners stand side by side.
that they mean to
protect the small
man - ("one or more")
Quite possibly the true
determining factor, though
there is no ownership of
the land.
H. J. ... has
agreed to ...
Oct 5/16

Sec. 3. - The definition of plantation
seems to me defective. In some districts
e.g. the Tolana Country, coconuts occupy
ownership of the land on either side of
the road. They stand in not required (v. S. A. Law
Reports 1913-4; p. 141). It is undoubted
whether ^{and} these coconut groves fall within
the Ord. One regard does not seem to
me to be paid to habits of
Customs in the Ord.

261

Sec. 4. - seems to me totally wrong in
principle & will not be understood by the
natives. I doubt whether it will be put
into operation against a European.

Sec. 8 seems to me an unwarranted
interference with a man's use of his own
property & no reason is apparent why if
he chooses to keep a palm for wine
instead of for oil he should not be allowed to do so.
The owner ^{any} & should be allowed to look
after his own interests in the case &
it seems undesirable to give the
arbitrary power to Ord. who are not
experts in the satisfactory cultivation of
coconut plantations.

A.L.
26/11

We had better have
a typed draft based
on the work by higher
authority. As regards
tapping, I am inclined
to think that the best
protection will be to
organize the Copra
industry, so that the
Coconut will be better
protected. On the other
hand, if the water should
drain down to any, it
will be something more.

Very
The main problem about both
the coconut industry &
tapping which should be
looked up must be in
the draft.

Wed 26.2.24
above

KENYA.

No. 66.



252

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

January 17th, 1924..

My Lord Duke,

I have the honour to transmit
herewith two authenticated and ten printed copies
of "The Coconut Industry Ordinance, 1923" together
with a statement of objects and reasons and a
comparative table prepared by the Acting Attorney
General.

2. This Ordinance passed its third
reading in Legislative Council on the 12th of
November, 1923, and on the 14th of December, 1923,
I assented to it in the name of His Majesty.

I have the honour to be,

My Lord Duke,

Your Grace's most devoted
and most obedient servant,

R. T. Comyns

G O V E R N O R .

RACE

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.,

THE COCONUT INDUSTRY ORDINANCE, 1923.

Objects and Reasons.

The purpose of the Bill is to develop the Coconut Industry in the Colony and Protectorate.

To give effect to this purpose sections are introduced to provide more ample remedies against theft than are afforded by the Indian Penal Code.

The principle of the Penal Sections will be found in Ordinance Number 28 of 1919.

Insistence is laid upon the registration of dealers. This principle is recognised in Ordinance Number 25 of 1916.

For the purpose of encouraging proper cultivation of coconut trees a licence to tap trees is rendered necessary and the issue of a licence may depend upon the trees being properly cultivated.

THE COCONUT INDUSTRY ORDINANCE, 1923.

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Comparative Table of Sections.

Section.	Remarks.
1.	Short title.
2.	Confers power on the Governor-in-Council to apply the Ordinance to Districts. Compare Section 11 of Ordinance No.28 of 1919.
3.	Definition of terms used in the Ordinance.
4.	This section corresponds with section 2 of No. 28 of 1919. The principal alteration is in sub-clause (b), which takes away the limitation of 'by night' from the conveying and introduces as an ingredient of the offense the words 'reasonably suspected of having been stolen'.
5.	Provides the penalty for an offence under Section 4. It differentiates between a first and a subsequent offence.
6.	This section deals with trespass on plantations. It differs from Section 2 of No.28 of 1919, mainly in altering the fine from Rupees 100 to Shillings 100/- and by enlarging the term of imprisonment from 3 months to 6 months.
7.	Confers on the owner of a plantation and his servants power to arrest persons reasonably suspected of having transgressed against Sections 4 and 6. Compare Section 49 of Ordinance 13 of the Revised Ordinances of St. Lucia, 1916.

Section.	Remarks.	255
9.	This section which requires a licence for tapping coconut trees is new. Its object is to encourage suitable methods of cultivation. A licence to tap trees is already required under section 26 of the Native Liquor Ordinance, 1921. This section gives power to withhold a licence if the plantation is not kept in a satisfactory state of cultivation.	
10.	Prescribes the term during which a licence to tap trees shall be in force.	
11.	Confers powers on Magistrates, Justices of the Peace, European Police Constables and other persons to inspect licences issued under section 8.	
12.	Enacts that dealers in the produce of coconut trees shall be licensed. The section is substantially reproduced from section 7 of the Coconut Trade Ordinance, 1913.	
13.	This section requires the position of licensee premises to be defined.	
14.	Prescribes the fee for a dealer's licence. Licences expire on 31st December.	
15.	District Commissioner empowered to refuse to issue a dealer's licence and to suspend or cancel a licence.	
16.	Provides penalties for offences for which penalties are not otherwise provided.	
17.	Offences to be cognizable to police. This section reproduces section 12 of the Coconut Trade Ordinance, 1913.	
18.	Rule-making powers.	
19.	Repeal section.	

Nairobi,
December, 1923.

Sd/- J. S. GOWER
ACTING ATTORNEY-GENERAL.

Downing Street

2 April March, 1924.

C. D.
R. 31 MAR
D. 114

Sir,

I have the honour to ack. the receipt of your despatch No. 66 of the 17th of January, transmitting copies of "The Coconut Industry Ordinance, 1923".

I note that the object of the Ordinance is to develop the coconut industry, but I feel bound to observe

that I regard certain provisions of the Ordinance with considerable misgiving, and am doubtful whether they will

secure the object aimed at. These provisions render it dangerous or at least

unsafe to possess or deal in coconuts or even to be near a plot of land on which coconuts are growing or to

be seen with a coconut. Before I tender any advice respecting the Ordinance to

M.M. I shall be glad to be furnished with a full explanation of the reasons for

the wide and arbitrary powers which the Ordinance confers, and whether you are

satisfied

DRAFT.

Kenya

3118

W. CORYNDON

MINUTE.

Mr. Seel 29.2.24

Mr. Calder 5.3.24

Mr. Ehrhardt 5.

Mr. Bottomley 7.3.24

Sir C. Davis.

Sir G. Grindle.

Sir H. Road.

Sir J. Masterton Smith.

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

satisfied that there is not a risk of serious abuses.

3. My attention has particularly been drawn to the following sections of the Ordinance:

Section 4.

It seems to me that the principle underlying this Section, that the burden of proof in the absence of affirmative proof of lawful possession, and that the onus of such proof shall be upon the person found in possession, would be understood by the natives. Moreover, it is on general grounds most objectionable that the onus of proving innocence should be placed on the accused. I am aware that no comment was made on the principle when the Coconut Trade Amendment Ordinance, 1919, was passed, but that Ordinance was understood to be in part a temporary measure, pending arrangements for the introduction of a system of registration

under the principal Ordinance of 1915.

The recommendation of the Coconut 267

Commission of 1914 that a "chit" or counterfoil system should be introduced, was based on the assumption that the registration of coconut plantations and the licensing of dealers would be carried out. The fact, however, that registration has been abandoned, partly because a large number of persons who trade in coconuts at the Coast are illiterate, appears to be an additional reason why natives found in possession of coconuts should not be charged with the onus of furnishing affirmative proof of innocence, which could in most cases only take the form of a written receipt for the coconuts.

(b) Section 7.

This section appears especially objectionable. The S. Lucia Ordinance quoted provides for the arrest by an owner or his agent only of persons found trespassing on his plantations. The present Ordinance gives such power of arrest

Prohibitory
Code

arrest to an owner or his agents not only
in their plantations and in the immediate
vicinity, but in any locality, if the
nuts are "reasonably suspected of being
stolen" from the plantation. This provision
offers undesirable opportunities for
abuse by an unscrupulous plantation owner
or his agents, since it would be possible
to arrest illiterate dealers in nuts and
to mulct them of money in consideration
of not taking them into Court.

(c) Section 8, Part (1) of this
section seriously interferes with the use
by an individual of his own property, but
I do not think a licence to tap coconut
palm is already required and that the 1914
Commission recommended a tax on each
nut tapped. Parts (2) and (3) confer
arbitrary powers upon the District
Commissioner, who may not be experts in
the satisfactory cultivation of coconut
plantations. This observation applies
also to Section 14 of the Ordinance, which
would enable a District Commissioner to

deprive

deprive a dealer of his means of 263
livelihood without giving any explanation.

(d) Section 16. This section makes
offences cognisable to the police, and
while there are precedents for this in other
Kenya Ordinances it is a form of legisla-
tion which should not be resorted to, if it
is possible to do without it.

I have, etc.

(SIGNED) J. H. THOMAS.