

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 186	Press Mis.
24	
Dated 10 - 2 - 1918	

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18

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Fort St. George, Judicial Consultation, 16th February 1858.

Read the following letters.

No. 2. From the Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 26th January 1858.

SIR,

I have the honor to acknowledge the receipt this day of the Extract Minutes of Consultation No. 81, Judicial Department, under date the 16th January 1858, and of the correspondence which accompanies.

2. The first thing to be done is to settle the facts of the case, as to which Mr. Robinson the Acting Magistrate of Malabar, and Shungara Chetty the proprietor of the captured tobacco (if not of the vessel also) on the one side, and General Cullen the Travancore Resident and V. Kristna Row the Travancore Dewan are rather at variance.

3. Shungara Chetty maintains that the Port Clearance and Manifest for Mahé were *bonâ fide* documents, that the tobacco was consigned there, but that the vessel was driven by *stress* of weather off Anjengo, where it was seized by the Travancore authorities on suspicion that its cargo was intended to be landed at Anjengo. He therefore seems to admit that he had no right to land his tobacco at Anjengo, and to rest his case on the fact that there was no attempt or intention to do so.

4. Mr. Robinson, on the other hand, admits himself fully satisfied that the Port Clearance was a "false" one, taken out to "deceive" those in the interests of the Travancore Government, and makes no denial of the Dewan's broad assertion of the existence of an "extensive smuggling trade" carried on between Cochin, Anjengo and the Travancore territories, but he contends that Anjengo is "a British port" in which free trade in tobacco has been legalized by Act IV of 1853; that the roadstead is "a British roadstead;" that Shungara Chetty had a perfect right to land his tobacco there, and the Travancore authorities no right whatever to seize such tobacco in the Anjengo roadstead, though about to be landed in Anjengo.

5. I think Mr. Robinson is so evidently disposed to support Shungara Chetty's case, that he would not without very sufficient grounds have admitted as distinctly as he has done, in the very teeth of Shungara Chetty's assertions, that the Port Clearance for Mahé was "false," and intended to "deceive," and that there is "no reasonable doubt that the tobacco *was* intended to be landed at Anjengo." I observe moreover that Shungara Chetty does not deny, while Mr. Robinson expressly admits, the Dewan's statement, and the Tindal's deposition, that a boat was seized in the actual attempt to land at Anjengo 8 bales of tobacco from this very vessel, and that an extensive smuggling trade in tobacco exists there.

6. I therefore take the facts—as regards this part of the case—to be as stated by the Dewan and admitted by Mr. Robinson, and I proceed to the point where Mr. Robinson and General Cullen are at issue.

7. General Cullen describes the attempt to land the tobacco in question at Anjengo as "an attempt to smuggle tobacco within the limits of the Sirkar *monopoly* at Anjengo, *as guaranteed by the Madras Government*, of that article; and the Extract Minutes of Consultation informs me that the *sole* jurisdiction retained by the Company at Anjengo is in matters of Police," and that "its whole revenues, including the customs, are now and have been for *many years past*" (prior, I therefore conclude, to Act IV of 1853) "leased to the Government of Travancore, a great portion of whose income is derived from its tobacco monopoly."

8. The tobacco monopoly being of such vital importance to the Travancore Government, if I am correct in supposing that both this monopoly and the lease of Anjengo to that Government existed previous to the passing of Act IV of 1853, (which is wholly silent about its extension to Anjengo, about the lease thereof to the Travancore Government, and about the Travancore tobacco monopoly—though it must be assumed that these matters were known to the Legislature when passing that Act) and still more if General Cullen be correct in stating that the Madras Government have "guaranteed" the "limits of the Sirkar monopoly of tobacco at Anjengo," and as it would seem moreover that no question has ever arisen of the Company making any compensation—such as good faith would seem to require in such case—to the Travancore Government for any injury to its tobacco monopoly at Anjengo by reason of the passing of Act IV of 1853,

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I feel obliged to come to the conclusion that, by reason of the previous lease of Anjengo to the Travancore Government, Act IV of 1853 was not meant to and does not extend to Anjengo during the duration of the lease—Anjengo, during that term, not being a part of the Province of Malabar within the meaning of that Act, but—for all purposes of revenue—part of the territory of the Travancore Government.

9. Taking then the Travancore Government to be an independent Government, and Anjengo to be an integral part of its territories, for the purposes of revenue and customs duties, the question is simply has an independent Government a right to seize a cargo of goods, contraband according to its laws, on board a vessel close to its own shore, intending to land them there, and a part of which goods were seized in the actual attempt to land them, in a boat into which they had been transhipped for that very purpose.

* Vol 2. Chap. VII, pages 319 to 327.

† 1799. 1 Rob. Ad. Rept. pages 340 to 378.

‡ Book III. C. VII. Secs. 112, 113 and 114 and Book I. C. VIII. Secs. 90 and 99.

10. The principles laid down in Browne's Civil and Admiralty Law,* and by Lord Stowell in the case of the Maria or the Swedish Convoy,† though there applied to contraband of war, apply also to cases like the present, as particularly does Vattel,‡ and in my opinion establish fully the right of any independent Government—according to the law of nations, as laid down by Bynkershock, Heineceus, Vattel and other eminent authorities—to search any vessel close to its shores suspected of an attempt to smuggle any contraband goods into that Government's territories, and to seize such goods if found on board. Lord Stowell after stating that the transaction before him took place “in the British channel, close to the British coast,” adds these words—“a station over which the Crown of England has from pretty remote antiquity always asserted something of that special jurisdiction which the Sovereigns of other countries have claimed and exercised over certain parts of the seas adjoining to their coasts.”

11. With respect to para. 4 of the Extract Minutes of Consultation, I would observe that I have supposed Travancore to be an independent State, having power legally to establish within its territories such monopolies as it pleases, that I consider Anjengo to be a part of its territories for the purposes of revenue and customs including its tobacco monopoly, and also that, (as stated by General Cullen) the Madras Government guaranteed to the Travancore Government that monopoly within the limits of Anjengo, and on these grounds I have considered that monopoly to be legal.

12. If I considered that monopoly illegal, or if it be contrary to any treaty or agreement between the Travancore Government and the Company, or if the terms of the lease of Anjengo, admit of Act IV of 1853 applying to Anjengo, then I should consider the seizure of the boat and cargo to be unjustifiable, whether regarded as occurring in a British port, or in a port belonging (temporarily) to an allied power, where, by agreement between that power and the Company, tobacco was not contraband.

13. The Extract Minutes of Consultation under date 25th July 1834 referred to in the Circular Order of the Foujdaree Udalt of the 31st July 1834, mentioned in Shungara Chetty's letter, has nothing to do with the question. It refers merely to the extent of the Admiralty Jurisdiction of the Supreme Court at Madras, and shows that in cases of offences committed at sea the nearest Justice of the Peace should be resorted to on disembarkation.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

No. 3. From W. ROBINSON, Esq., Acting Magistrate of Malabar; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated Calpetta in Wynaad, 1st January 1858, No. 1.

SIR,

To Board of Revenue 3rd June 1857, No. 85
From Government, 29th do " " 418 A
To do. 6th July " " 87
To Board of Revenue, 24th Oct. " " 155

With reference to the correspondence on the subject of the tobacco monopoly at Anjengo and Tangasherry, I venture to state that a very unsatisfactory state of things continues to subsist in those dependencies.

Fort St. George, Judicial Consultation, 16th February 1858.

2. The Contractor licensed by the Travancore Government is exercising an illegal interference, seizing tobacco, &c., and calling in the aid of the Police, an aid which I cannot legally countenance him in receiving.

3. In the mean time I have reason to believe that the demoralizing consequences of this uncertainty is taking effect on the officials, they are accused, and I fear with great reason, of playing into the hands of those who pay best. Some times countenancing the Contractor, though not openly, and always levying a large fee for their private use on import and storing of tobacco, to let it pass without notice; at other times they are engaging directly, though not in a way I can reach, in the smuggling trade.

This state of things ought to be put an end to.

(Signed) W. ROBINSON,
Acting Magistrate.

No. 4. ORDER THEREON, No. 196; dated 10th February 1858.

Resolved that copy of the above opinion be furnished to the Acting Magistrate of Malabar in reference to Extract Minutes Consultation 16th Ultimo. Mr. Robinson will inform Shungara Chetty in reply to his address of the 4th December, that his vessel and her cargo having been seized by the Travancore authorities when the Tindal and crew were in the very act of smuggling, the Government cannot interfere in his behalf.

With regard to his communication of the 1st Ultimo, the Acting Magistrate should warn the inhabitants of Anjengo and Tangasherry, and all other parties concerned, that they must expect no support from the British Government if they engage in the illicit introduction of tobacco into those Settlements.

(Signed) T. PYCROFT,
Chief Secretary.

which the Sovereigns of other countries have claimed and exercised over certain parts of the seas adjoining to their coasts...

11. With respect to Para 4 of the Extract Minutes of Consultation, I would observe that I have supposed Travancore to be an independent state, having power legally to establish within its territories such monopolies as it pleases, that I consider Ayjings to be a part of its territories for the purposes of Revenue and Customs including its tobacco monopoly, and also that, (as stated by General. Callen) the Madras Government guaranteed to the Travancore Government that monopoly within the limits of Ayjings, and on these grounds I have considered that monopoly to be legal.

12. If I considered that monopoly illegal, or if it be contrary to any Treaty or agreement between the Travancore Government and the Company, or if the terms of the lease of Ayjings admit of Act IV of 1853 applying to Ayjings, then I should consider the seizure of the boat and cargo to be unjustifiable, whether regarded as occurring in a British Port, or in a port belonging (temporarily) to an allied Power, where, by agreement between that Power and the Company, tobacco was not contraband.

The

the question is, simply, has an independent Government a right to seize a cargo of goods, contraband according to its laws, on board a vessel close to its own shore, intending to land them there, and a part of which goods were seized in the actual attempt to land them, in a boat into which they had been transhipped for that very purpose.

10. The principles laid down in Brown's Civil and Admiralty Law,† and by Lord Stowell in the case of the Maria or the Swedish Congo,† though there applied to contraband of war, apply also to cases like the present, as particularly does Vattel,† and in my opinion establish fully the right of any independent Government — according to the law of nations, as laid down by Bynkershoek, Heineccius, Vattel and other eminent authorities — to search any vessels close to its shores suspected of an attempt to smuggle any contraband goods into that Government's territories, and to seize such goods if found on board. Lord Stowell, after stating that the transaction before him took place "in the British Channel, close to the British coast," adds these words — "a station over which the Crown of England has from pretty remote antiquity always asserted something of that special jurisdiction which

† Vol. 2. chap VII
page 319 to 327.

† 1799. 1 Rob. Ad. Rep.
page 348 to 378

† Book III. C. VII. § 112, 113
in L. 114 & Book I. C. VII
§ 90 and 99

Memo

The Advocate General's opinion seems to settle the two points — that the seizure of the smuggling vessel by the French authorities was justifiable — and that the continuance of the monopoly of Tobacco in Angico, and consequently in Tanga-chany, is not unlawful so long as the present features of the settlement exist. — Lord Stowell's 1853 judgment is of great importance in this connection. The questions were immediately arising by the Act. May — but a further one yet remains — when these

leaves of pine - as one of them does, this
fishy - can they be removed ^{on} the
present terms - that is including the
continuance of the existing monopoly -
as in Decr IV - 1853 - a branch this renewal
on the conditions which do not
impose a free trade in Tobacco within the
limits of the colony leased?

30.1.58

JB

The subject of the renewal of the lease
has already been brought to the notice of
the Transvaal authorities - I think -
the settlement of the question must

501

depend very much on the disposition which
the Transvaal authorities may manifest
regarding their colonies there.

The Advocate General's opinion is
clear - on the point but one - by boat
there he knows the vessel in which the
tobacco was as cargo, on the smaller boat
which was taking a patient on shore -

this had to be ascertained - this opinion
communicated to Mr. Robinson.

The right of the Transvaal to large land
unquestionable.

Well ... I have
ascertained
from Mr. Smythe
that he meant this
post - not the
smaller
boat

the question is, simply, has our
Government a right to say
land according to

1840.
Read letter from the Advocate General - 21 Jan. 58. 68
do do Mag of Malabar - 1 do 1841.
Resolved that copy of the above opinion
be furnished to the Act. Mag. of Malabar
in reference to E.M.C. 16 ult. Mr Robinson
will inform Shungam Shetty in reply to
his address of the 4 Dec that his vessel
and her cargo having been seized by
the Jawancom authorities when the
Jindal and crew were in the very act
of smuggling, the Govt cannot interfere
in his behalf -

With regard to his communi-
cation of the 1st ult. the Act. Mag. I
warn the inhabitants of Koyungo &

In Dy to Cms. 16th Feb
a circular. 1858. Sept. 20

Replied to 30-8-58 No. 9

From the Advocate General

8/26
A/24 January 58

1847
1848
1849

Gives his opinion in
reference to C. No. 8. May
of 16 inst. relative to the
seizure by the Jawancom.
are authorized, on
false pretences, of a
boat laden with to-
bacco on the high
seas.

With an order

C. 19th Jan 58 to 20th Feb 58
A/24 Jan 58 to 20th Feb 58
30th March 58
10th April 58

Jangasberry, and all other parties concerned
in that they must expect no support from
the British Govt if they engage in the illicit
introduction of tobacco into these settlements
Act. Mag. Malabar. Dated 15th Feb 58
For 16th Feb 58
10 February 1858-58
204
C. 19th Jan 58 to 20th Feb 58
A/24 Jan 58 to 20th Feb 58
30th March 58
10th April 58

The Chief Minister of Government

under date 25th July 1834 referred to in the Circular
 Order of the Secretary of State of the 21st July 1834,
 mentioned in Mr. Baring's letter, has nothing
 to do with the question. It refers merely to the
 extent of the voluntary jurisdiction of the
 Supreme Court at Madras, and shows that
 in cases of offences committed at the the
 nearest Justice of the Peace should be referred
 to on disambiguation.

Have the honor to be

Dear

Yours truly &c. &c. &c.

Wm. Baring Esq. &c.

Wm. Baring Esq. &c.

Wm. Baring Esq. &c.
 26th January 1838