M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1641 Press
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Dated 13/12/1860 ~~19~~

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 13th December 1860.

No. 85. Read the following Proceedings of Government in the Revenue Department, dated 7th December 1860, No. 2,329.

Communicating the Order passed on Proceedings of the Board of Revenue, replying to the Order of Government, No. 1,367, *dated 15th August* 1860, *Revenue Department, wherein a report was called for on the existing state of things in connection with the Abkari Contract at Ootacamund.* } (Vide Proceedings Revenue Department, dated 7th December 1860, Nos. 87 and 88.)

No. 86. ORDER THEREON, 13th December 1860, No. 1,641.

Communicated to the Inspector General of Police, and likewise to Mr. H. D. Rae.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Proceedings of the Board of Revenue, dated 2nd November 1860, No. 5,048 :—

Read the following Proceedings of Government, dated 15th August 1860, Revenue Department, No. 1,367.

(In Cons., 16th August 1860, No. 4,042.)

1. In the above order the Board of Revenue were instructed to report on the Abkári arrangements in force at Ootacamund, after reference to the Collector, to the Improvement Committee, and to residents at the station.

2. The Collector's reports and the replies of the "Improvement Committee," and of nine out of the twelve gentlemen to whom the Board applied for information on the subject, are herewith submitted to Government.

3. The Abkári contract of the Neilgherries was sold by public auction for a term of five years, ending with June 1861, and realized Rupees 24,500 per annum for 29 shops. The number of shops at Ootacamund itself is 12, no increase having been allowed since 1844, although the population of the place has nearly doubled since then. The License, a copy of which is herewith submitted, contains all the usual stipulations.

4. It is clear from the above that there is nothing peculiar in the Abkári arrangements at Ootacamund, and that the abuses which are declared to prevail are owing to defects in the Police and Magisterial, rather than the Revenue administration.

5. The Board have carefully perused the letters of the residents consulted by them, and find little in them which the existing law is not fitted to remedy, if it were duly put in force.

6. They will here notice the chief matters of complaint.

7. The amount of the rent is deemed excessive. It certainly is a painful sign of the prevalence of intemperate habits; but if it were lower, the renter's profits would be larger; his inducement to sell would be as strong, and his ability to sell cheap would be greater. Whether the rent be high or low, the renter will always sell as much as he possibly can, for it is his interest to do so. At all events the Collector has no control in the matter, as the highest bidder, if he furnishes the required security, of necessity becomes the purchaser.

8. The number of shops is considered too large. The lease unfortunately contains no provision for reducing the number; but if Government are willing to grant compensation, an arrangement might perhaps be effected with the renter by private agreement. The number of shops, as already stated, has not been increased since 1844, and is now 12; even if reduced by one-half, there would still be a shop within comparatively easy reach of all but the out-lying houses of the Cantonment, and it may be doubted whether there would be any material diminution of drunkenness.

9. It is alleged that the Licensed Vendors sell liquor on credit and for barter. The former practice is not contrary to law, but may very properly be introduced as a condition in all future licenses. The sale of liquor in barter is criminal, and punishable under Clause 8, Section 6, Regulation I of 1820 with fine up to Rupees 200, or, in default, imprisonment for six months.

10. Liquor is said to be illicitly sold by unlicensed persons. This offence is also punishable under Regulation I of 1820 with fine up to 400 Rupees or, in default, imprisonment for one year.

11. The liquor sold is also said to be adulterated with noxious ingredients; the Regulation already quoted assigns imprisonment with hard labor for a period not exceeding three years as the punishment of this offence.

12. Almost all the other complaints made by the residents may be checked by strictly enforcing the Abkári Regulation, and with the new Police and a Magistrate constantly residing on the Hills, there ought to be no difficulty in this respect. It is quite clear, however, that the law has never yet been properly enforced, and criminal practices have been allowed to pass unchecked.

13. In addition to the regular Abkári license, a Mr. James has been allowed a license to sell "good wholesome Beer" in two shops, at Ootacamund. So long as the beer is good and wholesome, this is desirable rather than otherwise, as likely to reduce the consumption of spirits; but the license is defective in containing no penalty for breach of this condition, and no stipulation for entering the premises at pleasure for the purpose of testing the liquor. Mr. James however, also manufactures and sells a liquor which he terms "Ginger Wine," but which in reality is highly spirituous. So long as he sells what can justly be termed wine, no license is necessary, nor under the ruling of the Foujdári Adálat can the Collector interfere; but the enclosed sentence of the Sub-Judge passed under Clause 9, Sections 6 and 15, Regulation I of 1820, will, it is hoped, deter him and his agents from selling what is really a spirituous liquor, under the designation of Ginger Wine.

14. In making the above remarks the Board do not mean to imply that the residents' complaints regarding the Abkári are groundless; but that if the law is properly administered, the irregularities they describe may to a great extent be prevented.

15. The Board believe that the demoralised condition of the Native population of the Hills is owing to other causes besides defective Abkári arrangements.

16. The most effectual remedy for the present state of matters at Ootacamund would be to give the residents quicker and easier means of obtaining redress for grievances than our present Civil and Criminal procedure afford. It is not necessary, nor is it expedient that heavier penalties should be attached to crimes on the Hills than to crimes elsewhere, or that less proof of guilt should be accepted there; that acts should be constituted offences there which are not offences in other places; or that any procedure necessary to attain justice should be omitted. What is wanted is merely means, suited to the circumstances and position of the people, of obtaining redress. It is idle to tell the master who is resident for a few months, that he may prosecute a recusant mechanic or a servant who has broken his engagement by a Civil suit, which may be appealed to higher Courts, and must, under any circumstances, be a tedious matter. On the other hand, it is futile to tell a servant or a laborer, with scarcely a Rupee in his possession, that he may recover wages unduly withheld from him by the same process. The want of suitable means of obtaining redress for these every-day grievances, has a most injurious effect on all parties. No doubt special laws are to be avoided as a general rule, but such laws exist in the Presidency towns, and it is better to choose the lesser evil of a special law, or rather of a law of procedure restricted to particular localities, than to leave matters on the Hills in their present unsatisfactory condition.

17. The letters herewith submitted contain many valuable suggestions on the detail arrangements of the Abkári, and the Board propose sending them to the Collector and to Mr. Nesbitt for their information. It will be left to the Collector's discretion to adopt at once such of these suggestions as do not contravene the Regulations, or the term of the existing contract, and all should be carefully considered when the time arrives for fresh arrangements.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

ORDER THEREON, 7th December 1860, No. 2,329.

1. In these Proceedings the Board reply to the Order of Government of 15th August 1860, No. 1,367, wherein a report was called for on the existing state of things in connection with the Abkári contract at Ootacamund.

2. This requisition had its origin in a Report* of a Committee appointed at a meeting of the inhabitants of Ootacamund, for the purpose of taking steps towards the redress of grievances under which the residents generally were suffering.

* *Enclosure to G. O. 31st July* 1860, *No. 960, Judicial Department.*

3. The first resolution passed referred more especially to "the insolence, fraud and "drunkenness of domestic servants;" and these evils, the Committee observed (Report paragraph 2) were "mainly due to working of the Abkári Department, and the inefficiency "of the Police."

4. The Board were desired, after having procured information from the Collector of Coimbatore, the Improvement Committee, and individual members of the community to report:—

(1.) On the number of Arrack and Toddy shops now established at Ootacamund, and the regulations existing for the prevention of drunkenness, riots, reception of stolen goods, &c.

(2.) Whether any increase has been made in the number of shops during the last ten years, and if so, whether the European residents were consulted about it.

(3.) What change of system is desirable with the view of checking the abuses complained of.

5. They now forward with their remarks several letters from officials and private individuals, fully showing the faults of the system as at present carried out, and containing a variety of suggestions for their removal.

6. As to the *first* point, it is shown that the present contract of the Neilgherries for five years, and which terminates with June 1861, was sold for Rupees 24,500 per annum, for 29 shops, of which 12 are at Ootacamund itself. The usual license, containing the stipulations prescribed by Regulation I of 1820, was granted to, and Moochilka executed by, the renter; in other words the renter is bound both on his own behalf as well as for his sub-renters, to abide by the provisions, and, in case of breach, to endure the penalties of that Regulation. It is clear then, as the Board observe, that as far as the Revenue administration is concerned, all checks hitherto in force in the Districts generally, have been rendered available, and that any defect observable in practice must be from want of proper supervision on the part of the Police.

7. On the *second* question, it is stated that no increase has been allowed in the number of shops at Ootacamund since 1844, though the population of the place has nearly doubled since then.

8. Referring to the *third* point the Board do not consider, apparently, that much good would result from merely diminishing the number of shops. The first remedy that suggests itself is a strict enforcement of the Abkári Regulation. It is quite clear, they observe, that most of the offences complained of, could be easily checked in this way; but they would proceed further, and would obtain a legislative enactment by which all classes, both masters and servants, would be enabled to find that redress which, under the peculiar circumstances existing at Ootacamund, it is next to impossible for the present machinery to afford.

Proceedings under review, paragraph 16.

9. It would be, the Government fear, of no use applying for an enactment such as is intended by the Board. The papers before them show, moreover, that anomalies and abuses which now exist may be remedied without a recourse to any but the simplest measures.

10. The first anomaly is the distinction apparently allowed between the liquors mentioned in Regulation I of 1820, and "Wines." A Mr. James, it appears from paragraph 13 of the Board's Proceedings, has been in the habit of manufacturing and selling at Ootacamund, without license, a liquor which he styles "Ginger Wine," but which has been proved on the clearest evidence, to contain a large quantity of alcohol. Even this last circumstance, does not, in the opinion of the Court of Foujdári Adálat, bring the article in question under the prohibition contained in Section 3 of Regulation I of 1820. That Section declares it illegal to *manufacture* or *sell* "fermented liquors" otherwise than "in conformity with the provisions of this Regulation." The proceedings of the subordinate Court of Ootacamund in Criminal case No. 17 of 1860, show clearly that Mr. James' "Ginger Wine" was not only a *spirituous* but a *fermented* liquor of an intoxicating quality and the Government are therefore at a loss to understand how the Foujdári Adálat excluded it from the operation of the law. The wording of the Regulation seems to be sufficiently explicit, and there can be no doubt as to its intent. In England and other countries, not only distilled spirits, but fermented and intoxicating liquors are placed under restrictions as to their sale, and both wine and beer come under the latter head. If the present law cannot check the unlicensed sale of fermented and intoxicating drinks, no time should be lost in obtaining a new one. The Governor in Council will, however, in the first instance instruct the Government Pleader to move the Court of Foujdári Adálat to reconsider their ruling on this subject. Copies of the papers alluded to in this paragraph will be furnished him for that purpose. And his attention

Proceedings Foujdári Adálat, dated 25th August 1860.

will be called to the interpretation of the Foujdári Adálat dated 3rd March 1846 (see official Gazette of 1846, page 350), which ruled that beer, being a fermented and intoxicating liquor, could not be sold without a license. The Government are unaware why a different construction should be placed upon Section 3, Regulation I of 1820 in respect of wines.

11. One necessary reform is to diminish the number of Toddy and Arrack shops. Some of the shops in the most objectionable localities might be stopped at once, compensation being given to the contractor; and when the present contract expires in June next, their number might be still further reduced, after consultation with the Collector and Superintendent of Police. A large number, such as now exist, doubtlessly incite a love of drinking and prevent the Police exercising a proper surveillance over them.

12. When the Abkári is next farmed out, other essential improvements should be made. The sale of liquor *on credit*, as well as for barter, should be forbidden, under a penalty, in the license; and care should be taken to fix on proper sites, as well as buildings, for the shops. These should be in public places, where the frequenters of them would be well seen, and where the Police would have a ready view of all that passes in them. The discouragement thus given to drinking, especially among the more respectable classes, has been ascertained in many places. The shops should be pucka buildings, with no back-doors or windows, and approachable only in front. This is of great consequence in preventing stolen goods being bartered for liquor, and it may be desirable for Government to construct buildings for the purpose, on an approved plan, charging a fair rent for them. The plan and estimate of such a building should be forwarded for approval, and the Collector after consultation with the Police authorities should report what number of shops it will be advisable hereafter to allow and in what localities.

13. All the small beer shops ought to be put down. Beer is not a liquor which natives consume, and the licenses appear to be used as a cloak for selling strong drink. This course will not interfere with the sale of beer by the licensed keepers of European shops.

14. The Government will not, as suggested by some of the residents, interfere with the Coffee shops, or with the sale of liquor on market days. The new Police must be looked to for preventing abuses in these two respects. They do not, moreover, anticipate advantage from making the Abkári leases shorter, or from putting up the shops to competition separately.

15. The foregoing appears to the Governor in Council to be all that is necessary, since the existing laws, if duly exercised, punish the sale of liquor at forbidden times and places, as well as its adulteration, its exchange for grain or goods, and its sale below the minimum price. Shopkeepers also who permit drunkenness in their shops, or let them become the resort of bad characters are liable to punishment.

16. The Government presume that the Collector has withdrawn the license which he granted to Mr. James, if not, no time should be lost in doing so.

(True Extract.)

Deputy Secretary to Government.

To the Board of Revenue
„ Government Pleader.
„ Judicial Department ✓

Exd. S. T. Augustin.

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Proc. 4th Jan 1869 etc. 5 6 7
— 27th July 1860 etc. 191 to 192
— 16th Aug — etc. 216 to 219
— 25th Dec — etc. 1834 to 1844
— 6th Feb — etc. 50 to 51.

Lib. 21 Dec

Proc of Dec
Judicial 1860 Dept

Proc: of Govt in the
Rev: Dt. 23rd.

Ref. 10 to 3 Decr 1860

24 Enclosures.

F. No. 1248 to 2111

No 2053.

Copy the order passed
on Proc: of the Board of
Revenue respecting to the
order of Govt No 7367 dt 15th
August the Rev: Dt: wherein
a report was called for on
the existing state of things
in connection with the
Abkari Contract at
Vellacamund

85 & 86

With an Order.

No. 1641 — 13 December 1860.
Communicated to
the Inspector General
of Police, and likewise
to Mr. H. D: Race.

J P

The Inspector General
of Police.
Mr. H. D. Race.

dup 13th