

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	929	Press Mis.
153-154		
Dated	24-7-	1918.60.

9/9

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
24th July 1860.*

No. 153. Read the following letter from A. HATHAWAY, Esq., Magistrate of Bellary, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 11th July 1860, No. 33.

1. I have the honor to submit for the consideration of Government, the accompanying Extract from the Proceedings of the Foujdari Adalat, under date the 20th November 1852; wherein it is ruled, that the penalty attached to an infringement of the 5th and 6th conditions of the Muchilka, executed by a vender of spirits, can only be recovered by a Civil action; and to suggest that the Legislative Council be moved to pass a short Act, empowering the Magistrate to inflict the fine stipulated for in the concluding paragraph of the Muchilka (vide Circular Order, Board of Revenue, 29th June 1835, form No. 2) or in default to order a short period of imprisonment.

2. At present, the Magistrate is bound to try such cases; and in the event of conviction must institute a Civil suit to enforce the penalty awarded.

—

Extract from the Proceedings of the Foujdari Adalat under date the 20th November 1852.

Read letter under date the 4th November 1852, from the Session Judge of Coimbatore.

It was ruled by the Court of Foujdari Adalat under date the 31st May 1850, that a fine could not be imposed upon parties convicted of "selling liquor to European Soldiers and Sailors" under Clause eighth, Section VI, Regulation I of 1820, and that as Clause fifth of the above Section makes no provision for the recovery of any penalty which the stipulations of the Mochilka executed by a vender may have attached to an infringement of the terms of his license, that penalty could only be recovered by a Civil action, and on the acknowledged principle that all penal enactments must be construed strictly. The Court of Foujdari Adalat are of opinion that the above ruling was correct.

Ordered that Extract from these Proceedings be sent to the Session Judge of Coimbatore, for communication to the Magistrate.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Magistrate of Bellary.

(True Copy.)

(Signed) J. H. GOLDIE,
Acting Session Judge.

No. 154.

ORDER THEREON, 24th July 1860, No. 929.

In the Proceedings of the Foujdari Adalat, under date the 20th November 1852, copy of which accompanies Mr. Hathaway's letter recorded above, it is shown that "as Clause fifth, "Section VI, Regulation I, 1820, makes no provision for the recovery of any penalty, which the

"5. Not to open my shop before sunrise, nor keep it open after 8 p. m., and not to harbor any person in it during the night."

"6. Not to sell any quantity of liquor to European Soldiers or Sailors."

"2. If I transgress either of the 5th, or 6th conditions, I hereby agree to pay a fine not exceeding 50 Rupees, on proof of the same before the Magistrate."

"stipulations of the Mochilka executed by a vender, may have attached to an infringement of the terms of his license, that penalty could only be recovered by a Civil action." This ruling applies to the 5th and 6th conditions, and the penalty provided for a breach of them, in the Mochilka, form No. 2, in the Circular Order of the Board of Revenue, 29th June 1835.

2. Mr. Hathaway remarks that the Magistrate is bound to try cases infringing these conditions, and, in the event of conviction, must institute a Civil suit to enforce the penalty awarded—and suggests that the Legislative Council be moved to pass a short Act empowering the Magistrate to inflict the fine stipulated for.

Drum Kenne

Judicial.

Memo.

Letter, 11th July '60 N^o 33, from the Magistrate
of Bellary.

Mr. Hathaway brings
to notice the ^{which he deems} course ne-
cessary for the en-
forcement of the V & VI
conditions of the Mo-
chilka, ^{counter part} or Agreement,
executed by Retail
Vendors of Spirits.

2. The Mochilka, which,
under the authority
of Regulation I-1820,
is framed by the Board
of Revenue, contains
six stipulations. A
breach of the first three
viz. to prevent the re-
tail shops from be-
coming places of
drunkenness

Proceedings of the Madras Government, Judicial Department,
24th July 1860.

3. The Government do not deem it advisable to apply for a special Act to provide for the point submitted by Mr. Hathaway. It is not probable that the Council would be disposed to legislate for it singly.

4. His Excellency in Council observes, in reference to the existing arrangement, that there ought not to be much difficulty in recovering the penalty by Civil process. As, however, the Board of Revenue are competent, under Clause second, Section V of the Regulation, to alter the rules framed under it, it will be suggested for their consideration whether it might not be made a further condition of the Mochilka that parties so offending, should on proof thereof to the satisfaction of the Collector, be subject to a revocation of their licenses and to have their shops immediately closed.

(Signed) T. PYCROFT,
Chief Secretary.

Under N. 24. 1/1820

drunkenness — or the
haunts of thieves or
bad characters — or
to forbid the receiv-
ing of grain, wearing
apparel, or any other
goods, or effects, in bar-
ter or pawn for liquor
— is punishable, on
conviction, by the Ma-
gistrate, while the Cri-
minal Judge can take
cognizance of an of-
fence against the 4th
article in the Mochil-
ka viz. not to allow
liquor exceeding a
quart in quantity
to be removed from
the shop.

3. The 5th & 6th condition
in the Mochilka, are
not penal under the
enactment — & in-
fringements

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infringements of them
are provided for in
the Agreement itself. &
These conditions & the
penalty are as follow-

"5." Not to open my
shop before sun-
rise, nor keep it
open after 8 p.m.,
& not to harbor any
person in it during
the night."

"6." Not to sell any quan-
tity of liquor to Eu-
ropean Soldiers or
Sailors."

"2." If I transgress ei-
ther of the 5th or 6th
conditions, I hereby
agree to pay a fine
not exceeding 50
Rupees, on proof
of the same before
the Magistrate.

4. As regards the offence
of "selling liquor to
European"

+ which, as already
remarked, is not
penal under the
enactment,

European Soldiers &
Sailors, the Faujdar
ri Adalat decided
that the penalty at-
taching to the in-
fringement of the
terms of a licence, un-
der the stipulations
of the Mochilka, can
be recovered only by
Civil action - Clause
V. Section II. Reg. I
- 1820 making no
provision for the
recovery of such pe-
nalty.

5. Mr. Hathaway re-
presents that, in this
state of the matter,
the Magistrate is
bound first to try
cases of breach of the
I & II conditions of the

the Mochilka - &
in the event of con-
viction, must insti-
tute a civil suit to
exact the penalty
stipulated for. He
suggests, as a remedy,
that a short act -
should be passed
empowering the
Magistrate to in-
dict - the fine, or
in default, to order
a short period of
imprisonment.

6. It is not probable
that the Legislature
would consent to
pass a special act
to provide for these
two points - and if it
can be a claim on them
ought not to be much
difficulty in recovering

The amount of the penalty by Civil Process
moreover a condition
may be added to the
license making it
revocable on the com-
-mission of such acts - which
would be a heavier
infliction than a Rs 50
fine -

Resd Mr. J. to the
by Council does not
seem correct for + the
draft has been prepa-
red in this view

JPS

Memo.

Soon

Judicial. 20

Proceedings of the Madras Govt
Read letter from the
Magistrate of Bel-
lary _____ Inter 11th July 60 N^o 32

Order. 24 July 1860. No. 929

In the Proceedings
of the Fonjdari A-
dalat, under date
the 20th November
1852 - copy of which
accompanies Mr. J.
Bathawany's letter
recorded above - it
is shown that "as
"Clause fifth, Section
"VI, Regulation I -
"1820, makes no pro-
"vision for the recove-
"ry of any penalty,
"which the stipula-
"tions of the Moo-
chilka

JGW

Ly

W. M.

See page 4
addition made
accordingly
23/7/60
JPS

"Mochilka, executed
"by a vendor,
"may have attached
"to an infringement
"of the terms of his
"license, that penalty
"by could only be
"recovered by a civil
"action." This ruling

- "-5- Not to open any shop before sunrise, nor keep it open after 8 p.m., & not to harbor any person in it during the night." applies to the 5 & 6 conditions
- "-6- Not to sell any quantity of liquor to Europeans Soldiers & the penalty provided for a breach of them, in or Sailors."
- "2.- If I transgress either of the 5 or 6 conditions, I hereby agree to pay a fine not exceeding 50 Rupees, on proof of the same before the Magistrate."

the Mochilka, Form
No. 2, in the Circular
Order of the Board
of Revenue, 29 June
1835.

2. Mr. Hathaway

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Magistrate is bound
to try cases infringing
these conditions,
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penalty awarded.
— & suggests that
the Legislative Council
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3. The Govt. do not es-
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4. P.B. L. in Council
observes, in reference
to the existing ar-
rangement, that
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ty ~~to~~ⁱⁿ recover the pe-
nalty by Civil pro-
cess. As, however, the
Board of Revenue
are competent, un-
der Clause second,
Section I of the Re-
gulation, to alter
the rules framed
under it, it will
be suggested for
their considera-
tion whether ^{it} ~~there~~
might be ^{not} a ^{made} fur-
ther

on proof thereof to the
satisfaction of the Comr.

on proof thereof to the
satisfaction of the Comr.

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further condition
of the Machilka
that parties so of-
fending, should
be subject to a re-
vocation of their
licenses & to have
their shops imme-
diately Closed.

J.P.

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The Magistrate of Bellary }
" Board of Revenue. }
" Rev. Dept. }

M.L.

Part of July

Judicial 1855 Myrauth

Ms. 929

Proceeding of Court

dated. 24 July 1960