

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

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PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudder Adalat, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 11th July 1861, No. 130:—

SIR,

1. With reference to the Order of Government under Order of Government, 7th December 1860, No. 2,329, Revenue Department, the date and number noted in the margin, I have the honor to report for the information of the Honorable the Governor in Council, that I was unable to ascertain the proper course to be pursued for obtaining the Court's attention to the matter referred to, no similar case having hitherto arisen; the difficulty presented itself in consequence of there being no matter before the Court in which I could regularly present a petition. Moreover, I could not satisfactorily decide on whose behalf I was to present the petition, nor could any satisfactory solution be suggested; after much consideration however, and consultation, I addressed to the Registrar of the Court of Foujdaree Adalat a letter of which I do myself the honor of enclosing a copy. To this the Registrar has replied under date the 10th instant (a copy of which accompanies), informing me that the Judges would be prepared to reconsider their Proceedings of the 25th August 1860, if the subject be brought before them through (what they hold to be) the regular channel; which their Honors state would be for the Magistrate of Coimbatore to address the Session Judge, by whom the reference would be submitted for the Court's opinion.

From CLEMENT DALE, Esq., Government Pleader, Sudder Adalat, to C. F. CHAMIER, Esq., Registrar to the Court of Sudder Adalat, dated Madras, 3rd July 1861, No. 127.

SIR,

1. With reference to the Proceedings of the Court of Proceedings of the Foujdaree Adalat, 25th August 1860, Foujdaree Adalat of the date noted in the margin, I do myself the honor of informing you that I have been instructed by Government to solicit that their Honors, the Judges of the Foujdaree Adalat, will be pleased to reconsider the ruling contained in those proceedings.

2. The circumstances of the case upon which that ruling was made are, so far as I understand them, as follows: In 1860, an individual named James resided at Ootacamund, where he had two shops in which he carried on the business of a retail vendor of Spirituous liquors and Beer. For his so doing Mr. James held an Abkari license with a provision in addition to those usually inserted in the ordinary license, giving him permission to sell in both his shops "good wholesome Beer." It, however, appears that Mr. James did not confine his business operations to the sale of Spirits and Beer, but that he manufactured and sold in his shops a liquor which he termed "Ginger Wine," but which in fact is highly spirituous; and on the clearest evidence has been proved to contain a large quantity of alcohol.

3. In 1846 a reference was made to the Court of Foujdaree Adalat, as to whether Beer could be sold without the license required by Regulation I. of 1820; on which, under date the 3rd of March 1846; it was ruled by that Court, "that Beer, being a fermented as well as an "intoxicating liquor, comes within the class of Spirituous and fermented liquors, the unlicensed "sale of which is forbidden by Section 3 Regulation I. of 1820."

4. This ruling has been generally acquiesced in, as being not only in accordance with a strict interpretation of the Regulation, but as carrying out the intention of its framers.

5. In 1850 the Board of Revenue, with reference to that ruling, solicited the opinion of the Foujdaree Adalat, "whether wines come within the class of spirituous and fermented "liquors," the manufacture and sale of which were forbidden by Regulation I. of 1820, except in conformity with the provisions of that Regulation; when their Honors, the then Judges, were pleased to intimate as their "opinion, that the provisions of Section 3 Regulation I. of 1820 "do not extend to wines."

6. There the question has rested, so far as I am aware, until it was again mooted by the Assistant Magistrate of Ootacamund in his letter addressed to the Court of Foujdaree Adalat,

under date the 17th August 1860, in that letter the Assistant Magistrate asks whether "the manufacture and sale in this country of a liquor under the name of "Ginger Wine" is allowable "under Regulation I. of 1820."

7. On this letter the proceedings of the Court of Foujdaree Adalat were had, under date the 25th of August 1860, and in which their Honors express their opinion that the article in question is not one to the prohibition of which Section 3 of Regulation I. of 1820 applies.

8. Thus the law now stands so far as enactment and interpretation of such enactment extends.

9. The attention of Government has been forcibly drawn to the subject within the last year, owing to the very great increase of intemperate habits and drunkenness among the Natives resident on, or frequenting the Neilgherry Hills.

10. The matter has been referred to the Board of Revenue, and has undergone very careful consideration, the result of which is, that the Board is of opinion that on the whole, so far as the Regulation affects the manufacture and sale of Spirits and Beer, there exists sufficient provision for checking most of the complaints which have been submitted to Government, and that they might be checked by strictly enforcing the Abkari Regulation; and with the new Police and a Magistrate constantly residing on the Hills, they are of opinion, there ought to be no difficulty in that respect.

11. As regards however the manufacture and sale of wine, or liquors passing under that denomination (if the present rulings of the Court remain), no law at present exists under which their manufacture and sale can be in any way (in the Mufassal) checked, controlled or regulated. It is very apparent that the objects for which Regulation I. of 1820 was passed may be entirely, or to a very great extent frustrated, so long as the manufacture and sale of intoxicating liquors, passing under the name of wine, may be carried on without being in any manner controlled or regulated; and Government consider that "if the present law cannot check the unlicensed sale "of fermented and intoxicating drinks, no time should be lost in obtaining a new one."

12. On such a subject it entirely rests with their Honors, the Judges, as the sole interpreters of the Law, to rule how far this Regulation has given power to the authorities to interfere in the matter.

13. Therefore the Honorable the Governor in Council, previously to moving the Legislative Council to provide a remedy for checking the very grievous evil to which I have alluded, has instructed me to solicit their Honors, the Judges, to give the Regulation further consideration, and to review the rulings of the Court so far as they affect the unlicensed manufacture and sale of wines or intoxicating liquors manufactured and sold under the name of Wines.

14. Probably their Honors may expect that I should lay before them for their consideration, such arguments as suggest themselves to my mind, in a manner similar to what I should have submitted, had the practice of the Court admitted of my preferring a motion or petition to them in open Court.

15. Under that impression I do myself the honor of submitting the following observations for their Honor's consideration.

16. In England it has been the policy of the Legislature to control the manufacture (for sale) and the sale of all such liquors "Cyder, Perry, Metheglin or Mead, made Wines, "sweets," &c., being named in addition to words of general import, in the recent English statutes, where brevity is not so much studied as clearness; I only allude to this, however, as leading to a probable conclusion that the framers of the Regulation in question, knowing that the manufacture (for sale) and the sale of such liquors was controlled in England, by requiring the manufacturers and vendors to obtain licenses, intended in more concise terms to effect a similar object.

17. Without however laying much stress on that circumstance, I will submit for the consideration of their Honors that, looking at the whole of the Regulation under consideration, it was evidently the intention of the framers to restrict the manufacture and sale of all liquors which are "intoxicating" or "fermented." This, I submit, is clearly shown by the preamble, where it is recited that Regulation I. of 1808 had been found inefficient to restrain the immoderate use of "intoxicating liquors," and that it was expedient that that Regulation should be revised and amended, and that (as one of the means) it was expedient to impose restrictions on the sale of Toddy and on the transit and custody of foreign or country spirits.

18. Then, after repealing Regulation I. of 1808 and some Sections of other Regulations referred to, it is enacted that all persons are forbidden, except in conformity with the provisions of that Regulation, to manufacture or sell Rum, Arrack or other SPIRITS; or Toddy, or OTHER fermented liquors.

19. I submit that in the preamble the framers used the term "intoxicating liquors," as a general term, considering it as sufficiently comprehensive to include all liquors which had an intoxicating effect, and that they did so for the purpose of showing that it was not their intention to confine the operation of the Regulation to mere spirits, but to extend it alike to all "liquors" of an intoxicating character; I also submit that what follows as to the sale of Toddy and the transit, &c., of spirits, does not curtail in any manner, the large and comprehensive term "intoxicating liquors." Then, I submit, the third Section fully carries out the intention of the framers as declared in the preamble, for after specifying by name two species of spirits, and using the words "or other SPIRITS," it goes on to show that the operation of the Regulation was not to be confined to spirits, but (for the purpose of carrying out the intention expressed in the preamble) proceeds to give the largest scope to the enactment, by forbidding the unlicensed manufacture and sale of all "fermented liquors," and which, as I submit, not only includes Beer, but Wine, and that whether of foreign manufacture or "home-made."

20. It will be readily admitted that Wine, whether of foreign manufacture or "home-made," comes under both the definitions used in the Regulation, viz., first, an "intoxicating liquor;" and, second, a "fermented liquor," and consequently, as I submit, all Wines (including Ginger Wine) come within the purview of the Regulation.

21. I have adopted this mode of bringing the subject to the notice of their Honors, the Judges, as I could not ascertain, any other practice prevails in the Court; should, however, their Honors deem it an inconvenient course, I shall have much pleasure in pursuing any other course that may be indicated.

From C. F. CHAMIER, Esq., Registrar of the Sudder Court, to CLEMENT DALE, Esq., Government Pleader, Sudder Adalat, dated Madras, 10th July 1861.

SIR,

With reference to your letter of the 3rd instant, I am directed by the Judges to inform you that they will be prepared to reconsider their proceedings of the 25th August 1860 (relating to the applicability of the provisions of Regulation I. of 1820 to Ginger Wine), if the subject be brought before them through the regular channel. They observe that the proper course will be for the Magistrate of Coimbatore to address the Session Judge, by whom the reference will be submitted for the Court's opinion.

ORDER THEREON, 24th July 1861, No. 1,473.

This letter will, with reference to the Proceedings of Government, dated 7th December 1860, No. 2,329, be communicated to the Magistrate of Coimbatore, who will follow without delay the course pointed out by the Foujdaree Adalat. Mr. Thomas will furnish the Session Judge with copies of Mr. Dale's letter to the Registrar of the Sudder Adalat and of that Officer's reply, and of the orders of Government above quoted on the question under consideration.

(True Extract.)

Secretary to Government.

To the Collector and Magistrate of Coimbatore.
" Board of Revenue.
" Government Pleader.
" Judicial Department.
Exd. S. T. Augustin.

Dec: 15th Decem: 1860 1865
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Wm. J. G. G. G.

Proced: 1861 Sept 2

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Sept 24th July 1861

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(with reference to the re-
consideration by the judges
of the double Court of the 1861
of 25th Aug 1861 (relating to the
application of the provisions
of Regulation 1 of 1820 to the
line) decided by the Court
of the 20th July 1861.
That the Court should not by
that Court be followed - which
would be for the judges to
consider for a decision the
Court by whom the reference
would be submitted for the Court
of the 20th July 1861.
Wm: J. G. G. G.

Notary - 2d August 1861.
Communicated to
the 26th Dec: 1861 to the
Inspector Genl. of Police.

Wm: J. G. G. G.

Wm: J. G. G. G.
The Inspector Genl. of Police.
of Police.