Revenue Department

Minutes of Consultation

27th July 1858.

Back Nos 73 - 75

Order No 1643 27th July 1858

பாதுகாப்பு - பிரிவு - 1

செய்பனிடுபவர் பெயர் : ரெ. அவாமி வேல்

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள். 8/08 - 11/08

26/11/08
சரிபார்க்கும்
முதல் முறியாள
கையொப்பம்

சரிபார்க்கும்
2ம் முறியாள
கையொப்பம்

ஆராய்ச்சி
உதவியாளர்
கையொப்பம்

2/1043

No. 73. Read the following papers.

Extract from the Proceedings of the Board of Revenue, dated 2nd June 1858, No. 1953.

In Consultation 2nd June 1858.

Read letter from the Collector of Madras, dated 14th May 1858, forwarding copies of the Abkarry licenses, which the Brigadier in command at Saint Thomas' Mount, proposes to submit for the sanction of Government, and pointing out certain objections to the provisions of the proposed form.

(Here enter No. 73.)

19th April 1858, No. 493, R. D., in Con. 8th May 1858.

In the foregoing letter, Mr. Cunliffe notices two particulars in which the license drawn up by the Military authorities, is at variance with the instructions of Government in their recent Extract Minutes Consultation. The first is the quotation of a Regulation and an Order of Government, which are declared in para. 34 of the Extract Minutes Consultation, to be inapplicable. The second is the insertion of conditions and prohibitions, of the violation of which, the Military authorities have no power to take cognizance.

2. He also objects to the functions of Joint Magistrate and Police officer being exercised by the same individual, as contrary to the intentions of the Act, and proved to have had a prejudicial operation during the last contract, when the renters experienced very harsh treatment from the Mount authorities.

3. The Board resolve to forward Mr. Cunliffe's letter for the consideration of Government. His objections to the terms of the license they think well founded, and suggest that it should be amended in these particulars. The observations which follow in paras. 6 and 7, relate to a subject which appears to the Board hardly to fall within their province.

(A true Extract.)

(Signed) G. S. FORBES, *Secretary.*

No. 74. Extract from the Minutes of Consultation in the Military Department, 1st June 1858, No. 1907.

Read letter from the Adjutant General of the Army, Head Quarters Ootacamund, 27th May 1858, No. 937; to the Secretary to Government, Military Department.

Communicating Minutes of Consultation in the Revenue Department, dated 19th April, No. 493, passing orders on correspondence, regarding Arrack and Toddy Shops, within the Abkaree limits of the Cantonment, and directing that the Notification of Act XVIII of 1853, be published in the next issue of the Official Gazette.

With reference to Extract from Minutes of Consultation, dated 21st Ultimo, No. 1379, I have the honor by order of the Commander-in-Chief to forward for submission to the Right Honorable the Governor in Council copy of letter from the Officer Commanding Saint Thomas' Mount, dated 13th instant, No. 62, forwarding for approval and confirmation, forms of Licenses to be issued to the Abkarry Contractors in the limits of that Cantonment.

Lieutenant General Sir Patrick Grant begs attention to the suggestion of the Brigadier Commanding the Mount, which His Excellency thinks are deserving of favorable consideration.

From Brigadier Commanding the Mount, 13th May 1858, No. 62; to the Adjutant General of the Army, Fort Saint George.

Directs that a form of Licenses be submitted to Government for approval and confirmation.

With reference to para. 29 of Minutes of Consultation, No. 493, of the 19th April 1858, I have the honor to forward for approval and confirmation by Government, forms of Licenses to be issued to the Abkarry Contractors in the limits of this Cantonment; copies of which have also been furnished to the Collector of Madras;—They are nearly of the same tenor as those issued by the Commissioner of Police at Madras, and have been but slightly modified or improved so as to suit local peculiarities.

2. I am of opinion that the requirements of the people residing within the Abkarry limits of this jurisdiction will be amply met by the Establishment of one Arrack shop and one Toddy shop at the Mount, and one Arrack shop at Sydapett, as there are many Toddy shops in the vicinity, just near the boundary lines of the Abkarry limits of the Cantonment.

3. It may not be out of place to state here, that the preservation of order and regularity in the Cantonment seems to require that every person employed in vending Arrack and Toddy or otherwise employed by the Contractors should be registered in the Police Office as usual under Section XLVII, of Regulation VII, of 1832, in order that any breach on their part of the conditions laid down in the Licenses, may be taken cognizance of by the Military Police, the more so as there are generally a great number of persons who have small shares in the Contract, and they would all elude punishment, if there names were not registered. The measure would also enable the Police to prevent the employment of old offenders and persons of bad repute, or at least if they are employed by the Contractors, it will bring them under the immediate surveillance of the Police.

4. In para. 31 of the Minutes of Consultation under reference, smuggling is described to be an offence not cognizable by the Military Authorities, but as under Section XVI Regulation VII of 1832, it is cognizable by the Police, and as the above Section has not been cancelled by any portion of Act XVIII of 1853, Act XIX of 1852, and Act XIII of 1856, which only extend to the limits of Madras, I would respectfully submit for the re-consideration of Government, the expediency, nay the necessity of allowing the Mount Police to take cognizance and dispose of all cases of the nature therein referred to, as divided authority must always have a tendency to weaken the powers of the Officials and to allow offenders to escape with impunity in one or other jurisdictions, not to say any thing of the great inconvenience which will be entailed on the parties in performing a journey of 16 miles in proceeding to and from Madras, and of the unnecessary expenditure to the state in the shape of Batta to Witnesses and Peons escorting the parties, especially as the Collector of Madras can only hand over the parties to the Superintendent of Police at Madras for punishment, after preliminary enquiry under Act No. XIX of 1852, and can exercise no legal powers of his own.

5. The system of the single person undertaking the contract in the first instance, and then clandestinely retailing it to many without permission, is in my opinion highly objectionable, as it opens a wide door to fraud, and peculation, and ought to be discontinued as far as practicable.

No. 1. License under Section XLIV. Regulation VII. of 1832, Act No. XVIII. of 1853.

Saint Thomas' Mount, to Wit.—I Lieutenant G. B. Prior, Superintendent of Police for Saint Thomas' Mount, under and by virtue of the Provisions of Section XLIV. Regulation VII. of 1832, and Act No. XVIII. of 1853, do hereby authorize, and empower Soobroy Gramny of Madras, to keep a Cocoanut Toddy Shop in the house of Cauder Saib situated in the Bengallee Bazar, at Saint Thomas' Mount aforesaid, and to sell by retail therein, and in the premises thereinto belonging, such Cocoanut Toddy as he the said Soobroy Gramny, shall be Licensed and empowered to sell by the Collector of Madras, under the authority and permission of any Abkaree, or excise laws for the time being in force at Madras aforesaid; and to supply good and wholesome Cocoanut Toddy to the Bakers and Canteens of Corps, and to permit such Cocoanut Toddy to be drunk or consumed in his said Shop or in the premises thereunto belonging, provided that he the said Soobroy Gramny do fix conspicuous part of his said Shop or the premises thereunto belonging a Board, on which shall be legibly painted in the English, Tamil and Teloogoo languages his name, and the name of the Article he is Licensed to deal in; and provided also that he the said Soobroy Gramny do not fraudulently dilute or adulterate such Cocoanut Toddy or sell the same knowing the same to have been fraudulently dilute or adulterated; and do not use in the selling thereof any measures that are not of the legal standard; and do not knowingly permit drunkenness or disorderly behaviour in his said Shop or premises; and do not knowingly suffer any gaming whatsoever therein; and do not knowingly permit prostitutes or persons of notoriously bad character to meet or remain therein; and do not wilfully harbour or conceal therein any Soldier, or Eurasian, knowing, or having reason to believe, such Soldier or Eurasian to be a deserter; and do not permit or suffer any Cocoanut Toddy to be conveyed from or out of his said Shop or premises without a special permit; and do not receive any Articles whatsoever in barter or payment for liquor except money only; and do not knowingly sell or give upon trust any Cocoanut Toddy to any person; and do not allow his Shop to be kept open before 6 A. M. and after 8 P. M., and do not permit any person to be partner or servants without registering their names in the Police Office, in order to prevent old offenders or persons of bad characters being employed in the liquor Shops, but do maintain good order and rule in his said Cocoanut Toddy Shop and premises, and in all respects obey the provisions contained in the said Regulation VII 1832, No. XVIII of 1853, G. O. G. 27th June 1851, and Minutes of Consultation No. 3774, of the 30th August 1842, and this License shall continue in force from this 1st day of July 1858, up to and until the 30th day of June 1859, inclusive and no longer provided that the License granted unto the said Soobroy Gramny, under the Abkaree excise laws for the time being in force at the Mount aforesaid shall not in the mean time; terminate or be recalled in either of which cases this License shall be void.

Given under my hands and seal on this 12th day of 1859, at Saint Thomas' Mount aforesaid.

(Signed) G. B. PRIOR,

Superintendent of Police.

Proposed by

P. HAMOND, Brigadier,

Commanding the Mount.

License under Section XLIV Regulation VII of 1832, and Act No. XIII of 1853.

Mount, to Wit.—I Lieutenant G. B. Prior, Superintendent of Police for Saint Thomas' Mount, under and by virtue of the Provisions of Section XLIV Regulation VII of 1832 and Act XVIII of 1853, do hereby authorise and empower Gopaul Pillay of Saint Thomas' Mount, to keep a Puttah Arrack Shop in the house of Cawder Saib, situated in the Bengallee Bazar of Saint Thomas' Mount aforesaid, and to sell by retain therein and in the premises thereunto belonging, such Puttah Arrack as he the said Gopaul Pillay shall be Licensed and empowered to sell by the Collector of Madras, under the authority and permission of any Abkaree or excise laws for the time being in force at Madras aforesaid; and to permit such Puttah Arrack to be drunk or consumed in his said shop or in the premises thereunto belonging. Provided that he the said Gopaul Pillay do fix in a conspicuous part of his said Shop or the premises thereunto belonging a Board, on which shall be legibly painted in the English, Tamil and Teloogoo languages his name, and the name of the article he is Licensed to deal in; and provided also that he the said Gopaul Pillay do not fraudulently dilute or adulterate such Puttah Arrack or sell the same knowing the same to have been fraudulently diluted or adulterated; and do not use in the selling thereof any measures that are not of the legal standard; and do not knowingly permit drunkenness or disorderly behaviour in his said Shop or premises; and do not knowingly suffer any gaming whatsoever therein; and do not knowingly permit prostitutes or persons of notoriously bad character to meet or remain therein; and do not wilfully harbour or conceal therein any Soldier and Eurasian knowing, or having reason to believe, such Soldier or Eurasian to be a deserter and do not permit or suffer any Puttah Arrack to be conveyed from or out of his said Shop or premises without a special permit; and do not receive any articles whatsoever in barter or payment for liquor except money only; and do not knowingly sell or give—upon trust any Puttah Arrack to any person; and do not allow to be kept open his Shop before 6 A. M. and after 8 P. M. and do not permit any person to be partner or servants without registering their names in the Police, in order to prevent old offenders or persons of bad characters being employed in the liquor shops, but do maintain good order and rule in his said Puttah Arrack shop and premises, and in all respects obey the Provisions contained in the said Regulation VII. of 1832, Act No. XVIII. of 1853, G. O. G. 27th June 1851 and Minutes of Consultation, No. 3774 of the 30th August 1842 and this License shall continue in force from this 1st day of July 1858, up to and until the 30th

day of June 1859 inclusive and no longer—provided that the License granted unto the said Gopaul Pillay under the Abkarry or Excise Laws for the time being in force at the Mount aforesaid shall not in the mean time, terminate or be recalled, in either of which cases this License shall be void.

Given under my hand and seal of the Office at Saint Thomas' Mount this 1st day of June 1859.

(Signed) G. B. PRIOR,
Superintendent of Police.

Proposed by

P. HAMOND, Brigadier,
Commanding the Mount.

Communicated to the Revenue Department.

(True Extract and Copies.)

(Signed) W. H. WAPSHARE, Major,
Actg. Dy. Secretary to Government.

No. 75. ORDER THEREON, No. 1043; dated 27th July 1858.

1. By a notification attached to the foot of Extract Minutes Consultation dated 19th April 1858, No. 493, the provisions of Act XVIII. of 1853 (regulating the sale of spirituous liquors &c., in Cantonments) were extended to the Cantonment of Saint Thomas' Mount, and to a circuit of four miles around the Main Guard House therein situated. In para. 28 of the Extract Minutes Consultation itself, the Military Authorities were authorized to issue licenses under Act XVIII. of 1853 in addition to those granted by the Collector of Madras, under whom the Mount Abkarry has been placed as to all fiscal arrangements; and in the following para. (after remarking that the form used by the Commissioner of Police at Madras might to some extent serve as a guide) it was directed that when the form for the Mount had been finally determined on, it was to be submitted to Government for approval and confirmation.

2. The Collector of Madras having obtained from the Brigadier Commanding Saint Thomas' Mount the forms of Abkarry licenses proposed by him for Arrack and Toddy venders, now brings them through the Board of Revenue before the Government, with his objections to certain conditions embodied therein which he considers contrary to the orders of Government. The first objection is, that the license has mention of Regulation VII. of 1832, G. O. G. 27th June 1851, and Extract Minutes Consultation 30th August 1842, No. 3774, contrary to the decision of Government that the licenses were to issue under Act XVIII. of 1853. A second objection is, that the forms of license contain conditions against dilution and adulteration of the liquor and the use of illegal measures, such being matters beyond the cognizance of the Military Authorities, as declared in para. 34 of the orders of the 19th April 1858.

3. The Government are of opinion that Mr. Cunliffe's objections are well grounded; for in respect to the first, para. 34 of the recent Government Order distinctly declares that "the Authorities at the Mount will understand that Act XVIII. of 1853 gives all the authority that they can now legally exercise," and that "all byelaws connected with the Abkarry, hitherto in force in the Cantonment, should be at once cancelled as having no legal force." In regard to the second objection, the same para. of the order proceeds to declare that "the power to see that pure liquor only is sold, and that correct measures are used, is by law vested, not in the Military Authorities, but in the Collector's servants." The conditions objected to by Mr. Cunliffe will accordingly be omitted from the forms of license to be granted by the Military Authorities, and these licenses will, as already declared, issue under Act XVIII. of 1853, without reference to any other Regulation or Act.

4. In para. 5 of his letter, Mr. Cunliffe notices that in para. 29 of the Extract Minutes Consultation quoted above, the breach of any of the conditions of the licence is made punishable by the Military Police; whereas under Section I. of Act XVIII. of 1853 this offence is cognizable only by the Magistrate.

Fort Saint George, Revenue Consultation of 27th July 1858.

5. The Government deem it highly desirable that in a Military Cantonment where a large number of European Soldiers is congregated, there should be an Executive power at hand to enforce discipline energetically and immediately. But at the same time as late occurrences have convinced Government that Military officers invested with Police authority, and subject to no control, have used their powers in a very arbitrary manner, the Governor in Council considers it absolutely necessary that a system should prevail under which the official acts of such Officers may be readily supervised and controlled. In supersession therefore for the first clause of para. 29 of Extract Minutes Consultation dated 19th April, the Government are pleased to direct that the staff officer at the Mount shall hereafter deal with cases of the kind in question, in his capacity of Joint Magistrate under the terms of the Act just quoted; and returns of his sentences will then be made to the Magistrate or Sessions Judge, and although under Section XI. of the Act, no appeal lies from any order or conviction passed in accordance with its provisions, still any harshness or illegality under the system now ordered will be perceived and it will be the duty of the Judge or Magistrate to bring it to the knowledge of Government. for such notice as they may deem needed.

6. The Extract Minutes Consultation in the Military Department recorded above, refers a letter from the Brigadier Commanding the Mount, on the subject considered in the foregoing paras. The question as to the forms of licenses having been already disposed of, it remains only to pass orders upon two points raised by the Brigadier, first, as to the necessity of registering in the Police Office, the names of all persons employed by the contractors in vending Arrack or Toddy; and secondly, whether smuggling should be made cognizable by the Mount Police. As to registration the Brigadier urges it under Section 47 of Regulation VII. of 1832; but it has been ruled that this Regulation is not applicable; and in Act XVIII. of 1853 no provision is made for registration. But independently of this, the measure advocated does not appear to be called for, as the licensed Contractor is responsible for the acts of the servants employed by him. As to smuggling being made cognizable by the Police, the Government must on consideration adhere to their opinion expressed in para. 31 of Extract Minutes Consultation 19th April 1858, No. 493, that smuggling is a breach of the Abkarry Laws not cognizable by the Military Authorities under the provisions of Act XVIII. of 1853. All smugglers and smuggled liquor or drugs seized by the Military Police will therefore, as already ordered, be made over to the Collector of Madras for disposal under the Act.

7. In para. 2 the Brigadier states his opinion that the requirements of the people residing within the Abkarry limits of the Mount, will be amply met by the establishment of one Arrack and one Toddy shop at the Mount, and one Arrack shop at Sydapett, as there are many Toddy shops in the vicinity close to the boundary lines of the Abkarry limits of the Cantonment. In para. 27 of their order of the 19th April 1858, the Government referred a similar expression of opinion to the Collector of Madras, in order that he might be guided by it in his arrangements. The Collector's attention will, however, be called again to this point, through the Board of Revenue. The Government must repeat their hope that the distinct orders that they have now issued in respect to the Abkarry of Saint Thomas Mount, will, prevent future clashing of authority, and that the cordial co-operation of the Revenue and Military Authorities will not be wanting to give effect to the intentions of Government.

8. During the present discussion the attention of Government has been drawn to para. 3 of Extract Minutes Consultation of the 5th December 1857, No. 1256, in which the Superintendent of Police at the Mount was called upon to submit the orders passed by him, regarding the distribution of fines collected in the Abkarry cases, referred to by Mr. Cunliffe in his letter to Government dated 6th November 1857, No. 20. With his letter of the 22d December 1857, No. 121, to the Adjutant General, Brigadier Shirreff did indeed send up Extracts from the diary of cases disposed of shewing the *levying* of the fines; but nothing as to their *distribution* appears ever to have been placed before Government, beyond the mere denial of Mr. Cunliffe's allegations conveyed in para. 5 of the Brigadier's letter, where he declares that "the whole amount of fines is duly credited in the accounts, and only a moiety thereof distributed in rewards to informants"; but how the distribution of this moiety even was regulated, the Government were not informed. They accordingly now direct that the *orders* of the Superintendent of Police, regarding the distribution of the fines referred to may be immediately submitted for their information.

(Signed) T. PYCROFT,
Chief Secretary.

5/1042 Rev: { 890 x / 1032

This draft has been prepared in accordance with the orders of the Hon. Members of Sub: But with deference I submit for consideration, that the order of the Staff Officer at the Regiment, &

take cognizance of
cases of breach of Licence
&c. &c Joint Majesties
subjects & the Contd
of the Mag.s & Persons
Judge seems to me
to militate against
& XIV Act 18 & 53
which expressly

6/13 4

states that no appeal
shall lie from any
order or conviction
made under the provisions
of this Act
J. Norman
Esq Q.C.
July 8th

This view appears
to me correct - & if
it be so considered
the Act must be

attested in the place
superscript

I do not see
why a Notification
is absolutely necessary
in the case of the Military Officer
dealing with the Abkaree
shop keepers, as they pro-
bably will be glad
to avail themselves
of the facility
of health & dispatch
for the Trade

8-7-58

R.D.

7/7043 6/

Extract from the Minutes of Consultation
Under date the June 1858.
Read the following

Extract from the Proceedings of the
Board of Revenue.

/ Herewith 2nd June 1858 No 1953 /

Extract from the Minutes of Cons.
in the Military Department.

Encd.

/ Herewith 1st June 1858 No 1907 /

1. By a Notification
attached to the foot of Ex. Mins:
Cons: dated 19th April 1858, No.
493, the provisions of Act XVIII of
1853 were extended to the Cantonment of St. Thomas's Mount, and
to a circuit of four miles around
the Main Guard Bonds therein cited.
-ated. ~~The Subscriber to the Sale~~
~~of Spirituous Liquors &c in Con-~~ to
~~tonments~~ By para 28 of the Ex:
Mins: Cons: itself, the Military
Authorities were authorized to
issue licenses under Act XVIII of 1853
in addition to those
granted by the Govt of Madras,
under whose the Mount Abkary

has been placed as to all fiscal arrangements. ~~Let the validity of~~ ~~licenses issued in the following~~ ~~para of the Order~~ and in the following para 2 pp. after remarking that the forms used by the Comr of Police at Madras might to some extent serve as a guide, it was directed that when the form in the Mounk had been finally determined on, it was to be submitted to Govt for approval & confirmation.

2. The Govr of Madras having obtained from the Brigr Genl Sr St. Thomas' Mount the forms of Ak Karry licenses proposed by him for Arrack & Toddy vendors, now brings them thro' the Board of Revenue before the Govt, with his objections to certain conditions which he considers embodied therein contrary to the orders of Govt. The first objection is, that the licence has mention'd Reg VIII of 1832, G.O.C. 27th June 1837, and Ex: Misc: Cons: 30th August 1852, No 3774, contrary to the decision

C/1043

of Govt that the licenses were to issue only under Act XVIII of 1853. A second objection is, that the forms of licence contain conditions against dilution and adulterations of the liquor and the use of illegal measures, such being matters beyond the cognizance of the Military Authorities, as declared in para 34 of the Orders of the 19th April 1850. Mr. Cunliffe's objections are well founded; for in respect to the first para 34 of the recent Govt Order distinctly declares that "the Authorities at the Mounts will understand that Act XVIII of 1853 gives all the authority that they can now legally exercise," and that "all bye laws connected with the Ak. Karry, hitherto in force in the Cantonment, shall be at once cancelled as having no legal force." In regard to the second objection, the same para of the

3. The Govt are of opinion that

Order proceeds to declare that "the power to see that pure liquor only is sold, and that correct measures are used, is by law vested, not in the Military Authorities, but in the Colo's servants". The conditions objected to by Mr. Cunliffe will accordingly be omitted from the forms of license to be issued by the Military authorities, and these licenses will, as already declared, issue under Act XVIII of 1853, without reference to any other Regulation or Act.

4. Mr. Cunliffe raises a third point, viz as to breach of licence being made punishable by the Mount Police Authorities. Para 29 of Ex: Mins: Cons: 19th April 1858, No 493, declares that "breach of licence will constitute an offence punishable by the Military Police". Subject to this ruling Mr. Cunliffe properly objects, as Act XVIII of 1853, now solely governing the Mount Abbany, clearly vests all powers of punishment in the

I would recommend that one Seat-the Peace of Jor Military Police be held by the Local Magistrate. Should he not be stationed at Head Quarters of the Battalion he should be at Sea Ports or Depôts under his orders. Should any breach of the conditions of the licence be reported to the Police Officer, Mr Cunliffe refers to Para 29 of the Ex: Cons: above, the breach of any of the Conditions of the licence is made punishable by the Military Police; referred under § I Clause XVIII of 1853. This offence is cognizable only by the Magistrate.

5. The Govt deem it highly desirable that

9/53

in a military Cantonment, where a large number of European Soldiers is congregated, there should be an Executive power at hand to enforce disciplined and immediately; But at the same time it is also necessary that Executive Officers invested with Police powers should be subject to control, & have used their powers in a very arbitrary manner the Govt in C. consider it absolutely necessary that a system should prevail under which the official acts of such officers may be readily supervised & controlled. In deference to the first clause of Para 29 Ex: Cons: of 19 April the Govt are pleased to direct that the

Magistrate and not the Police.

In a military Cantonment, in which there are a large number of European soldiers, it is highly desirable that discipline should be enforced, that it should be immediately & summarily enforced, & that the Executive Officer responsible for the same should have power to punish summarily, & to suspend their acts should be controlled, or made subject to some early supervision. Recently, as appears from papers submitted to the Govt of India, the Members of the Mount Abbany Committee have objected, and that the Magistrate should be subject to the control of the Police Officer. And throughout the Hill Stations, the Staff Officer at the Mount should be the Magistrate to whom the Police Officer should report, & from whom he should receive instructions in all matters of importance. The Staff Officer at the Mount will hereafter deal with cases of the kind in question — in his capacity

of Joint Magistrates under the terms of the Act just quoted; & his acts will then be subject to the control of the Magistrate and Sessions Judge of the District; it is hoped that the abuses which have been frequently complained of will be effectually checked and prevented.

6. The Ex: Mins: Cons: in the Military Dept recorded above, refers a letter from the Brigadier Commanding the Nilgiris, on the subject considered in the foregoing paras. The forms of licenses having been already disposed of, it remains only to refer to his points raised by the Brigadier first, & the necessity of registering in the Police Office, the names of all persons employed by the Contractors in vending Arrack or Toddy; and secondly whether smuggling therein is, or may be made cognizable by the Nilgiri Police. As to registration, the Brig.

Act XVIII of 1853 gives the authority that the Govt. at the Nilgiris at the Monsoon can now legally exercise, and this Act makes no provision for registration. Independently of this, the Magistrate does not consider himself competent to the prosecution of offences, as the licensed Contractor is responsible for the acts of the persons employed by him. As to smuggling being made cognizable by the Nilgiri Police, the Govt must in consideration of the opinion expressed adhere to the declaration made in para 31 of Ex: Mins: Cons: 19th April 1858, No 493, that smuggling is a breach of the Abkarry Laws not cognizable by the Military Authorities under the provisions of Act XXIII of 1853. All smugglers and smuggled liquor or drugs seized by the Military Police will therefore, as already ordered, be made over to

10/63

Bris Reg: is not applicable; and in Act XVIII of 1853 no provision is made for registration, but independently of this the measure advocated does not appear to be called for,

the Collr of Madras for disposal under the Act.

7. In para 2 the Brigadier states his opinion that the requirements of the people residing within the Abkarry limits of the Mount, will be amply met by the establishment of one Arrack and one Toddy shop at the Mount, and one Arrack shop at Egmore depott, as there are many Toddy & Arrack shops in the vicinity, & close to the boundary lines of the Abkarry limits of the Cantonments. In para 27 of their Order of the 16th April 1850, the Govt referred a similar expression of opinion to the Collr of Madras, in order that he might be guided by it in his arrangements. The Collr's attention will, however, be called again to this point, thro' the Board of Revenue. The Govt must repeat their hope that the distinct orders that they have now issued recently in respect to the Abkarry of St. Thomas' Mount, will prevent future clashing of

11/1043

authority, and that the cordial co-operation of the Revenue and Military Authorities will not be wanting to give effect to the intentions of Govt.

During the present Discussion In considering this Case, the attention of Govt has been drawn to an observation in the para 3 of Mem: Cons: of the 5th Dec 6/57, No 1256. In which the Supt of Police at the Mount was directed to submit the orders passed by him, regarding the distribution of fines collected in the Abkarry cases, referred to by Mr. Cunliffe in his letter to Govt dated 6th Nov 1857, no 20. With his letter of the 22d Dec 57, No 121, to the Adjutant General, Brigr Shirreff did indeed send up Extracts from the Diary of disposed of Cases, shewing the levying of the fines, but nothing as to their distribution appears ever to have

been placed before Govt, beyond the mere denial ~~in words~~ of Mr. Cunliffe's allegations, embodied in para 5 of the Brigadier's letter, where he declares that "the whole amount of fines is duly credited in the accounts, and only a moiety thereof distributed in rewards to informants"; but how the distribution of this moiety even was regulated, the Govt were not informed. They accordingly now direct that the orders of the Supt of Police, regarding the distribution of the fines referred to may be immediately submitted for their information.

W.S.

JP

A file must [illegible] [illegible] of fines [illegible] to be kept JP

W.M. July 8

12/1043

Fines of Abkari [illegible] cases, St Thomas' Mount

Copy

Soon

[illegible]

Cop.d July 15th

Memo:

The Abkarry of St Thomas' Mount. 13/1043

1. By a Notification attached to the foot of Ex: Mins: Cons: 19th April 1858 No. 493, the provisions of Act XVIII of 1853 were extended to the Cantonments of St. Thomas' Mount, and to a circuit of 4 miles around the Main Guard house therein situated. This Act regulates the Sale of Spirituous liquors &c. in Cantonments.

2. By para 28 of the Ex: Mins: Cons: referred to, the Military Authorities were authorized to issue licenses in addition to those to issue under Act XVIII of 1853; and by para 29, after remarking that the form used by the Com.r of Police at Madras might to some extent serve as a guide, it was directed that when that for the Mount had been finally determined on, it was to be submitted to Govt for approval and confirmation.

3. The Colr of Madras having obtained from the Brigadier Commanding St Thomas' Mount the forms of Abkarry licenses proposed by him for Arrack and Toddy vendors, now brings them thro' the Board of Revenue before

the Govt, with the objections to certain conditions which have been inserted in the forms of licenses, contrary to the orders of Govt. The first objection is, that the licence has mention of Reg VII of 1832, G.O. C. 27th June 57, and E. M. C 30th May 1842, N: 3774, contrary to the decision of Govt that the licences were to issue only under Act XXIII of 1853. A second objection is, that the forms of licence contains conditions against dilution and adulteration of the liquor and the use of illegal measures, such being matters beyond the cognizance of the Military Authorities, as declared in para 34 of the Order of the 19th April 1858, Mr Cunliffe's objections are well grounded; for in respect to the first, para 34 of the recent Govt order distinctly declares that "the Authorities at the Mount will understand that Act XXIII of 1853 gives all the authority that they can now legally exercise", and that "all bye laws connected with the Abkary, hitherto in force in the Cantonments, should be at once cancelled as having no legal force." In regard to the second objection, the same para proceeds to declare that "the power to see that pure liquor only is sold, and that correct measures are used, is by law vested, not in the Military authorities, but in the Collector." The objectionable conditions in the accompanying forms of Military licenses are accordingly marked in pencil for omission.

14/1859

4. Mr Cunliffe raises a third point, which seems to call for the special consideration and orders of Govt, viz: as to breaches of the conditions of licence being made punishable by the Mount Police Authorities. Para 29 of the Order of the 19th April states that "breach of licence will constitute an offence punishable by the Military ~~Authorities~~ Police"; but to this ruling Mr Cunliffe properly objects, as Act XXIII of 53, now in force governing the Mount, clearly vests all powers of punishment in the Magistrate and not the Police. As for them, the declarations in para 29 as to breach of licence being punishable by the Police, seems to be an inadvertent error; but by an amendment of this error, Mr Cunliffe will not have ~~entirely~~ gained his point, for the Supt of Police at the Mount is also a Joint Magistrate, and Sec XV of the Act declares that the word "Magistrate" shall include a "Joint Magistrate", or any person lawfully exercising the powers of a Magistrate, or a Justice of the Peace. Accordingly Mr Cunliffe proceeds to question the propriety of the functions of Police Officers Joint Magistrate meeting in a single officer at the Mount; and puts it whether by the reading of the Act, it is not intended that these powers

4

shall be exercised by separate parties, viz, as at Madras, that the Police Officer shall commit, and the Magistrate (a separate officer) hear and convict. By a side wind, Mr Cunliffe would appear to find a remedy in the proximity of the Magistrate's office to Chingleput, before whom apparently he wd suggest the committal of all breaches of licence. Mr Cunliffe concludes that the exercise of Police and Magisterial powers by one man, has been the cause of the harrying conduct of the Police towards the renters, as deprecated by Govt in their Proceedings of the 8th Dec/57 Board of Revenue; again from appearing, any comment on this part of Mr Cunliffe's letter, remarking that his observations relate to a subject which appears to them hardly to fall within their province. As the circumstances reviewed in the Orders of Govt just quoted, would appear to corroborate Mr Cunliffe's representation would perhaps be well to refer this question for the consideration and orders of the Judicial Dept, with reference to the papers and circumstances considered in Extracts Mins: Cons: 8th Dec/57, No 1256, and 19th April/58, No 493.

5. A reference to the papers just alluded to, would appear to point to the Mount Cudwall

Perhaps by amending the order in para 2 of the order alluded to above, carrying out the spirit of Act 10 of 1853 (so as to make offences punishable by the Police Magistrate) some notification of existing orders may be obtained; for the proceedings of the Joint Magistrates and in such case fall under the cognizance of the Magistrate of the District.

13/57 as the author of all the evils which Mr. Cunliffe is anxious to avert. Mr. Cunliffe in his letter of the 6th Nov/57, charged the Cudwall with participation in the excessive fines imposed on the unabled renters on the renters, and he accordingly suggested that the original records shewing the individual distribution of the fines should be called up, and not any mere statements of totals; and that enquiry should be made into the amount of property proposed by the Cudwall when first appointed, his salary in the interval, and the extent of houses and gardens now owned by him. It is worthy of notice that, altho expressly called for by Govt (para 3 E. M. C. 5th Dec/57, No 1256), the Supt's orders shewing the distribution of the fines was omitted to be forwarded; and this omission was apparently inadvertently overlooked in E. M. C. 19th April/58 which reviewed the whole case, and defined the respective powers of the Military Authorities and the Collr of Madras. The Brigadier commanding the Station sent up Extracts indeed from the Diary of Cases, shewing the levying of the fines; but nothing as to their distribution appears ever to have been placed before the Govt, beyond the mere denials in words of Mr Cunliffe's allegations

by Brigadier Sherreff, in para 5 of his letter to the Brigade Major General, 22nd Dec 57, No 128, he declaring that "the whole amount of fines is duly credited in the accounts, and only a moiety thereof distributed in rewards to the informants", but how the distribution of this moiety, even was regulated the Govt were not informed, nor indeed they are to [illegible] para 7, when the Brigadier asks "whether in the event of the Cantonment Magistrate not exercising due control over the Conduct of the Peons, employing spies in watching their motions, and seeing that they discharge their duty properly, they would at all be willing to bring to light any, even cases of breach of the Military laws and other crimes committed in the Cantonment." And as to Mr Cunliffe's suggestion to enquire about the Cudwalls former and present property and the salary received by them in the interval, the Brigadier Sherreff concluded his letter with the following burst of indignation. "I look upon the remarks contained in the last para of Mr. Cunliffe's letter as both uncalled for and obtrusive. I cannot see that it is any part of Mr Cunliffe's duty to call for an enquiry on any person serving in the Cantonment immediately under my orders, and about whose character I must of necessity be better acquainted than he is. The Cudwalls only acts under the orders and superintendence of myself and my Staff; and it should be sufficient for Mr Cunliffe that he gives satisfaction to me, and has done so to my predecessors in command for the last 2 or 3 years." The animosity referred to, and this mode of meeting Mr Cunliffe's remarks, did not meet with notice in the last orders reviewing the whole case, whether inadvertently, or otherwise, it is not possible to say, but the whole tendency of the orders is to shew, that the proceedings of the Military Police towards the renters called for the reprehension of Govt, for in one place, (para 10), the charges of bad character, advanced on the part of the police against these renters, are characterized as "evidently made hastily, and maintained pertinaciously" in another place, the view which the Govt took of the police proceedings may be gathered from the following allusions to them in para 15 — "opposition in the first instance to allowing them (renters) to open their shops, continued notwithstanding the orders of Govt and rendering necessary a repetition of them." "frivolous nature of charges" "excessive severity of punishment inflicted" — and the mode in which cases were cited in justification of an imputation made before they occurred."

This was not the first occasion that the questionable proceedings of the Cudwalls came before Govt; for so long ago as 1847, they formed the

This is a note from the Collector's office and of Mr Cunliffe's order to which no reference is made in the text.

This is written on paper of the type used in Part 2 of Mr Cunliffe's letter of Jan 1858, the original of which is dated 6th Jan 1858 & is in Mr Cunliffe's hand.

subject of serious animadversion, as will be seen from the following passage in Ex: Mins: Cons: Judl dept, 3rd Feb 1847, No 86, para 14, -

"The repeated references made by the Military and Civil Authorities since 1841, in matters connected with the Police and Military Farms at St Thomas Mount, have already induced the Govt to call for public records with a lengthened correspondence, from which the Govt have observed the tendency of the Police towards private individuals to run into inconvenient lengths. The Proceedings of the Cadroll, of which the papers under notice convey not the first instance, exhibit some objectionable features, and the propriety either of the removal of that officer to some less responsible situation, or of his conduct being kept under proper and sufficient control. Under any circumstances, all proceedings which will not stand the test of a legal scrutiny should no longer be permitted to continue, & the Govt in Council wishes in pursuance of the views recorded above, to refer the whole subject to the Judges of the Court of Sudr and Foujdaree Adalut, to the intent that they will issue, as far as appertains to them, such orders and instructions to the subordinate officers, as may seem meet to them."

It does not appear from the records what steps were taken in pursuance of this suggestion; but it is very probable that the Cadroll was protected by the Military Authorities from the penalty, which his frequent offences appeared to call for.

W.H.S. 17/1843

W. H. B.

Re Military Establishment - in which there are a large number of European soldiers it is absolutely necessary that discipline should be enforced - & that there shd be an executive power capable of acting energetically & immediately - & I do certainly prefer having the order of the Joint Magistrate - that that may shd be transformed into the magistrate of Campetpet - it wd doubtless be better - if there shd be a judicial appeal from the head of police in each cantonment - but there is no prospect of this being sanctioned - & of the two evils - I wd select the continuance of that which secures the enforcement of discipline - & submission to the Military authorities in the cantonment - rather than sacrifice it - for the sake of a small gain in the revenue - a return

Revenues Dept

Board 8/163

No 1043

Extract from the Minutes of Consultation

Under date the 27th July 1858.

Read the following

Extract from the Proceedings

of the Board of Revenue

Here enter 2d June 1858 No 1495

Extract from the Min's of Con.

in the Military Dept

Here enter 1st June 1858 No 1497

By a Notification

attached to the foot of

Extract Minutes Con.

dated 19th April 1858,

No 493, the provisions

of Act XVIII of 1853

(regulating the sale of

spirituous liquors &c.

in

Minute:

Mary Stevens

St Thomas' Mount

22/6/58.

For Orders

In reference especially

to page 4 of the Memorandum

The Distribution of this
Bill should be called for.

This question appears
interminable.

H

I think also that the Military
authorities should have the control
of all matters within the Cantonment limits. But as the Staff
Officers have always acted
very arbitrarily & it is absolutely
necessary that their acts should be
controlled or made subject to some
Body's supervision & I am
inclined to think the plan of
considering all acts of the
Staff Officers connected with Abkari
as performed in his Capacity
of Justice of the Peace should be an improvement.

H

The objections taken by
the Collr to the grounds
therein assigned
& they should be
removed exclusively
with reference to Act
XVIII of 59.

H. Forbes 29 June 1858

Mr. JG 20 April 58

Read Act 21 July Cl. 15

an error has been
made - the Town Vestibules
& Wine Shops have been divided
into - Fruit Shops & Cake Shops
instead - This can also
be done
I am decidedly of opinion
that the Amount of Rent
deducted under the
Act - to have been paid to the
day & date under which
it is to be
deducted with the Vestibule
&c - the Vestibule Act was
adopted & the Wine Shops
Fruit Shops & Cake Shops
Retail - the Nelumbers
& Tea Shops closed accordingly

in Cantonments / were
extended to the Canton-
-ment of St Thomas'
Mount, and to a Circuit
of four miles around
the Naval Guard House
therein situated. In
para 28 of the Extract
Mint Cons. it left to the
Military Authorities
licenses under Act XVIII
of 1853 in addition to
those granted by the
Collector of Madras,
under whom the Mount
Abkarry has been
placed as to all forest
arrangements; and in
the following para (after
remarking

remarking / that the
form used by the
Commissioner of Police
at Madras might to
some extent serve as
a guide / it was di-
-rected that when
the form for the Mount
had been finally de-
-termined on, it was
to be submitted to Govt
for approval and
confirmation.

2. The Collector
of Madras having
obtained from the
Brigadier Commanding
St Thomas' Mount
the form of Abkarry
licenses proposed by
him

sum for Arrack and Toddy
vendors, now brings them
thro' the Board of Reve-
-nue before the Govern-
-ment, with his objections
to certain conditions
embodied therein which
he considers contrary
to the orders of Govern-
-ment. The first
objection is, that the
license has mention
of Regulation VII of
1832, C.O.C. 27th June 1851,
and Extract Mins Cons
30th August 1842, No 3774,
contrary to the decision
of Government that the
licenses were to issue
under Act XVIII of 1853.

A

Cons 29/9/43 No 3

A second objection is,
that the forms of
license contain condi
-tions against dilution
and adulteration of
the liquor and the use
of illegal measures,
such being matters be-
-yond the cognizance
of the Military Autho-
-rities, as declared in
para 34 of the Orders
of the 19th April 1858.

3. The Govern-
-ment are of opinion
that Mr Cunliffe's ob-
-jections are well
grounded; for in respect
-pect to the first, para
34 of the recent Govt
Order

Order distinctly declared that "the Authorities at the Mount will understand that Act XVIII of 1853 gives all the authority that they can now legally exercise", and that "all bye laws connected with the Abkarry, hitherto in force in the Cantonment, should be at once cancelled as having no legal force". In regard to the second objection, the same para of the Order proceeds to declare that "the power to see that pure liquor only is sold, and that

that correct measures are used, is by law vested, not in the Military Authorities, but in the Collectors Servants". The conditions objected to by Mr Ouliffe will accordingly be omitted from the forms of license to be granted by the Military Authorities, and these licences will, as already declared, issue under Act XVIII of 1853, without reference to any other Regulation or Act.

4 In Para 5 of his letter

letter, Mr Cunliffe notices that in Para 29 of the Extract Mins Cons quoted above the breach of any of the conditions of the licence is made punishable by the Military Police; whereas under Section I of Act XVIII of 1858 this offence is cognizable only by the Magistrate.

5 The Government deem it highly desirable that in a Military Cantonments where a large number of European Soldiers is congregated, there should be an Executive power at hand to enforce discipline energetically

Encl No 5 of 30/1043

energetically and instantaneously. But as the Sanctions as late occurrences have convinced Government that Military Officers invested with Police authority, and subject to no control, have used their powers in a very arbitrary manner, the Governor in Council considers it absolutely necessary that a system should prevail under which the official acts of such Officers may be readily supervised and controlled. In suspension therefore for the first clause of

Para

Para 29 of Extract Min.
Cons. dated 19th April the
Govt are pleased to direct
that the Staff Officer ab
the Mount shall hereafter
deal with cases of the
Rinds in question, in his
capacity of Joint Magis-
-trate under the terms of
the Act just quoted, and
returns of his sentences
will then be made to
the Magistrate or Sessions
Judge, and although under
Section XI of the Act,
no appeal lies from any
order or conviction passed
in accordance with its
provisions, still any
hardships or illegality
under the system now ordered,
will be perceived and corrected
by superior authority.

The

it will be the duty of the
Judge or Magistrate to bring
it to the knowledge of
Government for such notice
as they may deem needful

29/1847

to the Establishment
Constables in the Hill Dis-
-tricts recorded above,
refers to the powers the Rin-
-gdom Commanding the
Mount, on the subject con-
-sidered in the foregoing
paras. The question as to the
forms of licenses having
been already disposed of, it
to pass orders
remains by the Superintendent
for the necessity of
registering in the Police
Office, the names of all
persons employed by
the Conductors in guiding
Carts or Bodys, and
secondly as to whether any
thing should be made
cognizable by the attend
Police

Police. As to registration
the Brigadier urges it
under Sec. 4 of Reg. VII of
1832, but it has been ruled
that this Regulation is not
applicable, and an Act XVIII
of 1863 no provision is made
for registration. But inde-
pendently of this the measure
advocated does not appear
to be called for. As the Keeper
Contractor is responsible
for the acts of the Servants
employed by him & to
smuggling being made
organizable by the Police,
the Government must on
consideration adhere to
their opinion expressed in
para 3 of Sir Ellion's Comm[n]
of April 1858, No 493, that smuggling
is

27/1863

an Evil to the Abkary
Revenue organizable by the
Military Authorities under
the provisions of Act
XVIII of 1853. All Smugglers and
Smuggled Liquor or Drugs
seized by the Military Police
will therefore, as already
ordered, be made over to
the Collector of Moorcroft for
disposal under the Act.

In para 2 the Brigadier states his opinion that
the requirements of the
people residing within the
Abkary limits of the Station
will be amply met by the
establishment of one Arrack
and one Toddy Shop at the
Mount, and one Arrack Shop
at Sydapett, as there are
many

many Toddy Stores in the vicinity close to the boundary lines of the St Barry limits of the Cantonment. In para 27 of their order of the 19th April 1858, the Government referred a similar description of persons to the Collector of Malabar, in order that he might see granted by it in this arrangements. The Collector's attention will, however, be called again to this point. Since the Board of Revenue & the Government must respectfully hope that the district writers that they have now expressed in respect to the St Barry, of St Thomas Mount, will prevent

prevent future clashing of authority, and that the cordial co-operation of the Revenue and Military Authorities will not be wanting to give effect to the intentions of Government.

5 During the present discussion the attention of Government has been drawn to para 3 of Extract Minutes in General Letter of the 5th December 1857 etc 135th instant to the Superintendent of Police at the Neilgherries called upon to submit the information by him, regarding the distribution of prisoners collected on the St Barry cases, referred to by Mr Cunliffe in his letter to Government dated

dated 6th November 1857 p. 422
With his letter of the 22nd De-
cember 1857 p. 121, to the Ad-
jutant General, Brigadier
Sherriff did indeed
send up Extracts from the
Diary of cases disposed of
shewing the keeping of the
fines, but nothing as to
their distribution appears
to have been placed be-
fore Government, beyond
the mere denial of Mr
Cunliffe's allegations con-
veyed in paras 8 of the Bri-
gadier's letter, where he de-
clares that "the whole amount
of fines is duly credited
in the accounts, and only
a moiety thereof distributed
as rewards to informants;"
but

76/643

for on the distribution of
this moiety enquiries re-
gulated, the Government
were not informed. They
accordingly now direct that
the orders of the Superintendent
of Police, regarding the dis-
tribution of the fines referred
to may be immediately sub-
mitted for their information.

Copies
Judicial Dept. Dated 28th
To Town Clerk Dawkins
for Comparison
& Lodge Chaplain
Magistrate of Chinsurah
To Board of Revenue for
Comn & to Clk of Customs with 3 Boxes

Remr 1858 Depo 10
Cons 27th July

No 1043

Extract Mins of Coun.
D/ 27th July /58.

Extract from ... Act ... 1858 ...
... 1858 Sept 6 Sess /64 ... 15 63

Ex. Mins. Cons. &c. D: 5th Oct 58
C No 1590 &c
23 Pm

Authorizing the amend-
ment of the forms of licenses to be
issued by the Military authorities
at the mount to attorney contrac-
tors in the limits of that contract
ment and authorizing the staff
officer at that station to take cog-
nizance of breach of the conditions
of the License and to deal with such
cases in his capacity of Justice
Magistrate under the terms of the
act; submitting returns of his
sentences to the Magistrate or to
Legion Judge.

No 70 at 75