M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1473 Press ~~Mis.~~

337.338

Dated 24-7-1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 24th July 1861.

No. 337. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudder Adálat, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 11th July 1861, No. 130:—

SIR,

Order of Government, 7th December 1860, No. 2,329, Revenue Department.

1. With reference to the Order of Government under 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 Adálat, 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 Adálat, to C. F. CHAMIER, Esq., Registrar to the Court of Sudder Adálat, dated Madras, 3rd July 1861, No. 127.

SIR,

Proceedings of the Foujdaree Adálat, 25th August 1860.

1. With reference to the Proceedings of the Court of Foujdaree Adálat 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 Adálat, 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 Ábkári 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 Adálat, 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 Adálat, "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 Adálat,

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 Adálat 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 Ábkári 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.

Proceedings of the Madras Government, Revenue Department, 24th July 1861.

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 carrys 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 pervieu 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 Adálat, 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.

No. 338. 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 Adálat. Mr. Thomas will furnish the Session Judge with copies of Mr. Dale's letter to the Registrar of the Sudder Adálat and of that Officer's reply, and of the orders of Government above quoted on the question under consideration.

(Signed) J. D. SIM,

Secretary to Government.

Petitions

1861.

No. 356 of 1861 D/21st January
Rec.d 29th Janry.

From T. Thathachariar residing at Narrannum-malpuram in Nellian-kalam Taluq Tinnivelly.

Refers to his former petition to Government dated 25th November 1856, complaining of his opponents having deprived him of his Maniam, and to orders passed thereon to the Collector for enquiry. Complains that the Collector afforded him no redress. Prays for orders to the Collector to enquire into his case and restore him to his Maniam.—

From the Collector's endorsement (dated 14 Sept. 1859, on Board Petition 3467 of 1856,) which forms an enclosure to this petition, it appears that enquiry has already been made.

The Govt. cannot restore the Maniam in question to T. Thathachari, but they permit him, under Sec 2 Reg. IV of 1831, to sue in the Civil Courts for his share in the village of Alootha-kanirathana-colum in the Sivilipoo-toor Taluq of the Tinnevelly District; provided however that this permission does not affect any possible rights of Govt.

GW

The
Mr

N.o 472 of 1861. D/
Rec.d 11.th Feby/61.

From Subramaniya Pillai, and Chinnaiya Pillai inhabitants of Malapal-lam in Nanniambalam Taluq Tinnevelli.-

Complaining of the forcible seizure of their lands and delivery of the same to Nallatambi Buttan, and while urging nothing in regard to the modi-fication of the order of Go-vernment which recognized Nallatambi Buttans claim, pray simply that the Col-lector may be directed to restore their lands, on the usual terms, and that their opponent may be referred to the Civil court for redress if he thinks fit.-

The Govt. can pas no further order on the complaint than that already given under dat 10 November 1860. on Petitions no. 2447-2692 and 2866 of 1860.

Petitioners were then informed that their claim must be prose-cuted in a Civil Co.

C.H.C.

Petitioner's former address. No 3442 of 1860, was forwarded to the Collector, through the R.d of Revenue, for report on 12 December last.

Petitioner must await the result.

W.

W. order in No 581 of 1861 returned to Commit. dated 28.

N.o 508 of 1861. D/10.th Feby: 1861.
Rec.d 15.th Do

From Appaiya an inhabi-tant of Chundi in Chundi Division of Kandukúru in Taluq Nellore.-

Referring to his former Petition dated 8.th November 1860, prays for permission to sue in the Civil Court one C. Sashapah for the recovery of his land situated in Camapulli Agraharam and purchased by the said Sashapah in public auction contrary to an agreement made between them.-

N.o 501 of 1861 D/1.st Feby 1861.
Rec.d 14.th Februay 1861.

From Samuel James wine Merchant of Ootacamund.-

Submitting observa-tions on that part of the order of Government dated 7.th December 1860. N.o 2329 and

The Govt. see no reason to make any alteration in the order complained of by the Petitioner

C.H.C.
By. Secy. to Govt.

W.

and the enclosure thereto which reflects upon his character and requesting that Government will reconsider their decision regarding the withdrawal of his license.

For Saint George
3d April 1861.

Wine is a fermented and intoxicating drink which cannot be sold without a license as I understand the proceeding; does not seem rather hard that he should lose his license for selling that which probably is not more deleterious than the Port & Sherry sold in the shops

Let his license be withdrawn

I would rate it as

Ten Rupees -

Let it be Fifty Rupees

doing - The trade

which is usually

known as Grog

shop - I do not see

why he should be

interfered with

I thought it was a

Proof Spirit which

be sold under

The Name of Grog

shop

Cir 7th March/61 Rs 9 — Mad Rs 9 hence

Comm

No 130.

From Clement Dale Esquire Government Pleader Sudder Adalat

To J. D. Sim Esquire Secretary to Government

Madras 11th July 1861

Sir,

Para 1 With reference to the Order of Government under the

Order of Govt 7th December 1860 No 2329. Revenue Department

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 Sessions Adalat, a letter of which I do myself the honor of Enclosing a Copy; To this the Registrar has replied under date the 10 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 in what they hold to be the regular Channel; which their Honors state would be for the Magistrate of Coimbatore to address the Sessions Judge, by whom the reference would be submitted for the Court's opinion.

I have the honor to be
Sir,
Your most obedient Servant

Govt Pleader S. A.

Rec. 7th December 1860 No 87-88

Revenue 1861 Petns
Recp: of Govt for July
No 669.
From Govt Pleader S.A
To Secretary to Government.
Dated 11th July 1861
Rec 13th.

No 130

(with 2 Enclosures)
Recp: of the Bd of Revn 18th
Appl 61 Cv 960 dt 14th Oct
No 1984.
Forwarding Copies of a letter he had addressed to the Registrar of the Coimbatore Adalat soliciting the Judges to reconsider the finding contained in their Proceedings 25th August 1860 regarding the unlicensed sale of Wines &c & of the Registrars reply.

No 337 & 338.

With an Order
No 1473. 24th July.

No 1473 This letter will with reference to the Recpt of Govt 7th December 1860 No 2329 be communicated to the Magistrate of Coimbatore, who will follow without delay the course pointed out by the Coimbatore Adalat. Mr Thomas will furnish the Sessions Judge with copies of Mr Dales letter to the Registrar of the Sudr Adalat and of that Officers reply, and of the orders of Government above quoted on the question under consideration.

Lt Col Geo:
24th July 1861

Copy.
To The Collector & Magte of Coimbatore Pro No 24
1 " Board of Revenue
3 " Govt Pleader S.A
4 " Judicial Depart No 25

Recd 19 July